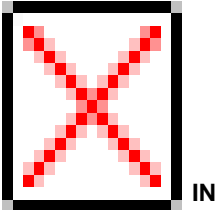


Rule 37 amendment - Implications for taxpayers

OCTOBER 07, 2022

By K Aarthy, Advocate, G N Law Associates



IN

GST regime, the credit of input taxes charged on any supply of goods and services or both can be availed by the taxpayers subject to conditions prescribed in Section 16 of the CGST [Act, 2017](#).

As per second proviso to sub-section (2) of Section 16, one of the conditions for availing credit is that the purchaser/recipient should pay the value of supply along with the tax payable to the supplier, within a period of 180 days from the date of supply.

In case the recipient fails to pay the value of supply with tax within 180 days, he is disentitled to the ITC availed.

The said proviso is reproduced below for ease of reference;

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

As per sub-rule (3) of Rule 37, in case of reversal of ITC for non-payment of consideration within 180 days, the taxpayer is liable to pay interest from the date of availment of ITC till the date of its reversal.

The said rule (as it existed before its amendment) is reproduced for ease of reference -

Rule 37. Reversal of input tax credit in the case of non-payment of consideration.

(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

(2) The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.

(3) The registered person shall be liable to pay interest at the rate notified under subsection (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid.

(4) The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.

Central Government has amended the said Rule 37 vide Notification No. [19/2022-CT](#) dated 28.09.2022, whereby sub-rule (1) and (2) have been substituted [and sub-rule (3) has been omitted] as below -

Rule 37 (1)

A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section(2) of section 16, shall pay an amount equal to the input tax credit availed in respect of such supply along with interest payable thereon under section 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

Provided

that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16:

Provided

further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.;

(2) Where the said registered person subsequently makes the payment of the amount towards the value of such supply along with tax payable thereon to the supplier thereof, he shall be entitled to re-avail the input tax credit referred to in sub-rule (1).

(3) Omitted

(4) The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.

It may be observed from the new sub-rule (1) reproduced above, that unlike the old provision, the period for which interest is payable is not specifically mentioned in the rule, but reference is made to Section 50 of the Act. It may be noted from sub-section (3) of Section 50 read with Rule 88B (3), the liability to pay interest would arise only if the credit is utilised. Section 50 read with Rule 88B (3) clearly stipulates that interest for the wrongly availed and utilised ITC shall be calculated for period starting from date of utilisation said wrongly availed credit to date of reversal of such credit. So, if the taxpayer's balance of credit is always more than the amount required to be reversed now, due to non-payment of consideration within 180 days, no interest liability would arise.

Secondly, as per the new sub-rule (1) of Rule 37, the reversal shall be made in the GSTR-3B return for the tax period, following the period of 180 days. For example, if 180 days expires on 06.10.2022, the tax period following the said period is November 2022 and hence the reversal should be made in the GSTR-3B return for the month of November 2022, which would be filed on 20th December 2022. But nothing prevents the taxpayer to reverse the same in the GSTR-3B return for the month of October 2022 itself, which would be filed on 20th November 2022, so that the interest liability could be reduced further.

Thirdly, prior to this amendment, it had been explicitly provided in sub-rule (1) that taxpayer is liable to reverse only the proportionate credit attributable to the portion of the value, which is not paid within 180 days.

Relevant portion of Rule 37 as existed prior to amendment is reproduced below;

Rule 37 (1)

Reversal of input tax credit in the case of non-payment of consideration.-(1)A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to subsection (2) of section 16, shall furnish the details of such supply,

the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice

Amended Rule 37 (1) is silent about whether the taxpayers are liable to reverse the entire credit, even if only part of the value (and tax) is not paid within 180 days or it is sufficient if proportionate credit attributable to the value (and tax) which is not paid within 180 days is reversed.

It is feared that in the absence of such clear stipulation in the amended rule, the department may demand reversal of entire credit, even if only part of the value (and tax) is not paid within 180 days.

CBIC may like to issue a Circular and clarify the matter in the light of the recent amendments.

[The views expressed are strictly personal.]

(DISCLAIMER : The views expressed are strictly of the author and Taxindiaonline.com doesn't necessarily subscribe to the same. Taxindiaonline.com Pvt. Ltd. is not responsible or liable for any loss or damage caused to anyone due to any interpretation, error, omission in the articles being hosted on the site)