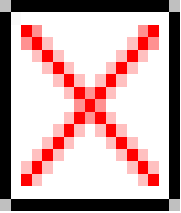


GSTR-9 - declared Additional liability - payment through cash ledger only?

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THIS article is aimed at demystifying the confusion surrounding the mode of payment of additional tax.

Indirect taxation is witness to many additional taxes. However, the additional tax that is conceived and put into GST is unique in the sense that it is not an additional tax in the real sense but a natural consequence specific to the GST law.

The Good and Simple Tax (GST) that it is, it provides an opportunity to the taxpayers to come clean at the end of financial year allowing them to pay what is missed (Tax) or taken excess (ITC) during the year at the time of filing the annual return in Form GSTR-9.

The annual return is like a confession box where taxpayer gets to confess what has been suppressed/missed knowingly or unknowingly during the year and come good by paying that **"Additional Tax liability"**.

How to pay this additional tax that is declared at the time of filing of annual return is still an enigma even after four years of the birth of GST. The divergent practices being adopted by taxpayers make the case even more interesting. The catch lies here.

Should it be paid through credit

Or

Should it be paid through Cash

The Instruction No. 9 mentioned at the end of the format of the GSTR-9 Return prescribed under Rule 80 of CGST [Rules, 2017](#) says that

"Towards the end of the return, taxpayers shall be given an option to pay any additional liability declared in this form, through Form DRC-03. Taxpayers shall select "Annual Return" in the drop down provided in Form DRC-03. It may be noted that such liability can be paid through electronic cash ledger only.

However, the feedback from the taxpayers is that the trade is divided on this. Some comply and some agitated over this instruction say rather wittingly or wryly that **"how a tail can wag the dog when it should be the other way round"**

. They are not completely without justification for the reason that the common portal / system is not barring them from utilizing the ITC for paying the additional liability when DRC-03 under **"annual return"**

is selected. But, when the GSTR-9 Return specified under Rule 80 of CGST Rules, 2017 is so explicit through Instruction No. 9 on the payment of additional tax liability through **electronic cash ledger only,**

then, the payment of additional tax liability by the taxpayers through electronic credit ledger utilizing the available ITC just because the drop down box prompts the option of **"Electronic Credit Ledger"**

at the time of paying the additional tax through DRC-03 is in conflict and not in congruence with the said instruction.

Then, how legal is this instruction No.9 under GSTR-9?

GST law is about levy of tax on SUPPLY as defined under Section 7 of CGST Act, 2017. The authority to levy the tax stems from the Section 9 of the CGST [Act 2017](#)

and the manner of payment of tax is as provided under Section 49 of the Act. A registered person is expected to file either monthly or quarterly returns under the provision of Section 39 of CGST Act, 2017. However, as the taxpayer is allowed to amend their tax liability either through Credit Note or Debit Note till the month of September following the financial year to which transactions belongs, the GST law provides for filing of an Annual Return in form GSTR-9 under Section 44 of CGST Act, 2017. As the GSTR-9 Return is a summary of transactions of the whole financial year, there may be a situation where the taxpayer may be required to pay tax that was not paid earlier or reverse the Input Tax Credit availed excess.

Section 49(4) of the CGST Act, 2017 says

"The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act"

Section 2(82) of the CGST Act, 2017 defined "**Output tax**" as

"Output tax" in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis"

The above provisions indicate that the credit available in electronic credit ledger can be utilized only towards discharging their "**Output tax**" liability i.e. to pay tax on their supply of goods or services or both. The "**Additional Tax**" liability that arises at the time of filing of GSTR-9 Return is not a tax on supply of goods or services or both and, therefore, cannot be equated to the "**Output tax**" as defined under Section 2(82) of the CGST Act, 2017.

Therefore, the credit available in electronic credit ledger of the taxpayer cannot be used to pay the additional tax arising at the time of filing the annual return as the "**additional tax**" cannot qualify to be the "**output tax**" given the definition of the same mentioned above.

For discharging any "**tax**" or "**other dues**"

through electronic cash ledger, there is no such restriction employed under Section 49(3) of the CGST Act, 2017. Thus, the usage of amounts available in electronic cash and credit ledgers is very clearly distinguished. Therefore, what cannot be discharged through credit ledger has to be discharged through cash ledger only and the instruction No.9 under GSTR-9 Return prescribed under Rule 80 of CGST Rules, 2017 read with Section 44 of CGST Act, 2017 is not arbitrary and has the backing of the law as mentioned above.

But, in spite of the legal backing for the said instruction No.9 under GSTR-9 Return as mentioned above, the divergent practices being adopted by the taxpayers asks for a solution to this issue and a clarification for an uniform approach in the matter.

More beats and bytes on this issue will one day echo in the GST Council meeting for a solution. Until that time, it is the Cash ledger that rules the roost and has the last laugh on the issue of payment of "**Additional Tax liability**" declared at the time of filing of the annual return in Form GSTR-9.

(The author is a Superintendent of Central Tax, Medchal Commissionerate, Hyderabad and the views expressed are strictly personal.)

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