

Some Thorny Issues in Tax Credits in GST- Need for Government to Reform

The credit provisions under GST is an amalgam of the Cenvat Credit provisions with some aspects of ITC borrowed from VAT. The cross credit between State and Central Taxes has been achieved in GST.

However the complications have been increased due to too much revenue bias, poor drafting and most tax officers mostly not having a clue on the final law. Therefore non compliances in this area of greater complexity are bound to be numerous. The trading community may be more impacted as they would not have the understanding of cenvat credit.

In this article we examine some of the areas of doubt, unfair provisions and possible mitigation which includes industry and trade (association of directly) making appropriate representation to correct and simplify the law. These corrections may be favourable examined in this year and the chance of amendments in the initial period is far higher than later points of time.

1. The provision borrowed from VAT that credit is available only ***after registration but tax is payable for past periods*** is unfair, unreasonable and would deter those who have made errors / mistakes in understanding this new and complex law.
 - a. Tax payer with average turnover of 4 crores dealing in agricultural products or supplies to Government or defense who believes that there is an exemption or product is exempt but tax is payable @ 18%. Normal margin could at best be 5%. The local GST officer is unable to clarify in writing. Other traders in smaller cities and town maybe more uninformed. Order after demand under section 73 for bona fide mistake can be made within 3 years of the filing of annual return. Order under Section 74 where fraud, misstatement or suppression is invoked can be made within 5 years of annual return. In normal course as the officers are the same- the earlier trend of longer period may be continued. Therefore demand for the years 2017- 2021 on $4 \times 5 = 20 \text{ cr} \times 18\% = 3.6 \text{ crores}$ with additional of interest (2 Cr) and penalty (2 cr) would be made. If credit was there the demand would be 18 lakhs. The total profit for the period would be 80 Lakhs and money available after drawings + income tax may leave 10 Lakhs. The trader and his family would be financially destroyed. The government of India is aware and has fostered unorganised industry and non keeping of accounts in Income tax, VAT & service tax. It is also known that there is active parallel economy.

GST law should provide for credits as interest and penalty would take care of the loss of revenue to Government and also act as a deterrent to the errant tax payer.

- b. GST is having the objective of inviting those outside the system to come in. However the provision of needing registration to avail the credit and being able to avail only 1 months credit and those on stocks may not be feasible. It is also a poor practice borrowed from the underdeveloped VAT law. If there is trader who has been outside the system for the past 10 months and wants to come clean then he would not get the credit for 9 months supplies made. He would obviously not come forward and maybe will start a new firm and take the risk for the past.

Such entities in the parallel economy who maybe billing part or none should be allowed to avail the credit to the extent of the purchases related to such declared turnover. In spite of several suggestions the lack of action which would be in line with the GST objective has not been considered maybe due to revenue officers from the States. It needs to be remembered that once the Government gets the tax then they should not be looking at unjust enrichment for the State. Article 265 also states that no tax shall be collected other than by authority of law. Making unfair laws may invite challenges.

- 2. The restrictions for ITC on goods and services used in furtherance of business is not called for as the objective of GST is to avoid cascading and it should be easy to do business lost GST. GST should also be a fair and simple law. The understanding in Income Tax of what is eligible as business expenditure and global best practices should be carried forward liberally. The various restrictions presently are as under:

- a. Time limit for Credit is due date of filing return. March 2018 credits can be availed latest by September 2018- Period for missed credit identification and availment = 6 Months. Demand for excess credit bona fide can made before September 2021. If longer period September 2023!! Why is what is due being sought to be limited. Smaller tax payers would be those who would get severely impacted.

Time limit to be aligned to Section 73 – 3 years. Advantage of having paid tax in advance would anyway accrue to revenue.

- b. Payment within 180 days is an intrusion into business. Leave business to businessmen. Least interference would help ease of business. The issues which hitherto were not there in VAT and in Excise would be: deduction made by buyer, non monetary considerations, debit notes for quality issues later to receipt, part payment, retention... In spite of several

representation the Government has stubbornly stuck to this unreasonable and unfair condition.

No link to payment for credit availment. The revenue should use the information technology to identify the errant instead of burdening every tax payer.

c. Artificial blocking of input, input service and capital goods credits for furtherance of business in transition as well as in section 17(5) is carry forward of revenue unfairness introduced in Cenvat and VAT laws. This complicates the law, leads to cascading and innumerable disputes expected as was the case in service tax and central excise. The unfair provisions are as under:

i. Invoice with all details presently indicates that 10,000s of cases on incorrect invoices not being eligible for credit would arise. In the past regime this issue was agitated (1990s) and settled and rectifiable errors, inconsequential errors, minor procedural mistakes were condoned for decades. Now this issue would again go through disputes and Courts.

As long as tax invoice uploaded credit to be available.

ii. Apportionment method to be fair, tax payer friendly and simple. Present method more complicated than Cenvat where almost EVERY ASSESSEE was found to be making a mistake. Reality of equating supply along with interest, sale of land, transaction in securities is a palpably unjust and unreasonable.

Reversal based broadly on real exempt supply versus taxable maybe implemented.

iii. Motor Vehicles credit used for business restriction unjust and smart tax payer can avail it anyway. Only the SME would be disadvantaged.

Restriction valid when used for personal use- For personal use 50% credit option would take care.

iv. Food and beverages, outdoor catering, membership of club, rent a cab, life/ health insurance in furtherance of business are only a figment of the revenue imagination that it is misused. There is audit and investigation which could indicate the use for personal purposes. This also leads to complexity and unfairness. In Income tax it is allowed and here not!! Large tax payers have already found methods of claiming these and only SMEs would be adversely impacted.

All these should be omitted as unnecessary restriction leading to complexity in business.

- v. Inputs and works contract credit is a major lacunae. When a person build to rent out a building or builds a factory it is certainly in business and denial of credit on the cement, steel, contractor bills etc is not just and is an indirect method of taxation which was used in the past and unfortunately carried forward tin GST.

All these credits should be available subject to reversals for personal use.

Cascading impact would be minimised.

- vi. Exclusion of ITC for construction of Buildings, civil structures, telecommunication towers, pipelines outside the factory are again unreasonable restrictions with loaded revenue bias. When Government expects these sectors to come clean whatever benefits other get they should also be extended the same.

These restriction should go as they do not take forward the objectives of GST.

- 3. Reversal considering amounts payable on reverse charge as exempt is not fair. In Central Excise the job worker credit for job worker u/n 214/86 was specifically available. The movement forward under cenvat from Modvat in 2 decades has been obviated by moving backwards.

As long as the law is fair- compliance would be encouraged. When it defies reason- tax payer would justify in making up for the unjust loss which some do.

- 4. Expenditure in hotels in places one is not registered. Hotel would charge SGST + CGST which would not available to the tax payer. For this he needs to set up an ISD, issue invoices, maintain records, file returns for that unit and transfer the amount to the registered premises.

Such credits should be enabled with just a disclosure of where it was due and the Government/ GSTN through that return should make the adjustments between the States.

- 5. Condition of receipt of services would lead to untold issues as even with goods there were problems. In goods constructive receipt being enough is not made clear. Many a times in industry- goods are inwarded but until quality control is done, the GRN (Goods Receipt Note) is not issued. When minor quantities are defective- only deductions are made.

Getting into this area is not important as TAX HAS BEEN PAID and no excess amount is taken over and above the tax paid. Invoice receipt is sufficient. Circular bill trading etc can be identified easily by the GSTN by way of data analysis.

Hope these issues are addressed adequately to make Indian products and services competitive internationally while making GST a successful reform instead of a retrograde law.

A concerned Citizen

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