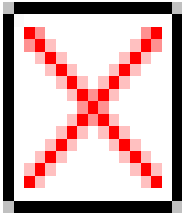


Refund - matching ITC with GSTR-2A - Exporters are at a disadvantage

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THE Government amended the Central Goods and Services Tax [Act, 2017](#) ('Act') to insert section 43A which provides that a taxpayer shall be entitled to input tax credit basis the outward statement i.e., GSTR-1 filed by the supplier. Further, section 43A(4) of the Act read with rule 36(4) of Central Goods and Services Tax [Rules, 2017](#) ('Rules') provided that a taxpayer may avail input tax credit in respect of outward supplies not furnished in GSTR-1 upto 10% of the amount of eligible input tax credit appearing in GSTR-1.

Post insertion of section 43A in the Act, the Government modified para 5.2 of Circular No. [125/44/2019-GST](#) dated 18.11.2019 vide Circular no. [135/05/2020-GST](#), dated 31.03.2020 to provide that the refund of accumulated input tax credit shall be restricted to the input tax credit as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the taxpayer. It must be mentioned here that circular dated 18.11.2019 does not specifically prescribe matching of GSTR-2A with input tax credit availed in case of refund of taxes paid on exports; however, the Circular under list of documents required mentions Statement of invoices matched with GSTR-2A even in case of refund of taxes in case of payment of duty.

This article critically examines whether denial of refund by the Government for input tax credit availed basis rule 36(4) of Rules which is not appearing in GSTR-2A is legally correct or not.

(1) Matching of input tax credit against the concept of input tax credit being a common pool

Section 43A of the Act read with rule 36(4) of the Rules, allows availing of input tax credit to the extent of 10% of the eligible credit available in respect of invoices or debit notes, the details of which have been uploaded by the suppliers. The GST Law provides for satisfaction of certain conditions before availing input tax credit. It is well settled that once credit has been rightly availed, it becomes part of common pool of credits and that the entire amount of input tax credit available in that pool is at par. Section 54 of the Act which provides for refund of input tax credit does not create any distinction in input tax credit against which invoices appear in GSTR-2A or input tax credit availed as per relaxation provided under rule 36(4) of the Rules.

That being the case, Circular dated 31.03.2020 creates an artificial distinction between the amounts of input tax credit availed against invoices appearing in GSTR-2A and the amount of input tax credit availed as per relaxation provided under rule 36(4) of the Rules. The circular treats credit availed against invoices appearing in GSTR-2A differently than credit availed as per relaxation provided under rule 36(4) of the Rules.

No such distinction between the credits is provided by the Act and, therefore, the circular to the extent it disallows refund of input tax credit availed in terms of relaxation provided under rule 36(4) appears to be invalid and **ultra vires** the Act read with the Rules.

(2) Not allowing refunds puts exporters at disadvantageous position which cannot be the intent

The importance of exports and foreign exchange earned is known to everyone. It is for this reason that the Government provides various export incentives and duty exemption & remission schemes for export of goods and services. The Government has always prompted 'export the goods, not the taxes' to keep Indian exports competitive in the international market.

Unfortunately, the requirement of matching input tax credit with GSTR-2A does the complete opposite by putting exporters to a disadvantage. Assume, a domestic supplier and exporter both take input tax credit as per relaxation provided under rule 36(4) of the Rules. The domestic supplier can utilize the credit availed as per relaxation against output GST paid on domestic suppliers. On the other hand, the exporter will neither be able to utilize the credit nor claim refund of the amount. Even if the credit is utilized for payment of GST on exports, even then the exporter cannot claim it back from the Government as matching with GSTR-2A is insisted upon while claiming refund of taxes paid on exports.

The Circular puts the exporters at a disadvantageous position when compared to domestic suppliers as it reduces the input tax credit which is rightly availed by the exporter to a mere superficial asset as benefit of the same can never be effectively realized.

(3)

Denying refund renders the relaxation granted under rule 36(4) as redundant and otiose by taking away right to enjoy the input tax credit

The GST Rules provide that a taxpayer can claim input tax credit to the extent of 10% of eligible input tax credit of invoices appearing in GSTR-2A. The Circular by prescribing that refund of input tax credit shall only be granted only if the invoices appear in GSTR-2A effectively renders the relaxation under rule 36(4) of the GST Rules as redundant and otiose.

The said relaxation provides a taxpayer a right to avail additional input tax credit on the basis of eligible input tax credit appearing in GSTR-2A. The Circular takes away the right to enjoy the property which has been duly acquired by the taxpayer as per provisions of the law. The circular renders the relaxation as purposeless as it creates a scenario where the exporter can either continue to carry forward the input tax credit as a receivable in the books or write it off as an expense.

(4) Matching at invoice level is self-contradictory to Circular No. [123/42/2019- GST](#) dated 11.11.2019

When the Government inserted section 43A of the Act and rule 36(4) of the Rules, various doubts had been raised by trade. To clarify various aspects, the Government issued circular dated 11.11.2019. One of the questions answered by the Circular was whether the restriction as per rule 36(4) of the Rules is to be calculated supplier wise or on consolidated basis?

The Government clarified that the restriction imposed is not supplier wise and that the credit available under rule 36(4) of the Rules is linked to total eligible credit from all suppliers against all supplies whose details have been uploaded by the suppliers.

The Circular clarifies that the amount availed under rule 36(4) of the Rules is linked to the total amount of eligible input tax credit availed by the taxpayer. The input tax credit is in addition to the input tax credit available against invoices which are appearing in GSTR-2A. That being the case, the question of such input tax credit appearing in GSTR-2A does not arise nor does denying input tax credit on such basis.

Way forward

The Government should remove the condition of invoices appearing in GSTR-2A for refund of input tax credit. The earlier manner of verification wherein the exporter was required to furnish copy of invoices should be restored. This will avoid a long drawn legal battle as the taxpayer would otherwise have no option but to approach the Courts for relief.

(The views expressed are strictly personal.)

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