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Organised by: GST & Indirect Tax Committee

Hosted by: SIRC of ICAI

Topic: Issues in ITC

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Whether Input tax credit available to the registered person in case;

- Where **registration was cancelled earlier** by the department and time limit for filing application of revocation was also been lapsed.
- Further, the department has introduced the **AMNESTY SCHEME** and by taking advantage of the scheme **registered person has filed all pending returns till date.**



SPECIAL PROCEDURE FOR REVOCATION OF CANCELLATION OF REGISTRATION

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The proper officer may, under section 29(2)(b) or (c), cancel the registration of a registered person due to any of the following reason:

- A person paying tax under composition scheme and has not furnished the return for a financial year beyond three months from the due date of furnishing the said return.
- Any registered person, other than a person specified above, has not furnished returns for such continuous tax period as may be prescribed.





The Government introduced a special procedure in respect of **revocation of cancellation of registration** as mentioned above vide Notification No. 03/2023 – Central Tax dated 31st March, 2023.

- Where the registration has been cancelled on/before 31-12-2022 and such person has **failed to apply for revocation** within the time period specified in section 30 of the CGST Act, 2017, including **a person whose appeal in this matter of cancellation/revocation has been rejected for non-compliance with section 30(1), such person shall file the application of revocation of cancellation of registration by fulfilling the following conditions:**



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- a) Revocation to be filed on/before 30-06-2023 which was further extended to 31-08-2023.
- b) Revocation to be filed only after filing all the returns for the period upto the effective date of cancellation of registration, along with payment of tax + interest + penalty + late fees.
- c) No further extension of time period for filing the application.



SECTION 16(4) OF THE CGST ACT, 2017

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- A registered person *shall not be entitled*
- *to take input tax credit* in respect of any invoice or debit note for supply of goods or services or both
- *after the thirtieth day of November* following the end of financial year
- *to which such invoice or debit note pertains or*
- *furnishing of the relevant annual return, whichever is earlier.*

Time Limit to avail Input Tax Credit enhanced [Section 16(5) & Section 16(6)]:

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- Section 16(5)
- The time limit to avail input tax credit in respect of any invoice or debit note for the financial years 2017-18, 2018-19, 2019-20 and 2020-21 may be deemed to be 30.11.2021, if the same is availed in form GSTR 3B filed up to 30.11.2021.



RESTRICTION ON CLAIMING ITC U/S 16(4)

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In the recent notification, it is informed by the department that,

- The taxpayer shall file the application of revocation of cancellation of GST registration **only by filing all pending GST returns** till the date of cancellation, and
- Further, after the filing of application taxpayer require **to file returns** to regularize the same.

Therefore, issue arises on the claiming of ITC as per Section 16(4) of the CGST Act, 2017.

As discussed the registered person shall not be eligible to claim ITC of any invoice or debit note after 30th November of the next FY.



HENCE, ANY PENDING RETURN

- **FILED AT THE TIME OF REVOCATION OF CANCELLATION OF REGISTRATION**
- **ITC SHALL NOT BE ALLOWABLE FOR THE RESPECTED FY,**
- **IF TIME LIMIT AS PER SECTION 16(4) HAS BEEN LAPSED.**

Time Limit to avail Input Tax Credit enhanced [Section 16(5) & Section 16(6)]:

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■ Section 16(6):

- Where registration of a registered person is cancelled under section 29 and subsequently the cancellation of registration is revoked by any order, either under section 30 or pursuant to any order made by the Appellate Authority or the Appellate Tribunal or court and where availment of input tax credit in respect of an invoice or debit note was not restricted under sub-section (4) on the date of order of cancellation of registration, the said person shall be entitled to take the input tax credit in respect of such invoice or debit note for supply of goods or services or both, in a return under section 39,—
 - filed upto 30th November following the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier; or

Time Limit to avail Input Tax Credit enhanced [Section 16(5) & Section 16(6)]!1

- for the period from the date of cancellation of registration or the effective date of cancellation of registration, as the case may be, till the date of order of revocation of cancellation of registration, where such return is filed within thirty days from the date of order of revocation of cancellation of registration, whichever is later.
- The aforesaid Section 16(6) is explained with the following illustration:
- Date / Effective date of cancellation of registration – 1st October, 2023
- ITC can be availed as tabulated below:

Time Limit to avail Input Tax Credit enhanced [Section 16(5) & Section 16(6)]:

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Date of order of revocation of cancellation of registration	Date of availment of ITC for the period 01/10/2023 to 31/03/2024
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**Scenario 1 –
1st July, 2024**

30/11/2024 or 31st July, 2024, whichever is later.
Hence, ITC can be availed by 30/11/2024.

**Scenario 1 –
1st January, 2025**

30/11/2024 or 31/01/2025, whichever is later.
Hence, ITC can be availed by 31/01/2025.

Time Limit to avail Input Tax Credit enhanced [Section 16(5) & Section 16(6)]:

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- It is to be noted that where the tax has been paid or the input tax credit has been reversed, no refund of the same shall be admissible.
- Now, the issues are as follows:
- **Can the assessee claim ITC now, if it was not claimed earlier due to awareness of the expired time limit as per Section 16(4)?**
- **What will happen in cases where SCN/Order has already been issued and the assessee has reversed such ITC along with interest and penalty?**

Time limit to avail ITC in case of RCM

Issue : What is the Time Limit to Avail ITC in respect of RCM Supplies received from Unregistered Person.

For eg, let say

- 1. Service has been received in F.Y. 2021-22 but the payment has been made in the month of September 2022, for the same. Will ITC be available?**
- 2. Service has been received in F.Y. 2021-22 but the payment has been made under SCN or Order in the F.Y 2024-25. Will ITC be available?**

Time Limit to Avail ITC in respect of RCM Supplies received from Unregistered Person

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- **As per section 16(2)(a) of CGST Act,**
- **no registered person shall be entitled to the credit of any input tax**
- **in respect of any supply of goods or services or both to him**
- **unless he is in possession of a tax invoice or debit note issued by a supplier registered under this Act,**
- **or such other tax paying documents as may be prescribed.**

Time Limit to Avail ITC in respect of RCM Supplies received from Unregistered Person

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- **Rule 36(1)(b) of CGST Rules, 2017** prescribes that **input tax credit shall be availed by a registered person inter alia on the basis of an invoice issued** in accordance with the provisions of section 31(3)(f) of CGST Act, **subject to the payment of tax.**
- Further, section 31(3)(f) of CGST Act provides that a registered person, who is liable to pay tax under section 9(3) or Section 9(4),
- shall issue an invoice (Self Invoicing) in respect of goods or services or both
- received by him from the supplier who is not registered
- on the date of receipt of goods or services or both.

Time Limit to Avail ITC in respect of RCM Supplies received from Unregistered Person

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- **Section 16(4) of the CGST Act, 2017 states that,**
- **A registered person shall not be entitled to take input tax credit**
- **in respect of any invoice or debit note for supply of goods or services or both**
- **after the 30th day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.**
- **It can be seen that section 16(4) of CGST Act links the time limit for ITC availment with the financial year to which the invoice or debit note pertains**

Time Limit to Avail ITC in respect of RCM Supplies received from Unregistered Person

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Section 13(3) - Time of Supply of service in case of RCM

Presently

- When the recipient records the payment in their books or
- When the payment is debited from their bank account or
- 60 days after the invoice date

Finance Act, 2024

- When the recipient records the payment in their books or
- When the payment is debited from their bank account or
- 60 days after the invoice date, **if the supplier is required to issue an invoice** or
- **The date of issue of invoice, if the recipient is required to issue an invoice.**

Time Limit to Avail ITC in respect of RCM Supplies received from Unregistered Person

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- Accordingly vide **Circular No. 211/05/2024 dated 26.06.2024** it has been clarified that,
- **in cases of supplies received from unregistered suppliers, where tax has to be paid by the recipient under RCM**
- **and where invoice is to be issued by the recipient (Self Invoicing)** of the supplies in accordance with section 31(3)(f) of CGST Act,
- the relevant financial year for calculation of time limit for availment of input tax credit under the provisions of section 16(4) of CGST Act
- will be **the financial year in which the invoice has been issued** by the recipient under section 31(3)(f) of CGST Act,
- subject to payment of tax on the said supply by the recipient and fulfillment of other conditions and restrictions of section 16 and 17 of CGST Act.

Time Limit to Avail ITC in respect of RCM Supplies received from Unregistered Person

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- In case, the **recipient issues the invoice**
- **after the time of supply** of the said supply and pays tax accordingly,
- he will be **required to pay interest** on such delayed payment of tax.
- Further, in cases of such **delayed issuance of invoice** by the recipient,
- he may also be **liable to penal action** under the provisions of Section 122 of CGST Act.

IT EMPHASIS THAT IF REVENUE IS COMPENSATED WITH INTEREST FOR DELAY DISCHARGE OF TAX LIABLE UNDER RCM, DUE CREDIT SHOULD NOT BE DENIED, BASED ON TIME OF SUPPLY.



GST INPUT TAX CREDIT

PROVISIONS U/S 16(2)



ISSUE

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WHETHER ITC CAN BE CLAIMED BY THE PURCHASING DEALER IN SITUATION WHERE THE SUPPLIER HAS COLLECTED THE TAX FROM THE PURCHASING DEALER AND NOT PAID TO THE GOVERNMENT?





WHEN IS ITC AVAILABLE 16(2)



Possession of a tax invoice, etc., issued by **a supplier registered** under GST

Bill to Shipped to Goods & **Services**

Details of above invoice or debit note have been communicated to the recipient (**via GSTR 2B**)

Inserted Via N. No. 39/2021-CT dated December 21, 2021 w.e.f 1.1.2022

Received the goods and/or services

How to Know?

The tax charged in respect of such supply has been **actually paid** to the credit of the appropriate Govt.

Furnished the return under section 39



PATNA HIGH COURT

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Aastha EnterprisesAppellant

V/s

The State of BiharRespondent

(2023) 9 Centax 270 (Pat.) [18-08-2023]

Facts of the case:

- The petitioner challenged an assessment order. The counsel for the petitioner submitted that the purchases were made after making payments through bank accounts.



- Invoices **were issued by the selling dealer** and there is a movement of the goods purchased. The **selling dealer has not paid up the tax liability, to the State**. The underlying object of Input Tax Credit regime brought in, is to avoid the cascading effect of tax and this would be totally frustrated if the department attempt recovery of tax from the purchasing dealer. The recovery has the character of a double taxation.
- The court observed that the conditions for such availment of credit has to be scrupulously followed failing which there can be no benefit conferred on the assessee. The contention of double taxation does not impress since the claim is denied only when the supplier who collected tax from the purchaser fails to pay it to the Government.



- The Government definitely could use its machinery to recover the amounts from the selling dealer and if such amounts are recovered at a later point of time, the purchasing dealer who paid the tax to its supplier could possibly seek for refund.
- **The claim of Input Tax Credit raised by the petitioner cannot be sustained when the supplying/selling dealer has not paid up the amounts to the Government; despite collection of tax from the purchasing dealer.**

Held that:

- The Hon'ble High Court dismissed the writ petition.



MADRAS HIGH COURT

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D.Y. Beathel EnterprisesAppellant

V/s

State Tax Officer (Data Cell)Respondent

2022 (58) G.S.T.L. 269 (Mad.) [24-02-2021]

Issue Involved:

- Whether the Respondent can levy the entire tax liability on the Petitioner, without involving the Sellers, where the tax has not been remitted to the Government by the Sellers?

Facts of the case:

- The Petitioner are dealers of Raw Rubber Sheets, they had purchased goods from Charles and his wife Shanthi (“Sellers”).



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- The payments were made by the Petitioners to Sellers included the tax component. A substantial portion of the sale consideration was paid through banking channels. Based on the returns filed by the Sellers, the Petitioner availed Input Tax Credit (“ITC”).
- During inspection by the State Tax Officer (“the Respondent”), it came to light that Sellers did not pay any tax to the Government, which necessitated initiation of the proceedings and issuance of show cause notices to the Petitioner.
- Subsequently, without involving the Sellers, the Respondent passed an order (“impugned order”) levying the entire liability on the Petitioners.



HELD THAT:

- As per Section 16 of CGST Act, 2017, the assessee must have received the goods and the tax charged in respect of its supply, must have been actually paid to the Government either in cash or through utilization of ITC, admissible in respect of the said supply.
- Therefore, if the tax had not reached the kitty of the Government, then the liability may have to be eventually borne by one party, either the seller or the buyer. It is also observed that, the **Respondent has not taken any recovery action against the Seller.** When it has come out that the Seller has collected tax from the Petitioner, the omission on the part of the Sellers to remit the tax must have been viewed very seriously and **strict action ought to have been initiated against the Sellers.**



- Respondent took a stand that there was no movement of goods. Held that, **if there was no movement of the goods, the examination of Sellers became more necessary and imperative. However, the Respondent did not ensure the presence of Sellers in the enquiry even when the Petitioners insisted on the same.** Hence, the Impugned order suffers from certain fundamental flaws. **Quashed the Impugned order due to non-examination of Sellers in the enquiry and non-initiation of recovery action against Sellers in the first place and remitted back the matter to the Respondent. Directed Respondent to hold the enquiry afresh where Sellers will have to be examined as witnesses and to initiate recovery action against Sellers.**



MADRAS HIGH COURT

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Jai Balaji Paper ConesAppellant

V/s

**The Assistant Commissioner, Sales Tax, Tiruchengode, Raghava
Industries Rep.by Proprietor Podili SuneelRespondent**

(2023) 8 Centax 298 (Mad.) [03-07-2023]

Facts of the case:

- The petitioner purchased a consignment of goods from the second respondent, vide three invoices dated 23.11.2018 and paid the amount including GST to the second respondent. **However, GST registration of the second respondent was earlier cancelled on 31.10.2018.**



- Therefore, the petitioner cannot be asked to pay IGST. The counsel for the first respondent submitted that the petitioner is not entitled for the relief in view of Section 16(2)(c) of the Act r/w Rule 36(4).
- **The court observed that a registered person is not entitled to credit of input tax in respect of any supply of goods or services if tax is not paid to the Government.**
- The registration of the second respondent has been cancelled on 31.10.2018 before three invoices dated 23.11.2018 were raised.
- Thus, it is clear that the second respondent could not have paid the tax to the ex-chequer. There is no merit in the present writ petition. The petitioner is however entitled to recover the amount from the suppliers in the manner known to law.



ORISSA HIGH COURT

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M/s Bright Star Plastic IndustriesAppellant

V/s

Additional Commissioner of Sales Tax (Appeal) Ors.Respondent

2022 (57) G.S.T.L. 226 (Ori.) [04-10-2021]

Issue Involved:

- **Cancellation of GST registration due to wrongful availment of input tax credit of fake invoices.**

Facts of the case:

- The show cause notice was issued to the petitioner for cancellation of registration alleging the claim of input tax credit on fake invoices issued by non-existent supplier.
- It filed clarification but registration was cancelled holding that clarification submitted was not satisfactory.



- It filed for revocation of cancellation of registration but it was rejected.
- Thereafter, appeal was filed before the Appellate Authority and the same was also rejected. It filed writ petition against the same.

HELD THAT:

- The Honorable High Court observed that the department would have to show that somehow the purchasing dealer and selling dealer acted in connivance to defraud the revenue.
- However, the department failed to show that the petitioner as a purchasing dealer deliberately availed of the ITC in respect of the transactions with an entity knowing that such an entity was not in existence.
- **Thus, the department was directed to restore the petitioner's registration by issuing appropriate orders/directions.**



ISSUE

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WHETHER ITC CAN BE DISALLOWED MERELY ON THE BASIS THAT IN FORM GSTR-2A THE SAID TAX IS NOT REFLECTED?

Reconciliation between
GSTR-2A and **GSTR-3B**

2A

GSTR

3B



WHEN IS ITC AVAILABLE 16(2)



Time of Supply

Possession of a tax invoice, etc., issued by **a supplier registered** under GST

Bill to Shipped to Goods & **Services**

Details of above invoice or debit note have been communicated to the recipient (**via GSTR 2B**)

Inserted Via N. No.
39/2021-CT dated
December 21, 2021 w.e.f
1.1.2022

Received the goods and/or services

How to Know?

The tax charged in respect of such supply has been **actually paid** to the credit of the appropriate Govt.

Furnished the return under section 39



ITC Shall not be available Rule 36(4)

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- No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under subsection (1) of section 37 **unless,-**
 - (a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and**
 - (b) the details of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60. [Rule 36(4)]**

N. No. 40/2021 CT 29th Dec, 2021, applicable from 01.01.2022



Earlier Applicability of Rule 36(4) [Before form GSTR 2B]

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- Full ITC in respect of Import and ISD
- **The restriction of 5%/10%/20% 36(4) will be applicable only on the invoices, etc. on which credit is availed before 31.12.2021.**
- The restriction imposed is not supplier wise
- The calculation would be based on only those invoices which are otherwise eligible for ITC
- The taxpayer may have to ascertain the same from his auto populated **FORM GSTR 2A as available on the due date of filing of FORM GSTR-1 under sub-section (1) of section 37.**



Calculation of Restrictions as per Old Rule 36(4)

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Sr. No	Particulars		Before 09.10.19	09.10.19 to 31.12.19	On or after 01.01.20
1	Total ITC as per Books		55,00,000	55,00,000	55,00,000
2	Eligible ITC as per Books		50,00,000	50,00,000	50,00,000
3	Ineligible ITC as per Books	(1-2)	5,00,000	5,00,000	5,00,000
4	Total ITC as per GSTR-2A		35,00,000	35,00,000	35,00,000
5	Eligible ITC as per GSTR-2A		30,00,000	30,00,000	30,00,000
6	Ineligible ITC as per GSTR-2A	(4-5)	5,00,000	5,00,000	5,00,000
7	20% / 10% of the Eligible ITC as per Form GSTR-2A [Rule 36(4)]	(5*20%) (5*10%)	NA	6,00,000	3,00,000
8	Maximum Permissible ITC [As per Rule 36(4)]	(5+7)	NA	36,00,000	33,00,000
9	ITC allowable		50,00,000	36,00,000	33,00,000
10	Additional Cash Outflow / Impact [As per Rule 36(4)]			14,00,000	17,00,000

- **It is Important to Reconcile GSTR 2-A(till 31.12.2021)/GSTR 2B(from 01.01.2022) with the Books of Accounts before filing of GSTR 3-B.**
- **If More than 20% (10% w.e.f. 01.01.2020/ 5% w.e.f 01.01.2021, 0% from 01.01.2022) ITC is claimed, department may seek interest, Penalty on the same.**
- **Refund Applications also rejected on the said grounds.**
- **Some Suppliers may file Quarterly GSTR-1.**
- **To be calculated separately for CGST, SGST/UTGST and IGST**

Gujrat HC admitted the writ challenging validity of Rule 36(4) in case of Society for Tax Analysis and Research



- As per Press Release dt. 18.10.2018, it is clarified that the furnishing of outward details in FORM GSTR-1 by the corresponding supplier(s) and the **facility to view the same in FORM GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment** basis in consonance with the provisions of section 16 of the Act. The apprehension that ITC can be availed only on the basis of reconciliation between FORM GSTR-2A and FORM GSTR-3B conducted before the due date for filing of return in FORM GSTR-3B for the month of September, 2018 is unfounded as the same exercise can be done thereafter also.

Circular No. 183/15/2022-GST dated 27th December, 2022 issued by CBIC

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Circular No. 183/15/2022-GST dated 27th December, 2022 issued by CBIC; relief for ITC mismatch in the **initial years of GST implementation i.e. F.Y. 2017-18 and F.Y. 2018-19** has been provided.

As per the said circular, the **mismatch** between **ITC as per GSTR 2A** and **ITC as GSTR 3B**, shall be handled by the proper officer by seeking all invoices on which ITC has been availed by the registered person in his GSTR 3B, but which are not reflecting in GSTR 2A and ascertain fulfillment of Section 16(2)(a) & 16(2)(b) of CGST Act, 2017 in the following scenarios;

- Non filing of GSTR 1 by the supplier.
- Non-reporting of invoices in GSTR 1 by the supplier.
- Wrong reporting of B2B supplies as B2C supplies in GSTR 1 by the supplier.
- Wrong reporting of GSTIN in GSTR 1 by supplier.

Special procedure for verification of ITC mismatch extended to period up to 31.12.2021

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As per the recommendations of the Council in its 48 meeting, Circular No. 183/15/2022-GST dated 27th December 2022 was issued to provide for the procedure for **verification of input tax credit** in cases involving difference in Input Tax Credit availed in FORM GSTR-3B vis a vis that available as per FORM GSTR-2A during FY 2017-18 and 2018-19.

To provide **further relief** to the taxpayers, the Council recommended for further issuance of a circular to provide for similar procedure for verification of input tax credit in cases involving difference in Input Tax Credit availed in FORM GSTR-3B vis a vis that available as per FORM GSTR-2A during the period **01.04.2019 to 31.12.2021**.

Further, the department has issued clarification in **Circular No. 193/05/2023-GST** dated 17th July 2023 to deal with difference in Input Tax Credit (ITC) availed in **FORM GSTR-3B** as compared to that detailed in **FORM GSTR-2A** for the period **01.04.2019 to 31.12.2021**.

Why the government issued the said circular with limited period?

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i.e Firstly upto 31.03.2019 and now extended upto 31.12.2021.

- **Earlier**, Circular No. 183/15/2022-GST dated 27th December, 2022 issued by CBIC for relief for ITC mismatch in the initial years of GST implementation for F.Y. 2017-18 and F.Y. 2018-19 this is for the reason that of Rule 36(4) of CGST Rules, 2017 issued in the FY 2019-20 (5%/10%/20%).
- Further, the government has realized that the said Rule 36(4) was challenged by the Gujarat High court and issues notices to the Central and State government on limiting the input tax credit to the assessee. Therefore, the government has now extended the benefit of the said circular till 31.12.2021.
- It is to be noted that, on 01.01.2022 the Rule 36(4) was amended and A new Auto-generated, ITC statement has been introduced in the GST portal – The GSTR -2B which is available to all regular taxpayers.
- **Hence, as a result of the GSTR 2B the said circular is now extended till 31.12.2021 only.**



KERALA HIGH COURT

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Henna medicalsAppellant

V/s

**State Tax Officers, Deputy Commissioner (Arrear Recovery) Office of The
Joint Commissioner, State Goods and Service Tax Kannur, Union of India,
Central Board of Indirect Taxes & Customs, State of Kerala**

....Respondent

(2023) 11 Centax 32 (Ker.) [19-09-2023]

Facts of the case:

- The present writ petition has been filed, impugning Ext. P1 assessment order and Ext. P2 recovery notice dated 28.12.2021 and 02.09.2023, respectively. The petitioner claims input tax credit to the extent of Rs. 2,58,116/- with interest and penalty. The total amount comes to approximately Rs. 4,58,156/-



- From the perusal of the Assessment Order impugned in the present writ petition, it appears that the only ground on which the petitioner has been said to have availed the input tax credit is the difference between GSTR 2A and GSTR 3B.
- This Court, after taking note of the judgment of the Supreme Court in the case of **The State of Karnataka v. M/s Ecom Gill Coffee Trading Private Limited 2023 (3) TMI 533 SC, [2023]** as well as Calcutta High Court judgment in **Suncraft Energy Private Limited v. The Assistant Commissioner, State Tax, Ballygunge Charge Judgment dated 02.08.2023 in MAT No.1218/2023** has held that the input tax credit of the assessee under the GST regime cannot be denied merely on the difference of GSTR 2A and 3B.



- Paragraph 8 of Diya Agencies v. The State Tax Officer Judgment dated 12.09.2023 in WPC 29769/2023, of this Court would read as under:
- “8. In view thereof, I find that the impugned Exhibit P-1 assessment order so far denial of the input tax credit to the petitioner is not sustainable, and the matter is remanded back to the Assessing Officer to give opportunity to the petitioner for his claim for input tax credit. **If on examination of the evidence submitted by the petitioner, the assessing officer is satisfied that the claim is bonafide and genuine, the petitioner should be given input tax credit. Merely on the ground that in Form GSTR-2A the said tax is not reflected should not be a sufficient ground to deny the assessee the claim of the input tax credit.** The assessing authority is therefore, directed to give an opportunity to the petitioner to give evidence in respect of his claim for input tax credit. The petitioner is directed to appear before the assessing authority within fifteen days with all evidence in his possession to prove his claim for higher claim of input tax credit.



After examination of the evidence placed by the petitioner/assessee, the assessing authority will pass a fresh order in accordance with law.”

- **In view thereof, the present writ petition is allowed.** The matter is remitted back to the file of the Assessing Authority/1st respondent to examine the evidence of the petitioner **irrespective of the Form GSTR 2A** for the petitioner`s claim for the input tax credit. After examination of the evidence placed by the petitioner/assessee, the Assessing Authority shall pass fresh orders in accordance with the law.
- **The petitioner is directed to appear before the Assessing Officer on 03.10.2023 at 11.00 a.m. with all the evidence in support of his claim for input tax credit.**



Suncraft Energy Private Limited....Appellant

V/s

Assistant Commissioner, State Tax....Respondent

[2023] 63 TAXLOK.COM 001 (Calcutta)

- The Hon'ble Calcutta High Court held that, issuance of notice on recipient on account of mismatch in GSTR-2A and GSTR-3B.
- ITC cannot be sustained without any investigation being done at the end of the supplier whose invoices are not reflecting in GSTR-2A and that allegation of non-payment of tax by supplier and denial of ITC cannot be made
- **without any investigation of the supplier in question.**



- In the said case, the Apex Court have recently dismissed the SLP filed by the GST Authorities and agreed with the Hon'ble High Court.
- For the on-going cases, the Courts should pay attention to the fact that the recipient has no control over the supplier's actions and GSTR-2A restricted eligible ITC to the recipient.
- **Thus, demand raised on the basis of GSTR-2A is wrong and contrary to the very fundamental principles on which foundation of the Act were laid.**



- **WHETHER ITC ON CSR EXPENDITURE IS ALLOWED?**





ITC on CSR Expenditure

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Taxpayer is entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used **in the course or furtherance of his business.**

While the term “business” is all inclusive as per GST law, the term “in course or furtherance of business” has not been defined.

Let us assume that. any activity carried on with a purpose to **achieve business objectives, business continuity and stability** would amount to an activity in course or furtherance of business.

CSR expenses are mandated by **Section 135 of the Companies Act.** Failure to incur these expenses could result in **punitive actions and leads to disclosure** of non-compliance in board report.

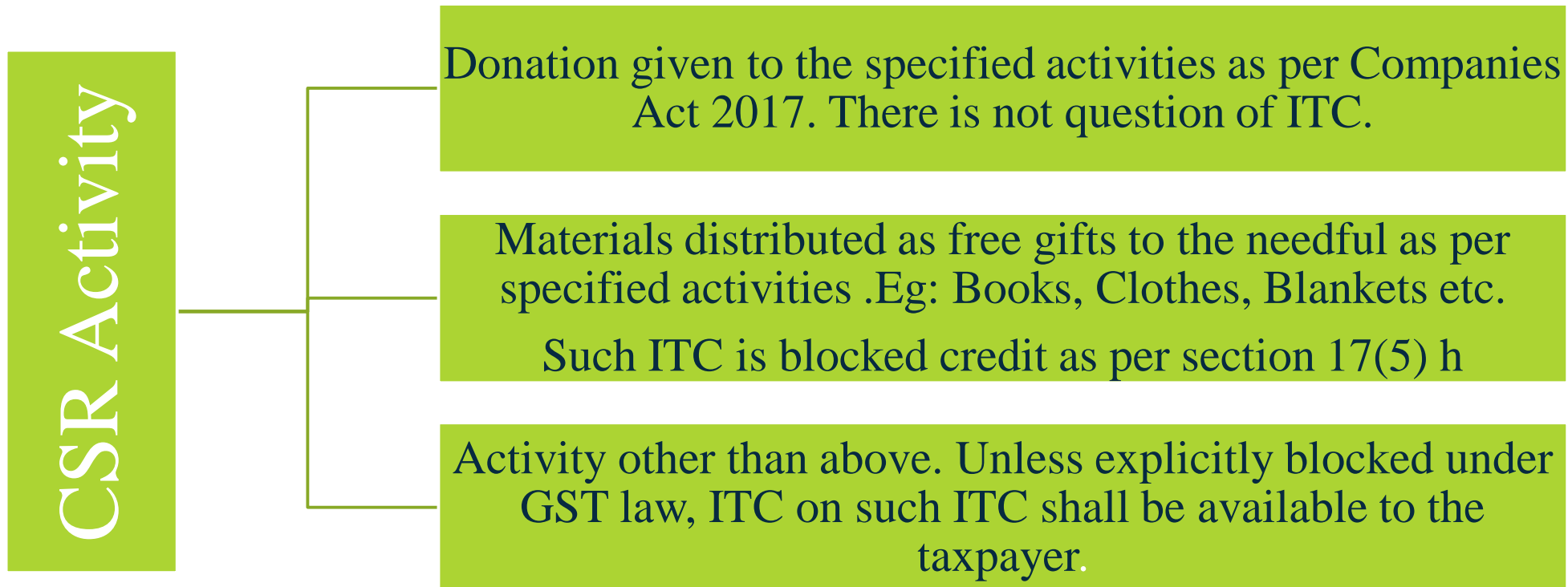
The “going concern” state of a company could be hampered. Hence, CSR expenses are needed to run business smoothly and in compliance with applicable law. Drawing nexus from the above it can be said **that CSR expenditure is a business expense and the ITC thereon is therefore is available as per section 16.**



ITC on CSR Expenditure

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Now, we have to check the eligibility as per section 17 (5). There can be various types of CSR expenditures. The eligibility depends on the type of the said CSR.





ITC on CSR Expenditure

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Further, such expenditure is not allowed under Income Tax Act.

But that does not ipso facto mean that credit will not be available under GST. GST registration is isolated law and once cannot read GST as a subsidiary of other laws

Hence, its eligibility of ITC depends solely on the GST provisions and should be judged by them.





ITC on CSR Expenditure

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Further, CBDT vides **notification No. 28/2023 dated 31.07.2023** specified that the amendment proposed in Finance Act, 2023 for insertion of **clause (fa) in Section 17(5) of CGST Act** shall come into force w.e.f. 01 October 2023.

Wherein it provides that **no ITC can be availed of goods or services** received by a taxable person, where such activities are involved in the obligations **of CSR activities.**

The question is whether the ITC on CSR expenses would be allowed before the date of notification by which clause (fa) has been inserted?



ITC on CSR Expenditure

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The view is that clause (fa) to section 17(5) of the CGST Act, has been inserted specifically to block ITC on CSR expenditure.

It does lead to the conclusion that earlier such ITC was not blocked and Input Tax Credit can be availed for CSR expenditure incurred before the notification date i.e., 01.10.2023.



**SOME CASE LAWS ON
ITC RELATED TO
BLOCKED CREDIT I.E.
SECTION 17(5) OF CGST
ACT, 2017**





ITC on Construction of Shopping mall for the purpose of letting out

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- **Safari Retreats Private Limited Vs CC of CGST**
 - **Orrisa High Court W.P. (C) No. 20463 of 2018**
(2023) 5 Centax 206 (S.C.) [18-04-2023]
- Applicant is in the business of construction of shopping mall and later on give on Rent.
- Applicant purchase various material and availed various services for construction of Mall.
- Where inputs are consumed in the construction of an immovable property which is meant and intended to be for the provision of taxable output services, whether input tax credit was available to the assessee?





- Rent income is arising out of the malls which are constructed after paying GST on different items.
- If ITC is denied on building meant and intended to be let out, it would amount to treating the transaction as identical to a building meant and intended to be sold.
- Further, treatment of these two different types of transactions as one for the purpose of GST, is contrary to the basic principles regarding classification of subject matter of tax levy and, therefore, violative of Article 14 of the Constitution.
- Hence, the interpretation adopted by the Revenue is frustrating
- the Petitioner in that case has to pay huge amount without any basis.
- The very purpose of the credit is to give benefit to the assessee.
- Therefore, if the Petitioner is required to pay GST on the rental income arising out of the investment on which he had paid GST, it is required to have the input tax credit on the



ITC detachable sliding or partition? ⁶⁰

- **Karnataka AAR in the case of We Work India Management Pvt. Ltd 2020 (32) G.S.T.L. 63 (A.A.R. - GST - Kar.) [30-09-2019]**
- Appellant is engaged in providing shared Workspace on rent to various businesses. The appellant procures goods and services from various contractors for fitting-out of the workspaces and provides the said workspace on rent, as sharing work spaces. The major components procured by the appellant that are used in the construction of furniture's and fixtures in its buildings are:
 1. Detachable 14mm Engineered wood with Oak top wooden flooring
 2. Detachable sliding and stacking glass partitions
- **Questions:**
 - Whether ITC can be availed on the detachable 14mm Engineered Wood with Oak top Wooden Flooring which is movable in nature and capitalized as “furniture and fixture”, and is not capitalized as “immovable property”?
 - Whether ITC can be availed by the applicant on the detachable sliding and stacking glass partition which is movable in nature and capitalized as “furniture and fixture” and is not capitalized as an “immovable property”?



- For construction of an immovable property (other than plant and machinery) on his own account including when such goods or services or both are used in the course or furtherance of business. For triggering the restriction, certain criteria have to be satisfied viz:
 1. The goods or services should be used for the **construction of immovable property**.
 2. The construction can be in the form of re-construction, renovation, additions, or alterations or repairs to the immovable property.
 3. The construction should be on his own account.
 4. The goods or services received are capitalized in the books of accounts.
- In the first case of “Detachable 14mm Engineered Wood with Oak top Wooden Flooring”, which is movable in nature, the condition 2, 3 and 4 can be satisfied as the construction of the same is considered as addition or alteration to the property, which is done on his own account, and is capitalized as “furniture and fixture” in the books of account.



- The term **immovable property** is not defined in the GST Law but rather it is defined in the **Section 3(26) of the General Clauses Act, 1897** as “including land, benefits arising out of land, and **things attached to the earth, or permanently fastened to anything attached to the earth**”.
- As it is clearly stated, the 14mm Engineered Wood with Oak top Wooden Flooring is detachable and movable in nature, it cannot be considered as permanently fastened to anything attached to the earth and hence cannot be identified as an immovable property. Thus, the provisions of Section 17(5)(d) are clearly not applicable in this case and ITC of the same is not restricted.
- The second case is in relation to “Detachable sliding and stacking glass partitions”. The sliding and stacking glass partitions **are fixed to the earth with nuts and bolts and can be easily dismantled and moved without demolishing the civil structure according to the requirements of the clients of the Appellant.**
- There is no permanency as the same can be easily dismantled and re-fixed. Therefore, the “Detachable sliding and stacking glass partitions” cannot be considered as immovable property and **thus ITC of the same is eligible.**



Opinions or views are like wrist watches.

Every watch shows different time from others.

But every one believes that their time is right!



Thank You

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