

Double the Credit

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A few days ago, the GST Portal carried a flash:

Few taxpayers (recipients of supply) have reported that they have observed same invoice twice in GSTR 2B i.e. April and May, 2022. Taxpayers are advised not to avail ITC on same invoice twice. A solution to the issue would be implemented shortly .

What surprised me more than the electronic failing was the linguistic aberration. I think there had to be the article 'a' before 'few.' Anyway, there was this situation where the same invoice figured twice in the GSTR-2B and the GSTN **advised** the taxpayers not to avail the credit twice. The problem was sorted out soon enough and the GSTN issued a clarification:

Availing ITC as per law and GSTR2B

18/06/2022

For some of the taxpayers, there was an issue in relation to duplicate entries in GSTR2B which has since been fixed and correct GSTR 2B has been generated. In this regard, taxpayers while filing GSTR3B are advised to check and ensure that the value of ITC they are availing is correct as per the law.

They may check the correct ITC value from download of Auto drafted ITC statement GSTR2B or pdf of System Generated GSTR3B or on the ITC observed on the mouse hover of Table 4 in GSTR3B, particularly in any such case where there is any difference observed between the correct figures available at places as stated above and the prefilled GSTR3B observed on screen.

Just a month ago, the GSTN advised:

Incomplete GSTR-2B in some cases - regarding.

15/05/2022

1. It has been noticed that in a few cases, certain records are not reflected in the GSTR-2B statement for the period of April 2022. However, such records are visible in GSTR-2A of such recipients.
2. The technical team is working to resolve this issue for the impacted taxpayers and generate fresh GSTR-2B at the earliest.
3. In the interim, affected taxpayers interested in filing GSTR-3B are requested to file the return on self-assessment basis using GSTR-2A.

Inconvenience caused in this regard is deeply regretted.

So, last month, the problem was that there were no entries, and this month the problem is there are double entries. Set off?

What will happen if some taxpayer, by oversight, takes credit based on the double entries? Will he be charged with evasion, collusion, suppression, and allied sins? Will he be charged interest and a bonus penalty?

This reminds me of a case that happened nearly forty years ago.

The facts, in brief, are that a Central Excise Assessee - let's call them the COMPANY - is alleged to have taken false credit of Rs. 1.17 crores during July 1983 and the false credit was detected on specific information from some employees of the COMPANY. In the course of investigations with the staff, it was revealed that the credit was deliberately taken without any authority under the instructions of their Director and two others. Statements of several persons connected with finance management, audit of the accounts, excise in charge of the unit, were recorded and it was alleged that the wrong credit was taken deliberately with intention to evade duty. The COMPANY admitted wrong credit and paid up the duty to the extent of Rs. 1.17 crores. Hence show cause notice was issued by the Collector for confirming the demand for duty (already paid) invoking the proviso to Sec. 11A of the Act and for imposing penalty under Rule 173Q(a) and (d) of Central Excise Rules. In the adjudication proceedings, the Collector did not rely on the statements of the two officers of the COMPANY on the ground that they are co-accused in the prosecution launched by the Department. He confirmed the duty demand for Rs. 1.17 crores. He also rejected their offer of interest and imposed a penalty of Rs. 1/- crores on the COMPANY.

The closing balance of B.E.D in their RG-23 register on 8.7.1983 was Rs. 93,88,014, but in the next page, they showed the opening balance as Rs. 1,87,76,028 - that is double the previous closing balance. Similarly for S.E.D and Additional Duty, they took double the credit, thereby taking an excess credit of Rs. 1,17,35,018. Rs 1.17 crore excess credit in 1983!

Before the Tribunal, the advocate for the COMPANY agreed that the amount of Rs. 1.17 crores was payable by them and he did not plead time bar of the demand. They have paid the amount in PLA within a few days, when this mistake was pointed out by the Officers and they even offered to pay interest on this amount for the period of 4 years, during which period the amount was in their hands. He pleaded that the Tribunal must make an observation that the amount of Rs. 1/- crore is not to be treated as penalty but as a payment towards interest payable. The above amount works out to about 18% interest for 4 years, which should be adequate compensation for the revenue. He submitted that original and duplicate copies of RG 23A Part II are submitted to the Range Officer along with RT 12 returns for scrutiny by the Department. Besides many internal audit parties including C.E.R.A. audits have been conducted and wrong credit has not been detected by any one of the agencies.

Hence, if this could be on account of omission on the part of the Revenue Officers, the same benefit of doubt could also be given to the assessee.

The Tribunal held in 1994:

We are led to believe that all is not well with their claim of *bona fide*

clerical error. The fact of palpable false entry was known at least to some officers of the COMPANY. There are no direct evidences implicating the Top management, though presumption can go upto them, because the COMPANY is the ultimate beneficiary. However, even in the adjudication proceedings, one cannot jump to a conclusion on presumptions and surmises or suspicion.

When we arrive at a conclusion that there is a palpable false entry made and evidences indicate that it has been done with the knowledge upto the level of authorised Officers entrusted with the day to day maintenance of records and furnishing returns, penal provisions are inescapable against the company, irrespective of whether Top management was having direct knowledge or otherwise.

In ***Wipro Enterprises Ltd vs Commissioner*** - [2020-TIOL-511-CESTAT-HYD](#)

, the appellant had not disputed the fact that they had availed Cenvat credit twice on the same invoice. However, they contended that they have reversed the aforesaid amounts on being brought to their notice by the department. Therefore, they argued that no penalty should be imposed upon them. They contested the imposition of penalty on the ground that they had no intention to evade and they had already reversed the amounts on being pointed out by the department. They had further contended that they had sufficient balance in their Cenvat credit account.

The Tribunal held:

No doubt that the appellant had wrongly availed Cenvat credit twice in the same invoice. Evidently, nobody can legitimately claim Cenvat credit twice on one invoice. In this factual matrix, the intention is self evident and the violation of Act and Rules are undisputed.

In ***Hindustan Motors Ltd Vs Commissioner*** - [2019-TIOL-3729-CESTAT-MAD](#), the Tribunal held:

Admittedly, the appellants have availed wrong credit by taking credit twice on the same invoices. Though, the appellants contend that it is an inadvertent mistake, they are liable to pay interest on the wrong credit availed by them till the reversal of the credit. Taking note of the fact that the credit availed by them was reversed on being pointed out, the situation does not warrant imposition of penalties. On this ground, the penalty is set aside.

In ***Commissioner vs Hindustan Petroleum*** - [2018-TIOL-287-CESTAT-MUM](#), the Tribunal held

There cannot be any mala fide intention attributable to the respondent for availment of cenvat credit twice or in one case, thrice.Â

In ***Messung Systems*** - [2017-TIOL-611-CESTAT-MUM](#), the Tribunal held:

The only question to be decided in this case is whether the appellants are liable to penalty for availing the Cenvat Credit twice. It is not disputed that the appellants had availed the credit on the basis of the same documents two times. It is also not disputed that the appellants did not reverse double credit till it was pointed out by the Audit. The question is whether there was an intention to evade payment of Central Excise by way of suppression or not.

I find that the explanation given that it was due to oversight and the documents against which the credit was availed and utilised were not closed as required under SAP system is the entirely unsatisfactory. The responsibility to ensure that Cenvat Credit is taken correctly and on the basis of proper documents is on the assessee. Clearly, the assessee did not discharge that burden and availed and utilized credit on same documents again. It is evident that had there been no audit, undue benefit would have been taken by the appellants at the cost of Revenue.Â

In ***Aquasub Engineering*** - [2013-TIOL-560-CESTAT-MAD](#), the Tribunal noted:

This is a case where the appellant had taken CENVAT credit twice based on same set of documents in respect of twenty invoices. During audit such double credit against the same documents were detected and immediately they reversed the excess CENVAT credit taken.

I am inclined to accept the contention that this is a case of mistake rather than any action with intention to evade payment of duty especially in view of the fact that the credit taken was not utilized. Further I notice that the majority of instances happened in one month that is March 2009 when as per pleading they had some change in the staff. Therefore, I accept the pleading of the appellant for waiver of penalty and it is ordered accordingly.

Double credit happened often, either due to clerical mistakes or management tricks and even in those days, there used to be talk about electronic verification to curb such menace. Some years ago, Audit officers used a software programme to detect double credit on the same invoice.

GST is supposed to be working on a hi-tech electronic environment and it should be easy for the government to monitor credit electronically as it is done with TDS in Income Tax or the banks with crores of accounts or the Railways with huge number of online reservations and companies like Amazon.

But we are stuck with a GSTN which says that in one month some invoices are missing and, in another month, some are repeated.

To err is human, but to really mess upâ€¦â€¦!

Until Next week