Analysis of Amendment in Rule 36(4) ITC Restrictions CGST Act 2017

The Central Board of Indirect Taxes and Customs, on the recommendations of the GST Council, had released a **notification (94/202-Central Tax) on December 22,2020** making a number of crucial amendments to the **Central Goods and Service Tax Rules, 2017**. The said amendments caused a disruption in the business community, who were worried that the amendment is not in the favour of all and would reduce the amount of ITC they claim resulting in higher tax liability to be borne from their pockets.

The two major changes that are mainly bothering businessmen are:

- Amendment to Rule 36(4) that reduces ITC from 10 per cent to 5 percent
- Rule 86B that makes it compulsory for businesses with a turnover of more than Rs 50 lakh to pay at least 1% of their GST liability in cash.

What is Rule 36 (4) :

Rule 36 consists of three parts, of which the first two (Pact A & Part B) talk about the form and the furnishing process while the third part (C) says "for the figure and words 10 per cent, the figure and words 5 per cent shall be substituted."

As it's easy to understand, the part C means to say that the ITC claim, which was 10 per cent earlier will now be 5 per cent.

What is Input Tax Credit (ITC) :

Input Tax Credit, or ITC, refers to the credit that businesses can claim against the tax they have paid on purchase of goods and/or services from the tax they will have to pay for the sales. Earlier the maximum limit of ITC a businessman could claim was 10 per cent.

According to Rule 36(4), the maximum claimable Input Tax Credit (ITC) is now 5 per cent, effective from January 1,2021.

How to Calculate the 5 % Limit :

Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have **not been** furnished / Uploaded in Form GSTR-1 or using the invoice furnishing facility**, shall not exceed 5 per cent** of the eligible credit available in respect of invoices or debit notes the details of which **have been furnished/Uploaded in Form GSTR-1 or using the invoice furnishing facility.**

Example for Clarification:

Eligible ITC appearing in GSTR-2A (on basis of return uploaded by Vendor)

Rs.1,00,000.00

Eligible ITC not appearing in GSTR-2A(Return not uploaded by vendor)

Rs. 6,000.00

Total Eligible ITC (100000+6000)
Rs. 1,06,000.00

Maximum Permissible ITC in GSTR3B on self-assessment basis (100000x 5%) **i.e. Rs. 5000 or Rs. 6,000 whichever is lower**, therefore, Rs. 1,00,000 +Rs. 5,000 = **Rs. 1,05,000**

Note : ITC carried forward to the subsequent tax period subject to the requisite invoices uploaded by the supplier shall be Rs. 1000.00

Exception to Rule 36 (4) :

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.

New Rule 86B

Introduced along with the amendments says that businesses with a monthly Taxable supply (Except zero rated and exempt supply) of Rs 50 lakh or more will have to pay at least one per cent of their monthly GST liability in cash. This aims to reduce the number of tax evasion incidents where businessmen were using fake invoices to offset their GST liability against ITC.

Impact of Rule 86 B :

- After examining the above restriction as introduced by rule 86B, it is clear that the above rule applies only to the large taxpayers.
- There will be no impact on micro and small businesses, under this rule it is clearly stated that this rule is to control the issue of fake invoices to use the input tax credit to discharge the liability.
- It restricts fraudsters from showing high turnovers without having any financial credibility.
- Restrictions imposed by rule 86B will further increase the compliance burden for the taxpayers.

Exceptions to Rule 86 B :

- If the persons mentioned below have paid more than Rs.1 lakh as Income Tax under Income Tax Act, 1961
    - The registered person
    - Proprietor, karta or Managing Director of the registered person
    - Any of the partners or whole time directors or any other person as the case may be.

- If the registered person under concern has received a refund of amount greater than Rs.1 lakh in the preceding financial year on account of export under LUT or due to inverted tax structure.
- If the registered person under concern has discharged his liability towards output tax by electronic cash ledger for an amount in excess of 1% cumulatively of the total output tax liability up to the said month in the current financial year.
- If the registered person under concern is any of the following:
  - Government department
  - Public sector undertaking
  - Local authority
  - Statutory Authority

Conclusion : As discussed above it is apparent that both these rules have been inserted with the objective to curb the practice of fake invoices and to conquer the large tax payers. In times to come its effect could be seen and may bring transparency in availment of credit and payment of taxes including discharging of liabilities.

Every effort has been taken to provide an insight about this recent amendment and to cover all important areas of it , any suggestions and improvements will be welcomed and highly appreciated.

Source : TaxGuru