

Input Tax Credit in GST - A Bumpy Ride

Jan 31, 2023



Gopa Kumar

Director - Indirect taxes of Cognizant Technology Solutions India Pvt Ltd

Seldom would one disagree that GST brought in lots of hope and optimism among everyone, and the expectation was that it would put to rest some of the issues which Industry had been facing for long. While the list is endless but one of the major and the critical issue that had everyone on their toes was the issue on Input tax credit (ITC), the way ITC was allowed and administered.

Everyone thought that there were too many restrictions on ITC in the erstwhile regime and the expectation from GST was that it would make the ITC mechanism seamless. But these expectations were not met and today, most would consider the ITC mechanism in GST as quite complicated and restricted one. None of the countries world over have similar restrictions on ITC as in Indian GST. The concept everywhere across the world is that if an expense relates to business activity that is allowed as credit so long as some of basic conditions are satisfied which include an invoice and payment for that invoice.

The concept of allowing the credit only when the supplier has actually paid the tax for his supplies and details are disclosed as part of his outward supplies is something which was prevalent in the VAT laws of few States. This provision was disputed by taxpayers on the ground that once the recipient has received the goods or services and has a valid invoice, credit cannot be questioned. The Hon'ble Supreme court affirmed the order of the Hon'ble Delhi High Court in the case of [ON QUEST MERCHANDISING INDIA PVT. LTD., SUVASINI CHARITABLE TRUST, ARISE INDIA LIMITED, VINAYAK TREXIM, K.R. ANAND, APARICI CERAMICA, ARUN JAIN \(HUF\) , DAMSON TECHNOLOGIES PVT. LTD., SOLVOCHEM, M/S. MEENU TRADING CO., & MAHAN POLYMERS VERSUS GOVERNMENT OF NCT OF DELHI & ORS. & COMMISSIONER OF TRADE & TAXES, DELHI AND ORS.ITS-314-HC-2017\(DEL\)](#)]-VAT - which held that benefit of ITC cannot be denied to a bonafide buyer if the seller did not remit the tax, after issuing tax invoice reflecting the TIN number of the buyer. The Hon'ble High court mentioned that *"the purchasing dealer is being asked to do the impossible, i.e., to anticipate the selling dealer who will not deposit with the Government the tax collected by him from those purchasing dealers and therefore avoid transacting with such selling dealers"*.

With GST coming in, the expectation was that these principles laid down by various courts would be accepted and seamless flow of credit would be allowed, which is the very basis of GST world over. Unfortunately, these concepts were borrowed from VAT law and inscribed in the current GST law as well.

One of the first and the basic provision which talks about eligibility and conditions for taking credit i.e., Section 16 of the CGST Act is in itself very restrictive and today, one cannot take credit unless the supplier has filed the details of his outward supplies (GSTR-1) which is accordingly communicated to the recipient (GSTR-2B), the Supplier has paid taxes to the government for his supplies and credit is not restricted under Section 38. Even though the Government has all the ways and means to recover taxes and penalize the person who does not file the return or pay taxes, the denial of ITC to recipient due to default of supplier effectively shifts the onus on the recipient taxpayer to ensure the payment of tax to avoid loss of ITC, despite paying the amount of tax to the supplier.

These requirements also lead to complicated reconciliations between the purchase register and the GSTR 2A/2B on a monthly basis to ensure that the ITC is not lost and is correctly availed. Unfortunately, the ITC

that was allowed earlier on the provisional basis was later restricted and the ITC in case of unmatched supplies was allowed to be claimed only up to 20% of the amount of matched ITC in a month, which was subsequently reduced to 10% and then to 5% of the eligible credit and finally the way law stands today, the credit is only allowed as per the ITC appearing in GSTR 2B, as declared by the supplier in his returns.

Interestingly, Hon'ble Kerala High court has held in the case of [ST. JOSEPH TEA COMPANY LTD., PARAMOUNT ENVIRO ENERGIES VERSUS THE STATE TAX OFFICER, DEPUTY COMMISSIONER, STATE GST DEPARTMENT, KOTTAYAM, STATE GOODS AND SERVICE TAX DEPARTMENT, GOODS AND SERVICE TAX NETWORK LTD. \[TS-365-HC\(KER\)-2021-GST\]](#) that ITC cannot be denied if the invoices are not appearing in GSTR 2A. However, this was somewhat of fact specific observation.

Also, In [M/S. D.Y. BEATHEL ENTERPRISES VERSUS THE STATE TAX OFFICER \(DATA CELL\) \(INVESTIGATION WING\) COMMERCIAL TAX BUILDINGS, TIRUNELVELI. \[TS-190-HC\(MAD\)-2021-GST\]](#) - The Hon'ble Madras High court has quashed the order passed by the GST officer demanding the entire tax liability from the purchaser without involving the seller, where payment of GST has already been made by the buyer and same has not been remitted by the seller to the Government. The High Court held that non remittance of GST by the seller should have been viewed very seriously and strict action ought to have been taken against the seller.

The GST Authorities have powers for recovery of tax from the defaulters under section 79. The GST authorities can attach the bank account or even the property of the defaulter after following due procedure and initiate recovery of GST. However, in many cases, the GST authorities still commence proceedings to disallow the ITC claimed by the recipient, before seeking to recover the tax amount from the supplier.

Lastly, some of the restrictions on ITC which Section 17 of the CGST Act poses, wherein one cannot avail credit on some of the basic things like Motor vehicles, rent a cab and works contract needs to be relooked at. One wonders on the logic to restrict such credits when it is known beyond doubt that each of these expenses are infact incurred for business activity.

To conclude, ITC is one of the very important and critical aspects of GST, on which stands the very foundation of GST. Looking at how broadly the courts have been viewing the concept of ITC and how the law in all other countries, its high time that the Government makes suitable amendments to the provisions related to ITC by not penalizing the purchaser for the default of the seller and broadens the ITC eligibility.

**Views expressed are personal and not that of the organization*