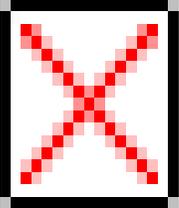


**Availment without utilization - To be or not to be!**

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**By CA Shivani Shah**



**PURSUANT** to the 45th GST Council meeting held on 17/09/2021, a press release was issued which *inter alia* stated as under:

***"In the spirit of earlier Council decision that interest is to be charged only in respect of net cash liability, section 50 (3) of the CGST Act to be amended retrospectively, w.e.f. 01.07.2017, to provide that interest is to be paid by a taxpayer on "ineligible ITC availed and utilized" and not on "ineligible ITC availed".***

***It has also been decided that interest in such cases should be charged on ineligible ITC availed and utilized at 18% w.e.f. 01.07.2017."***

Many a times, it is a conundrum of sorts for an Assessee to determine if a given ITC is eligible or not. Hence at the time of availment, there may be a lack of clarity on whether the ITC in question is eligible or not. In such cases, it is prudent for the Assessee to avail the ITC and not utilize it till he achieves some clarity. This is also required keeping in mind the provisions of section 16(4) of the CGST Act ('Act'), which do not permit the availment of credit in respect of an invoice or debit note after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Say, for an example, an Assessee may have taken ITC in respect of construction services. At the time of availment of ITC in respect of the said service, it is not clear to the Assessee whether the same will be used for construction of an immovable property or for plant and machinery. Hence the assessee will not utilize it till he is certain of the eligibility of the ITC.

Now let's understand how the GST portal would behave in the following scenario -

Mr. A (Assessee), for the month of September 2021, has output tax liability to the tune of Rs. 600 (IGST), Rs. 400 (CGST) and Rs. 400 (SGST). Assume he has NIL ITC balance in his E-Credit Ledger. For the given tax period, Mr. A avails Rs. 200 (IGST), Rs. 100 (CGST) and Rs. 100 (SGST) as ITC. However, out of the credit of Rs. 200 (IGST), he is not certain of the eligibility of the ITC amounting to Rs.50 since it may or may not fall within the ambit of section 17(5) of the Act. Hence he avails the entire ITC but does not utilize it to the tune of Rs.50.

Hence he utilizes the ITC as under -

IGST Rs.150 (Rs.200 - 50)

CGST Rs.100

SGST Rs.100

However, the GST statute and the portal have different tale to tell.

As per the provisions of Section 49 of the CGST Act, credit of integrated tax has to be utilised first for payment of integrated tax, then Central tax and then State tax, in that order mandatorily.

Rule 88A in the CGST Rules allows utilisation of input tax credit of IGST towards the payment of CGST and SGST, or as the case may be, UTGST, in any order subject to the condition that the entire input tax credit on account of integrated tax is completely exhausted first before the input tax credit on account of CGST or SGST/UTGST can be utilised.

With these rules in place, it is mandatory to utilise the entire IGST available in electronic credit ledger before utilising ITC on CGST or SGST. The order (sequence) of setting off ITC of IGST can be done in any proportion and any order towards setting off the CGST or SGST output after utilising the same for IGST output.

Resultantly, the portal will not allow Mr. A to avail the ITC accruing on account of IGST to the tune of Rs.150 if he intends not to utilize the full amount. The portal will literally compel Mr. A to fully utilize ITC to the tune of Rs. 200 before it proceeds to utilize the ITC available of CGST and SGST.

Hence the only option with Mr. A is to either utilize the full amount of ITC arising out of IGST or to not avail the uncertain ITC. In other words, he really does not have the option of availing and not utilizing the said ITC. Hence the press release dated 17/09/2021 (supra) does not really help the cause of an Assessee like Mr. A as shown in the example. This problem would, however, not be as grave if the uncertain ITC arises on account of CGST and SGST.

**(The views expressed are strictly personal.)**

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