

ITC Restriction under GST to 10%

Input Tax Credit (ITC) is the credit available towards tax paid on inputs which are used or intended to be used for in the course or furtherance of business.

Input Tax Credit is the backbone of GST structure. The success of GST depends upon the smooth flow of ITC. Having too many restrictions on the ITC may impact the whole GST system negatively.

Not restricting ITC with certain conditions for utilisation would result in misuse of ITC widely therefore the GST Law under section 49 and Rule 36 prescribes certain conditions to avail ITC.

Notification No 75/2019 issued on 26th December 2019 restricts the ITC eligibility to maximum 10% on inward supplies for which details have not been furnished by the outward suppliers in its GSTR1. Is this notification viable in the background of following contentions:

1. Waiving off late fees on GSTR1 filing till November 2019 wide notification 74/2019
2. No stringent provisions or actions taken for late filing or non filing of GSTR1
3. Allowing quarterly GSTR1 filing for MSME's

In the background of above provisions, suppliers are not serious about filing GSTR1 regularly. Over and above, the law itself provides option to file GSTR1 once a quarter for MSME's having turnover upto 1.5 crore then how can Government penalise the tax payers and restrict the ITC to 10% on inward supplies for which details have not been furnished by the outward suppliers in its GSTR1. On one hand allowing suppliers to file GSTR1 quarterly and on the other hand restricting ITC for not reflecting in 2A is contradictory. This decision impacts the cash flow of business houses. Apart from the above, giving additional power to department officials by inserting new Rule 86A towards utilisation of amount available in electronic credit ledger wide notification 75/2019 may result in bureaucracy and manual intervention in the whole process again.

Rule 86A mentions the following conditions to avail credit which is already available in the electronic credit ledger of the taxpayer:

(1) The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as

a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36-

i. issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

ii. without receipt of goods or services or both; or

b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or

c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36,

may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.

Reading both notification 75/2019 along with ITC utilisation rules under 36, it is obvious that a tax payer has to ensure after taking the goods or service from the supplier, it is his duty to follow up and ensure that supplier has filed GSTR1 and also ensure that supplier has made tax payment through 3B which he has collected through invoice. Is this practically possible for a business men? Does this allow for growth of business and economy?

We have seen recent change with respect to E-way bill provisions. As we know the GST collections had dropped significantly after 2017-18 therefore the Govt has implemented rule 138E of CGST rules effective 1st Dec 2019 as per which if taxpayer has not filed GSTR3B for 2 consecutive tax periods then he shall not be able to generate E-way bill both as consigner and consignee. This provision has helped improve GST revenue and streamline GSTR3B filing in a short span of time. Looking at this, may be actions such as mentioned below may help improve compliance without burdening or restricting ITC for tax payers.

1. Imposing stringent penalties for not filing GSTR1 on time
2. GSTR1 filing along with 3B for rule 138E of E way bill rules whereby filing GSTR1 also becomes compulsory for generating E Way bills
3. Removing quarterly option of filing GSTR1 so that all tax payers on same page and credit flow is seamless

Encouraging seamless credit flow without too many restrictions on ITC utilisation and avoiding manual intervention into the system shall help improve GST system work efficiently and smoothly instead of putting road blocks by increasing the restrictions on ITC. Revenue collection can improve only by increasing the seamless credit flow and not by putting hindrances in the system.