

ACHROMIC POINT KNOWLEDGE FORUM

Issue #10
FEBRUARY 2021

eMagazine
Annual Subscription - 1200 | \$50



BY THE PROFESSIONALS FOR THE PROFESSIONALS



SHOULD AN HONEST **TAXPAYER** BEAR LOSS DUE TO DEFAULT ON THE PART OF ITS **SUPPLIERS?**

Introduction

With the introduction of GST, plenty of amendments were also introduced in the robust taxation system to ensure transparency and simplicity in the system. Major transformations that were introduced include tax charged by suppliers appearing in GSTR 2A of the recipient based on GSTR-1 filed by the supplier, auto-population of GSTR 1 and GSTR 2B data in GSTR 3B, e-invoicing system, etc

One of the most vital aspect of the Goods and Services Tax ('GST') regime is the elimination of the cascading effect of taxes and ensuring seamless flow of credits. If the credit flow is disrupted, it would enhance the cost of doing business and cause issues to a variety of stakeholders. Hence, timely transfer of credit is of paramount importance for any service recipient.

In this article, we will elaborate on the dilemmas that an honest service recipient goes through due to the defaults on part of the suppliers.

Provisions of Law

As per the provisions embedded in GST Law, a registered person will be entitled to avail ITC in respect of any invoice or debit note only if the following conditions are satisfied:

1. Goods and services are received by

the recipient

2. The recipient is in possession of tax invoice or debit note issued by the supplier.

3. The amount of tax charged in respect of such supply has been actually paid to the government by utilizing cash or ITC admissible in respect of such supply.

4. Monthly or quarterly returns are furnished

The points 3 above imposes that credit would be available only when the taxes are actually paid to the government. It implies that if the supplier performs its part of obligations diligently, the credit would be available to the service recipient.

Procedures for e-invoicing are also implemented for all the entities having aggregate turnover in any preceding Financial Year from 2017-18 onwards exceeding INR 500 crores w.e.f October 1st 2020 and for all entities exceeding INR 100 crore w.e.f January 1st 2021. The Applicable persons will have to issue an invoice in such manner as specified in Rules. Every invoice issued in any manner other than the manner specified, will not be treated as an invoice.

Further, the government restricted the

claimable ITC to 120% of the eligible credit amount reflecting in GSTR-2A which was later on reduced to 110% and now the government further has reduced it to 105%. So, to conclude the recipient has been left at the mercy of the supplier's action especially in case the terms of the contract states the advance payment or a shorter credit period.

Difficulties to the taxpayers

The above provisions under GST were introduced in order to bring in transparency in the system and to ensure seamless flow of credit with the aid of automation. However, this has led to an additional trauma for the honest service recipients, since the recipients will also have to verify whether the supplier



has complied with all the provisions in GST to claim their credit.

For instance, Mr. X (a trader of goods) is satisfied with the quality of goods supplied by Mr. A and wishes to purchase them from Mr. A in order to further supply. Nevertheless, Mr. A neither files the returns timely nor pays the tax to the government. Hence, Mr. X will not be able to claim the credit on bona-fide purchase of the goods even if he has complied with all the provisions and paid tax on his outward supplies to the government. This will enhance the cost of doing business and will impose an additional burden on the recipient to constantly follow-up with suppliers for

paying the taxes and filing the returns.

If we also say in the above example that Mr.



A had a turnover more than INR 500 crore and was eligible to issue an e-invoice, the recipient will also have to ensure that an e-invoice is issued in lieu of regular tax invoice. Thus, it mandates for every recipient of goods and services to obtain a declaration from the supplier that he/she is not eligible to issue an e-invoice. But, that can also be challenged by the department and will open another box of litigation.

The supplier may even commit a mistake in filing of GSTR 1- late filing, wrong details entered etc. Consequently, the recipient will not be able to claim the ITC within due time causing working capital blockages.

Several Courts have taken heed of the issues faced by sincere taxpayers and have passed judgments in their favor. Karnataka High Court in case of M/s. Onyx Designs, wherein it was held that the benefit of input tax could not be deprived to the purchaser dealer, if the purchaser dealer satisfactorily demonstrates that while purchasing goods, he has paid the amount of tax to the selling dealer. If the selling dealer has not deposited the amount in full or a part thereof, it would be for the revenue to proceed against the selling dealer. Apex court dismissed the petition filed by the revenue against the order

of Delhi High Court in case of Arise India Limited wherein Delhi High Court has held that similar provision of Delhi VAT act being arbitrary and unconstitutional. Court also held that purchasing dealer cannot be expected to keep track of whether the selling dealer has in fact deposited tax. Further, court also held that the department is not helpless if the selling dealer commits a default.

So, in order to get relief, the taxpayer will have to go the court, which will increase the burden of the already overburdened judiciary.

Conclusion

Taking a view of the above points, it can be concluded that smooth availability of claims to honest recipients is a long drawn battle. Till date, certain taxpayers are still not able to claim ITC due to default on the part of suppliers. Even though some assistance is provided by the government by blocking E-way bills for non-compliant taxpayers, stricter provisions should be introduced in order to protect the interest of honest taxpayers.

A new clause is being inserted by Finance Bill 2021, which may be a game-changer in this respect. This clause provides that input tax credit on invoice or debit note may be availed only when the details of such invoice or debit note have been furnished by the supplier in the statement of outward supplies i.e. GSTR -1, and such details have been communicated to the recipient of such invoice or debit note. This clause would give a statutory framework to introduce of the provisions related to the restriction of ITC on account of GSTR 2 vs. GSTR 2B matching. Like every cloud, this one also has a silver lining. Insertion of this provision makes it clear that there were no powers conferred under the Act for the disallowance of credit

on account of Rule 36(4) or mismatch in ITC from GSTR-2A prior to this insertion. Hence this can form a strong contention against the departmental notices on this account for the previous period.



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