

Challenges in availment of Input Tax Credit under GST

The Revised Model GST Law (hence forth "RMGL") was made available in public domain in November, 2016. The commitment of the government is to roll out a simplified and easier indirect tax regime, yet the provisions reveal a different picture. The whole concept of availment of input tax credit (ITC) is set to change from present system of availment of credit as part of self-assessment scheme to electronic matching of credit with supplier wise, invoice wise and item HSN code wise matching. Basic conditions for availment of credit mentioned in Section 16(2) of RMGL are as follows:

- Recipient is in possession of a tax invoice or debit note issued by a supplier registered under the GST Act, or such other taxpaying document(s) as may be prescribed.
- Recipient has received the goods and/or services.
- Tax charged in respect of such supply has been actually paid to the account of the appropriate Government, either in cash or through utilization of input tax credit admissible in respect of the said supply.
- Return under Section 34 has been filed.

Credit on advance payment

GST is required to be paid at the time of supply as per the provisions contained in Section 13/ Section 14 which talk about earlier of the two i.e. date of issue of invoice or date of receipt of payment. However, credit is allowed only when all the conditions of credit in Section 16 are satisfied. This will result in gap of crucial days between actual payment of GST by supplier and allowance of credit to recipient. This gap will be mainly in case of GST paid on advance receipt since condition for availment of credit requires that goods and/or services should have been received. Also, Section 28(3) provides that receipt voucher shall be issued in case of advance receipt. Receipt voucher, not being a tax invoice, will not be considered as eligible document for availment of credit. Thus, credit shall not be eligible in case of advance payment. However, definition of taxable service in Finance Act, 1994 covers service provided or to be provided. A view is generally taken that on payment of advance, services should be considered as received and credit is eligible. But under GST, even such view is not possible even though definition of supply covers supply of goods and/or services which are provided or agreed to be provided. But, as per Section 16 of RMGL does not state that supply should have been received for availing credit rather it requires goods/ services have been received. Thus, credit will not be eligible merely because advance payment has been made for goods or services.

Credit on receipt of last lot of goods

Where the goods against an invoice are received in lots or instalments, credit is eligible on receipt of the last lot or installment. This unnecessary condition could result in significant delay in availment of credit. If the goods are imported and from port goods are received in factory in lots, then credit is eligible only when the last lot is received.

Payment to supplier of services within three months

Second proviso to Section 16(2) states that where the recipient fails to pay supplier of service the value of service within three months from the date of issue of invoice, then credit claimed is required to be reversed

along with interest. This condition is similar to present condition in Cenvat Credit Rules under Rule 4(7). But in GST credit is required to be reversed along with Interest. Further, if payment is made to supplier after three months, then the provision about credit eligibility of reversal made earlier is not mentioned in GST law. This omission appears to be unintentional and the final law is expected to provide for the same.

Capital goods used partly for taxable & partly for exempted supplies

Section 17 seeks to cover those situations where credit is claimed on goods/ services which are used partly for taxable supplies including zero rated supplies and partly for exempted supplies. The said provision is based on the very rational reason that only credit of those goods/ services is allowed which are used for taxable supplies. However, even the credit on capital goods needs to be apportioned in GST if they are used for both taxable and exempt supplies. Currently Cenvat Credit Rules do not require such apportionment of credit on capital goods. Only common credit in respect of input and input services is required to be apportioned as per Rule 6(2) and Rule 6(3) of Cenvat Credit Rules.

My vendor and vendor of my vendor must pay tax

A harsh condition for availment of the credit is contained in Section 16(2) as per which the supplier must have paid tax to the account of the appropriate government. This single condition can create several problems and disputes between supplier and receiver. Even though the receiver has already paid tax to supplier, yet he is not allowed to take credit if the supplier has not paid tax. This problem is somewhat similar to present reconciliation issues which assessees face in claiming TDS by Form 26AS. Some of the problems which may arise:

- Where vendor has not paid tax and assessee is not able to take credit.
- Second, suppose vendor has paid tax appropriately by cash/ credit. But vendor's return comes out to be invalid after 2 months of provisional credit claimed by him. This could be due to vendor of my vendor has not passed on the credit to my vendor. Consequently, my return becomes invalid. This chain of invalid return can go on and on. If any large scale assessee defaults, then recipient will have to pay credit claimed earlier along with interest. This mismatch of credit could spread across the entire supply chain.

GST of different State?

Suppose, CA firm in Delhi is auditing a company in UP. For this purpose, auditors visited Mumbai (for plant visit) and avail hotel accommodation services in Mumbai from Hotel XYZ. Now considering the place of supply provision as per Section 9(4)(b) in draft IGST Law, place of supply will be Mumbai. Therefore, Hotel XYZ will charge CGST+SGST of Maharashtra. Now the question that will arise is whether the said CA firm being Delhi registrant is eligible to take credit of CGST and SGST of Maharashtra. If not, then how will it be shown in auto populated GSTR2A of CA firm since the hotel will be uploading its invoices in its GSTR1 along with GSTIN of CA firm? If tax of one State is not allowed as credit to a registrant of a different state, then the whole idea of GST becomes questionable. It is ignoring the concept of seamless flow of credit. And what could be the reason for not allowing such credit?

Continuing the above example, now CA firm is required to pay IGST on its audit services since client's head office is in UP. The IGST on its output services will go to UP Government since consumption is in UP. Now for payment of IGST, CA firm is eligible to utilise credit of CGST & SGST which are paid by him to Delhi

Government. But he is not eligible to utilise credit of CGST & SGST of Maharashtra Government. But again the question comes up, why cannot he utilise Maharashtra GST?

Thus, it is clear that input tax credit chain could be stuck and the ultimate motive of GST could be diluted. Hopefully, government will come out with appropriate changes so that the final law and rules do not lead to any blockage of genuine credits.