

Recent changes in GST

CA HEMANTH KUMAR

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Coverage

1. Changes vide Finance Act, 2022 – effective from 01-10-2022.
2. Last opportunity to avail transitional credits.
3. Changes in form GSTR-3B.
4. 47th GSTC (part)

Changes made vide Finance Act`2022

w.e.f. 01.10.2022

ITC eligibility restrictions

- Initial conditions under section 16(2)
 - Tax invoice or debit note or other tax paying documents
 - Received goods
 - Tax should be paid by supplier with eligible credit
 - Return has to be filed by the recipient to claim credit.
- Rule 36 (4) restrictions w.e.f. 09.10.2019 (20%/10%/5%)

ITC eligibility restrictions

- Introduction of section 16(2)(aa) w.e.f. 01.01.2022
“(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;”
- **Fate of GST 2A vs 3B notices, Telangana System generated notice on table 8A etc ?**

ITC eligibility restrictions

In Section 16(ba) is inserted w.e.f 01.10.2022 as follows

“the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;”;

New Section 38 is as follows: -

ITC available would be communicated in GSTR 2B

ITC not available, wholly or partly, would be communicated in GSTR 2B, in the following situations:-

ITC eligibility restrictions

S. N	Restriction in ITC in 2B	Mechanism
1	Details of supplies furnished by supplier within specified period of registration	Clarity awaited
2	Supplier has not paid GST for some prescribed period	GSTR 3B filing status of supplier
3	Supplier's GST payable as per GSTR-1 is more than GST paid in GSTR-3B, to certain limit	% of GSTR-1 liability paid through GSTR-3B.
4	ITC availed by supplier in GSTR 3B is more than ITC available in his GSTR-2B, to certain limit	Clarity awaited
5	Supplier has defaulted in discharging GST in cash [1% under R. 86B]	Clarity awaited
6	Such other class of person as may be prescribed.	Yet to be prescribed

Section 41 -Availment of ITC

- Section 16(2)(C)
 - *“subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and”*
- Issues
 - No mechanism provided under initial period to verify
 - Cannot go back and see whether tax payment is made with **eligible ITC only**.
 - Settled principles – How can a bonafied recipient be punished – Arise India Ltd
 - Just because the supplier is non existence, credit cannot be denied (unless the connivence is proved) – DY Bethal (Madras HC), LGW Industries (Calcutta HC) and Bright Star Plastic (Orissa HC)

Section 41 -Availment of ITC

Amendments made under 41

- 41(1) Claim credit as per GSTR-2B as self assessed
- 41(2) Reversed with interest if supplier has not paid GST. Such ITC could be reavailed upon payment of GST by the supplier.
- Intension –
 - To prove that provision exists and
 - Can say courts that once supplier pays tax, credit can be claimed
- Shows that there is no provision prior to 01.10.2022 requiring reversal.
- No interest refund provision as compared to old section 42(8) – Unjust enrichment by the government.

Extended time limit till 30th Nov

S.N	Particulars	Section	Old time limit	New time limit
1	ITC availment	Section 16(4)	Due date of furnishing GSTR-3B of September month of next financial year	30 November of next financial year
2	Reporting of credit notes	Section 34(2)	Due date of furnishing GSTR-3B of September month of next financial year	30 November of next financial year
3	Amendment in GSTR 1	First proviso of Section 37(3)	Due date of furnishing GSTR-3B of September month of next financial year	30 November of next financial year
4	Amendment in GSTR 3B	Proviso of Section 39(9)	Due date of furnishing GSTR-3B of September month of next financial year	30 November of next financial year

GST on export Air and Ocean freight

Type of Contract	LOS*	LOR**	Movement of Goods and POS.	Taxability under GST.
FOB	India	Outside India	From India to outside India. Thus, place of supply is outside India. [Section 13(9) – IGST Act]	Export of service – No Impact.
FOB	Outside India	Outside India	From India to outside India. Thus, place of supply is outside India. [Section 13(9) – IGST Act]	No impact.
CIF	India	India	From India to outside India. The place of supply would be the destination of such goods i.e., outside India. [Proviso to Section 12(8) – IGST Act].	Taxable – POS - Other territory. ITC restriction.
CIF	Outside India	India	From India to outside India. Thus, place of supply is outside India. [Section 13(9) – IGST Act]	No impact.

*Location of supplier of transportation services

**Location of recipient of transportation services.

Sequential filing of GSTR-1 and GSTR-3B

This restriction is already in place on GST portal, now legalized under the GST Act

- GSTR 1 cannot be furnished if GSTR 1 for earlier period is not furnished {Section 37(4)}.
- GSTR-1 mandatory before filing of return in Form GSTR-3B. {Section 39(10)}.

Transitional credit – A final opportunity

Initial provision – 140, 141 and 142

- **Brought to carry forward the pre GST credits**
 - Closing balance of ST/Excise and VAT credits
 - Capital goods balance credit
 - Unregistered/ Exempted suppliers etc – Credit can be availed on stock (Input, semi-finished or finished goods)
 - Inputs/Input services received in GST but taxes paid under earlier law- Recorded within 30day in BoA
 - ISD credit/Centralised registration etc.
 - 142(11)(c) –VAT and ST paid on advances, where supplies are made in GST.

To be filed within 90 days extended more 90 days (till 27.12.2017)

Issues in filing of old Tran-1 and 2

1. Complete 180 days was not provided.
2. Technical glitches
3. Mistakes in filing

High Courts

Various High Court fundamental arguments

- ITC is a vested right
- ITC is a Property which cannot be denied under Article 300A
- Time limit- Directory and not mandatory

Supreme Courts Directions

1. Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e., w.e.f. 01.09.2022 to 31.10.2022. [from Oct 1, 2022]
2. Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form **irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).**
3. GSTN has to ensure that there are no technical glitch during the said time.

Supreme Courts Directions

4. The concerned officers are given **90 days** thereafter to verify the veracity of the claim/transitional credit and pass appropriate orders thereon **on merits after granting appropriate reasonable opportunity to the parties concerned.**
5. Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.
6. If required GST Council may also issue **appropriate guidelines to the field formations in scrutinizing the claims.** The Special Leave Petitions are disposed of accordingly. Pending applications, if any, also stand disposed of.

Guidelines issued by CBIC

- Applicant may file **fresh** or may **revise** the earlier filed TRAN-1 & TRAN-2.
- In case of revised filing facility for downloading the earlier furnished TRAN1/2 will be made available on the common portal.
- A copy of the declaration as per ANNEXURE 'A' of this circular, is to be uploaded in pdf format.
- If the applicant is claiming credit in Table 7A of TRAN-1 on the basis of Credit Transfer Document (CTD) (Duty paid Invoices etc.) then a copy of Form TRAN-3 containing details in terms of NNO. 21/2017-CE(NT) dated 30th Jun 2017 to be uploaded in pdf format.
- No claim shall be filed in Table 5(b) & 5(c) of TRAN-1 in respect of such C-Forms, F-Forms, H-Forms, and H/I-Forms which have been issued after 27.12.2017 i.e., after the earlier due date of filing TRAN-1.

Guidelines issued by CBIC

- Following to be submitted to Jurisdictional Tax Officer **within 7 days** of Filing TRAN-1/2: –
 - a. Self-Certified Copy of TRAN-1/2, after downloading from Portal;
 - b. Declaration in Annexure 'A';
 - c. Copy of TRAN-3, wherever applicable.

The applicant shall keep all the requisite documents/records/returns/invoices, in support of his claim of transitional credit, ready for making the same available to the concerned tax officers for verification.

The option for filing TRAN-1/2 from 1st Oct 2022 to 30th Nov 2022 is strictly a ONE-TIME OPPORTUNITY.

Credit earlier availed in FORM GST TRAN-1/ TRAN-2, has either wholly or partly been rejected by the proper officer, the appropriate remedy in such cases is to prefer an appeal against the said order or to pursue alternative remedies available as per law.

Issues under Tran credit

1. What if credit was already claimed in GSTR-3B?
2. Tran credit was rejected during the audit can we reclaim it now?
3. Credit was not availed on all closing stocks, can we avail now?
4. Whether we need to give documents only for incremental value or for complete credit?
5. Refund applied under ST but not yet sanctioned, can we claim credit now?

Changes in GSTR-3B

ITC Disclosure

4A. ITC available (whether in part or full)			GSTR-2B
4A(1)	Import of goods	Import of goods	Auto populated
4A(2)	Import of services	Import of services	
4A(3)	Inward supplies liable to reverse charge (other than 1 & 2 above)	Inward supplies liable to reverse charge (other than 1 & 2 above)	Auto populated
4A(4)	Inward supplies from ISD	Inward supplies from ISD	Auto populated
4A(5)	All other ITC	All other ITC	Auto populated
4B. ITC Reversed			
4B(1)	As per rules 42 & 43 of CGST Rules	As per rules 38, 42 and 43 of CGST Rules and sub-section (5) of section 17	
4B(2)	Others	Others	
4C. Net ITC (Same as before)			
4D. Ineligible ITC Other Details			
4D(1)	Other Details	ITC reclaimed which was reversed under Table 4(B)(2) in earlier tax period	
4D(2)	Ineligible ITC: Others	Other Details : Ineligible ITC under section 16(4) and ITC restricted due to PoS provisions	Auto populated

Other disclosures

Changes with respect to disclosures Form GSTR 3B (ECO related disclosures)

- Table 3.1.1 added
- Table 3.1.1 (i) - Separate disclosure of tax paid by Electronic Commerce Operators for tax paid u/s 9(5);
- Table 3.1.1 (ii) - Separate disclosure of supplies made by the registered persons through Electronic Commerce Operators on which the tax is paid by Electronic Commerce Operators u/s 9(5);

Disclosure of B2C supplies, supplies to composition taxpayers and UIN holders in Table 3.2 of GSTR-3B - [Circular No. 170/02/2022-GST]

Details of supplies made to the following category of persons shall be reported place of supply-wise, in Table 3.2 of FORM GSTR-3B:

- To the unregistered persons,
- To the registered persons who are composition taxpayers, and
- to the UIN holders.

Changes made through 47th GSTC

Category	Change and Impact
GTA	<ol style="list-style-type: none">1. Option to pay tax under FCM @ 5%2. Exemption removed (750 and 1500)
Renting of residential dwelling	<ol style="list-style-type: none">1. Exemption removed for renting to a registered person2. Recipient to pay tax under RCM3. PIB fact check vs exemption4. ITC eligibility

Category	Change and Impact
Pre-packed and labelled	<ol style="list-style-type: none"> 1. Before 18th – unit container and bearing a registered brand name. 2. Specified commodities sold in loose – Exempt 3. Packed in presence of buyer – exempt 4. Prepacked and lable <= 25kg or 25 lt – Taxable 5. Institutional buyers – Exempt
Others	<ol style="list-style-type: none"> 1. Transfer of cash balances between distinct person 49(10) read with rule 89(14) 2. Interest on delay payment of taxes, credit wrongly availed and utilised 3. Re-credit of erroneous refund sanctioned – PMT-03A (Rule 86(4)(B)) 4. Change in formulae refund for inverted duty.

A hand holding a black pen is shown writing the words "Thank you" in a cursive script. The hand is positioned on the right side of the frame, and the pen is in contact with the surface, having just finished writing the word "you". The background is plain white.

Thank you

For any queries reach me at Hemanth@cahemanth.in or

call at +91 9505552018