

MOST DRACONIAN PROPOSED SECTION IN THE HISTORY OF GST

INTRODUCTION

In the Finance Bill 2022-23 new condition for availing ITC has been introduced i.e Section 16(2)(ba) according to which requiring credit should not be restricted under Section 38 of the CGST Act, due to this two way communication between supplier and recipient will be removed.

What is ITC?

Input Tax Credit Mechanism is available to you when you are registered as a Taxpayer under GST Act whether you are Manufacturer, Supplier, Agent, E-Commerce Operator etc. You are eligible to claim ITC on your Purchases.

Section 38

For section 38 of the Central Goods and Services Tax Act, the following section shall be substituted, namely:—

(1) The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an auto-generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.

IN SIMPLE WORDS

The details of outward supplies (Sales) furnished by the supplier in his GSTR 1, an auto – generated statement is made available as GSTR 2B on 14th of the succeeding month for recipient

(2) The auto-generated statement under sub-section (1) shall consist of—

(a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and

(b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the

recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37,—

(i) by any registered person within such period of taking registration as may be prescribed; or

(ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or

(iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said subsection during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or

(iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or

(v) by any registered person, who has defaulted in discharging his tax liability in accordance with the

provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or (vi) by such other class of persons as may be prescribed.”

IN SIMPLE WORDS

Section 38(2)(b) details of supplies in respect of **which such credit cannot be availed**, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37 i.e GSTR 1

- Supplier in the cooling period of taking new Registration (Period to be prescribed) (earlier it was 30 Days).
- Supplier who has defaulted the tax payment for continuous period as prescribed in rules.
- Supplier who has paid tax in GSTR-3B is less than the tax payable in GSTR 1 subject to allow limits.
- Supplier who has availed ITC more than the allowed limits under Section 38(2)(a)

- Supplier who has defaulted in complying mandatory payment of tax liability in cash if applicable (Rule 86B 1% of tax liability and utilization of Electronic Credit Ledger to 99% Subject to conditions prescribed in Rule 86B).
- Other class of suppliers as may be prescribed in Rules in future.

AUTHOR VIEW

If this section would be notified, then lot of Taxpayers/Professionals will be in big trouble to comply with this Section. This section is practically impossible as of now to satisfy all the conditions for availing credit. Previously, new condition was introduced clause (aa) under Section 16 now the credit is being depended on Section 38 with the newly introduced clause (ba) under Section 16. Now all the conditions will be dependent on the supplier nothing is in the hands of recipient. Some thoughts to ourselves.....

- ✓ Is this ease of doing business?
- ✓ Is this seamless flow of credit?

- ✓ Is this newly inserted clause and section reducing compliance burden of the Taxpayers and Tax Professionals?

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