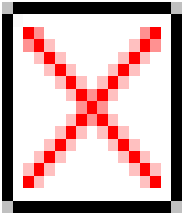


**GST - Agenda for the second year - Part 33 - Input Tax Credit-Time to relax time-limit**

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**APRIL 15, 2019**

**By Dr G Gokul Kishore**



**THIS**

is election time and right to vote is considered as sacrosanct. In this 33rd part, we intend to vote for doing away with time-limit for availing input tax credit.

**Time-limit for availing credit-Rationale**

Section 16(4) of CGST Act is unequivocal and it is not camouflaged either. It prescribes the outer time-limit within which input tax credit can be availed. Being a provision intended to deny a legal entitlement, it is worded negatively by stating that registered person shall not be entitled to avail credit in respect of any invoice or debit note issued in a financial year after due date for filing monthly return for September in the following FY. Due date for filing annual return is, statutorily, last date of December of the following FY. If a taxpayer files such annual return even before filing the said monthly return (theoretically possible), then the time-limit for availing credit will get guillotined with such filing of annual return. For invoices issued by supplier in March (at the end of FY), the time-limit will be just six months while for the invoices issued in April (at the beginning of FY), the taxpayer will have time of almost 18 months to decide about taking credit. The right to avail credit is conditioned by time of purchase. Purchase decisions are based on commercial requirements but the same are invariably controlled by business laws.

The rationale or reason for denial of credit beyond a particular period, which is as short as six months, could not have been driven by any consideration to benefit the taxpayer. The taxpayer would be pleased if there is no time limit at all. The reason may be to benefit the administration in terms of both enabling it to police the taxpayers through audit and investigations on availment of credit and easing the task of verification. The bureaucracy need not deploy its resources to verify years-old, if not decades-old, documents. Opportunity to rummage documents and records of taxpayers arises multiple times if shorter time-limits are provided and, therefore, taxpayers are kept under constant surveillance.

One may argue that if annual return is filed and credit is to be availed in respect of older invoices beyond such date, the same will lead to reconciliation issues. If refund claims are denied and contested for years and contingent liability continues for years to get settled and the same can be reconciled, then credit pertaining to earlier FYs may not pose any reconciliation issue. If the argument pertains to closure of something and not to be left open-ended, the same cannot be sustained if credit is perceived and statutorily worded as entitlement. The only other rationale, though latent, is maximisation of revenue by blocking legally earned credits. Such provisions are not, therefore, in sync with progressive tax system like GST and should be done away with.

**Substantive right not deniable by limitation**

There are judgments holding that credit of tax paid on purchases is a vested right and there are others holding otherwise. However, it appears there is no divergent view on credit being a substantive right. If this is so, then law of limitation being procedural cannot curtail the same. Limitation can only place sun-set on claiming remedy and not extinguish a lawfully earned substantive right. This was highlighted in the case of ***Kirloskar Electric Co. Ltd. v. State of Karnataka***

[Karnataka High Court judgment dated 10-1-2018 in WP Nos. 58917-58928 of 2017 & others] - [2018-TIOL-131-HC-KAR-VAT](#)  
~~The High Court in this case relating to time-limit for availing ITC of VAT in the light of amendments to KVAT Act in 2015 held that claim of~~

credit of input tax was indefeasible and cannot be denied even under provisions relating to time frame which is law of limitation barring the remedy rather than negating the substantive claims under the taxing statute.

Substantive right may be provided by substantive law (like CGST Act) as contrasted with procedural right to avail such substantive right. It may, therefore, be argued that credit itself is a right created by the statute and such statute can prescribe conditions including time-limit to avail such right. However, exercising substantive right needs to be differentiated from such right itself. Exercising the same takes the colour of procedural law and procedures are handmaids of justice as per celebrated judgments.

The ITC related provisions must have been drafted in CGST Act based on inputs from CBEC (now CBIC) as well and the landmark judgments like ***Eicher Motors v. Union of India*** - [2002-TIOL-149-SC-CX-LB](#) and ***Collector of Central Excise v. Dai Ichi Karkaria*** - [2002-TIOL-79-SC-CX-LB](#)

ought to have been taken into account while framing GST law. In Eicher case, the Supreme Court had held that the right (to credit) accrued to the assessee on the date when they paid the tax on the raw materials or the inputs and that right would continue until the facility available thereto gets worked out or until those goods existed and that credit under the Modvat scheme was as good as tax paid. In the latter case, the Apex Court had held that a manufacturer was entitled to use credit and credit reversal can be sought only when the same was taken illegally or irregularly. The powers to place procedural restriction as to time-limit was, however, approved by the Supreme Court in ***Osram Surya (P) Ltd. v. CCE*** - [2002-TIOL-64-SC-CX](#) .

Time-limit for availing credit in excise was present and later removed and re-introduced subsequently. The faux pas committed in the earlier regime includes prescribing time-limit when the relevant rule itself did not confer such power and the notification was struck down by Gujarat High Court in ***Baroda Rayon Corporation Ltd. v. Union of India*** Special Civil Application No. 9913 of 2002 dated 14.03.2011.

One may wonder why such excise judgments are being discussed. Credit of tax paid in GST law today traces its lineage to its ancestral laws of excise and VAT and the genes of ITC provisions in the GST law are from such parents. Indirect tax administration had the opportunity to use such judgments to draft GST law in a taxpayer friendly manner but in certain aspects, such opportunity has been lost.

The time-limit prescribed for claiming transitional credit under CGST Act was held as valid by the Gujarat High Court in ***Willowood Chemicals Pvt. Ltd. v. Union of India*** [Judgment dated 19-9-2018] - [2018-TIOL-2873-HC-AHM-GST](#)

. One hopes the ratio of this judgment is not extended to defend the limitation stipulated for availing credit itself accrued under GST law. It is time to re-look at and omit the time-limit for availing credit by amending Section 16(4) of CGST Act.

**(â€¦To be continued)**

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See [Part 32](#)

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