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CTC WEBINAR Tackling GST Department's Overreach

SPEAKER -ADVOCATE BHARAT RAICHANDANI

Saturday, 16th January 2021 on virtual platform 11.00 am to 1.00 pm

Few issues and Difficulties faced by the taxpayers due to coercive action by the department.

1. Withholding refund on export by listing the exporter as risky exporter. DGARM is taking undue time to clear the verification. Many offices of GST are involved in the verification. The delay by the jurisdictional office of the exporter, his nodal office or office of the Commissioner and the similar authorities of the suppliers to the exporter and suppliers of suppliers to the exporter are being verified on frivolous reasons.

2. Rule 36(4) provides for availing additional 10% of ITC of those matched with GSTR2A. However, refund is being sanctioned only on the basis of what is appearing in GSTR2A. Further few vendors pay their GST belatedly for which ITC refund is rejected as stated above. In that case how to claim the refund for such ITC on future date.

3. Recently it was found that department is blocking the ITC ledger of assessee without giving any notice etc. On personal follow up the assessee was informed that the blockage of ITC ledger is on account of hawala dealer transaction of purchase. The department does not issue SCN but intimate in writing to reverse the said ITC with interest.

Is this approach of department is legal/valid as per law? What is remedy for assessee?

4. The assessee has availed cenvat credit under old service tax regime in month of March,2015 for invoices pertains to FY 2013-14. The time limit including extended date for issuing SCN for wrong availment of cenvat was 31st December,2020 in above case. Recently department issued SCN on 5th January,2021 under section 73(1) of The CGST Act,2020 read with CGST Rule 121 and section 174 of CGST act.

Can department issue notice SCN under GST for recovery of incorrect availment of cenvat?

5. Section 16(1) of CGST Act provide that “Every registered person shall, subject to such conditions and restrictions **as may be prescribed** and, in the manner, specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person”

Section 16(2) of CGST Act *Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, --*

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

Explanation. -For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-

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(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]

*(c) subject to the provisions of section 41 or **section 43A**, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and*

(d) he has furnished the return under section 39:

Notification No. 49/2019-CT, dated 09th October, 2019 inserts Rule 36(4) effective from 9th October, 2019, which places a maximum cap on the amount of ITC available to an assessee in a given tax period. A person can avail ITC on his total purchases/inward supply to the maximum extent of the details furnished by the respective suppliers while filling his GSTR-1 for corresponding tax period PLUS 20% of such eligible ITC for which no details are available in GSTR 2A of registered

assessee. The said cap of 20% is further reduced to 10 % w.e.f. 1st January,2020 vide notification number 75/2019-CT dated 26th December,2019.

Section 16 (2) lays down conditions for availment & eligibility of ITC. Further Section 41, 42 & 43 lays down provisions related to claim of ITC, provisional acceptance, matching, reversal and reclaim of ITC by the registered assessee.

Vide the CGST (amendment) Act,2018, section 43A was inserted in statute. The section 43A (4) provides for laying down procedure for availing ITC in respect of outward supplies not furnished under section 43A (3) and such procedure may include the maximum amount of the ITC which can be so availed, not exceeding 20% of the ITC available, on the basis of details furnished by the suppliers under the said sub-section.

The said newly inserted section 43A is not yet notified, hence not operative till to date. This is specific provision inserted for procedure for availment of ITC. On the hand CGST Rule 36(4) was notified in exercise of powers conferred u/s. 164 of CGST Act, which empowers government to make rules for carrying out provisions of CGST Act.

On one hand the provision of section 43A which is specific for procedure for availing ITC are yet to be notified & on the other hand the rules 36(4) regarding procedure for ITC was inserted effective from 9th October,2019. This has led to situation that the rules are in place whereas corresponding section is not yet operative.

In such scenario, business community are facing following difficulties while implementing the Rule 36(4)

- There would be blockage of Working capital of the registered person if his supplier delays the filing of his GSTR 1
- In case of supplier, who are required to file quarterly GSTR 1, the ITC related to such supplier will be blocked for initial 3 months
- Government will recover Interest from supplier who has filed his return late return as well from recipient for wrong availment of ITC if the recipient avails such credit without such credit appearing in GSTR 2A. With this government is collecting Interest on same transaction twice.

Can government recover interest twice on same amount of ITC? What are remedies available with assessee in case of above issue?

6. M/s XYZ Ltd (Exporter) applies for GST refund for Month of October, 2020 in month of January, 2021. The Amount of ITC appearing in GSTR 2A for month of October is Rs. 1,00,000/- whereas as per books of account ITC is Rs. 1,40,000/-. One vendor has not uploaded his GSTR 1 for month of October, 2020 till the date of filing refund claim.

Since entire turnover of M/s XYZ Ltd was exports, they claim refund of ITC amounting to Rs. 1,40,000/-. However, Ld. Proper officer issued refund of Rs, 1,00,000/- only since Rs. 40,000/-was not appearing in 2A.

Thereafter in month of February, 2021, the said vendor uploaded the details of outwards supply in GSTR 1 for month of October, 2020 thereby the entire Rs.,1 40,000/- was appearing in GSTR 2A for month of October, 2020.

How Can XYZ Ltd again claim the refund of Rs. 40,000/-?