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Restriction on claim of ITC to 5% **vide** **CGST (Fourteenth Amendment) Rules, 2020**

The CBIC has introduced very important changes in GST as per new Notification No. 94/2020 dated 22nd December, 2020 which was applicable from 1st January, 2021. Out of all changes, one major change is related to **Restriction on claim of ITC as per Rule 36(4)**.

According to the changes made, the ITC claim w.r.t. invoices not furnished by suppliers/vendors, has now been **revised to 5% which was earlier 10%** of the credit available.

The official gazette in the point no (c) says *“for the figures and words —10 per cent, the figure and words —5 per cent shall be substituted.”*

Earlier a tax payer could take the provisional Input of 10% of the credit as per GSTR 2A/2B, will now be eligible to take only **5% of the credit available as per GSTR 2B** w.r.t the invoices not furnished by the suppliers. Any claim exceeding the specified limit shall result in violation of CGST Act read with rules which may result into suspension of GSTIN.

Background of Rule 36(4):

In the initial period of GST, Government wanted to increase the adoption of the GST by taxpayers and steady the system, for that very purpose they allowed taxpayers to claim ITC on self declaration basis which result in set off of full or major amount of liability of supplier.

Though advised, reconciliation of the purchase invoice available in internal records with the GSTR 2A was never compulsory except while filing Annual return in GSTR-9 wherein a taxpayer has to explain the difference of ITC Claimed and ITC available.

With the stabilization of the GST, The Government with the intention to keep check on fraudulent transactions introduced a sub rule to the rule 36 which will forbid the taxpayers to claim full ITC and give effect to matching concept and introduced the term ‘Provisional Input Credit’.

Provisional ITC means ITC which can be claimed even if credit is not available in GSTR 2A.

The Central govt through notification 49/2019 Central Tax dated 09/10/2019 inserted a sub rule (4) to the rule 36 which restricts the input tax credit in case of mismatch of invoice. The subrule is reproduced as below:

“(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.”



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This rule with the view of increasing the burden of compliances and financial hit had a far reaching implications for the traders and industrialists both. From the very beginning this rule was causing issues to the tax payers regarding the availment of input credit for the non-invoice GST returns, by making reconciliation of invoices and GSTR 2A form mandatory, increasing the workload of taxpayers and professional, where the availability of provisional credit was 20% .

Let's say, an assessee has total input tax credit of Rs. 3,00,000. of which Rs. 2,00,000 is reflected in GSTR-2A and Rs. 1,00,000 was not reflecting. In that case the total input tax credit that can be availed is Rs. 2,40,000 i.e. Rs. 2,00,000 + Rs. 40,000 (20% of Rs. 2,00,000). Thus, input tax credit of Rs. 60,000 out of Rs. 1,00,000 which is not reflecting on GST portal cannot be claimed in that particular month.

Though this amendment when introduced was proved to be not very well analysed, hence a lot of unanswered questions aroused and validity of the restriction was also questioned. Few of the questions were related to determination of 20% for eligible credit or applicability in case of RCM or clarification in case of rule 42 & 43 w.r.t calculating credit will be subject to reversal of common credit. However, most of the doubts has been clarified by circular number Circular No. 123/42/2019-GST, dated 11-11-2019 which explains

“The restriction of availment of ITC is imposed only in respect of those invoices / debit notes, details of which are required to be uploaded by the suppliers under sub-section (1) of section 37 and which have not been uploaded. Therefore, taxpayers may avail full ITC in respect of IGST paid on import, documents issued under RCM, credit received from ISD etc. which are outside the ambit of sub-section (1) of section 37, provided that eligibility conditions for availment of ITC are met in respect of the same. The restriction of 36(4) will be applicable only on the invoices / debit notes on which credit is availed after 09.10.2019”.

The biggest concern was why to make the buyers suffer for non-payment of tax by their defaulting sellers which has never been resolved and hence the Input tax credit of buyers is totally dependent on the suppliers which remains uncertain till the date all the invoices are uploaded by them.

Amendment of the Sub rule:

The restriction limit is reduced by CBIC to 10% vide notification 75/2019 dated 26th December 2019, which says -:

“2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), with effect from the 1st January, 2020, in rule 36, in sub-rule (4), for the figures and words “20 per cent.”, the figures and words “10 per cent.” shall be substituted”.

Further via Notification No 94/2020 dated 22nd December 2020, Government has restricted the ITC claim to 5% from the earlier restriction of 10% of the credit available w.r.t invoices not furnished by the suppliers which was effective from 1st January 2021.

Conclusion:



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Hence, now the tax payers would be restricted to claim ITC upto **105% of the credit reflected in their GSTR 2A/2B**. Any claim exceeding the specified limit shall result in violation of CGST Act read with rules which may result into suspension of GSTIN.

In other words, If the taxpayer made genuine purchase and are eligible for Input Tax Credit but the supplier hasn't filled his/her return and as a result Invoice(s) is not reflecting in your GSTR 2A/2B then ITC is restricted to only in excess of 5% of the total ITC available in your GSTR 2A/2B. The limit was 10 Percent earlier.

Opinion:

With the passing of time and the adoption of GST to the fullest, Government is increasing the burden of the taxpayers under GST which was once introduced saying that it will be beneficial for the entire country. Now this Act and rules seems to be beneficial only for Government. Since the tax payers are still suffering with the strictness of the system which is making their work and financial capacity difficult. Now, with these one by one amendment in sub-rule (4), there will be huge lag of credit for all the tax payers which could affect their periodical tax liability and the working capital of a taxpayer, as he will be required to make GST payments in cash, despite having paid his supplier for the tax invoice raised to him and having eligible ITC in his books.

This will effect the vendors negatively, who generally files GSTR 1 quarterly since they will be pressurized by their buyers to file it monthly so that there would not be lag of huge amount of credit for them.

At one side the Government is giving option of QRMP scheme for small taxpayers to file return quarterly and on the other side this notification will force the supplier file return monthly.

Though the Government has issued many circulars for clarifying the rule and its applicability this rule has really disappointed the people of this country in the Government. It seems that the rules and notification now a days have been introduced just for the sake of increasing the strictness and the view of common people are heavily ignored.

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Ms. Divya Jain is a Chartered Accountant. She recently started practicing and providing consultancy services related to Direct & Indirect Taxation and Accounts management. She had 2 years of post-qualification work experience in Compliance & Financial Reporting. She had been working as a Head of Department, Finance & Accounts with a well-known Luxury Watch Company in Mumbai. She has also been assisting the clients for GST & Income Tax related queries.

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