



Stringent Conditions to avail GST Credit with effect from October 1, 2022

The CBIC vide Notification no. 18/2022- Central Tax dated September 28, 2022 notified the following changes in this regard vide Sections 100 and Section 104 of the Finance Act, 2022 in the Central Goods and Services Tax Act, 2017 ("the CGST Act") read with Central Goods and Services Tax (Second Amendment) Rules, 2022 notified vide Notification No. 19/2022- Central Tax dated September 28, 2022 both w.e.f. October 01, 2022:

- Section 100 of the Finance Act, 2022- Section 16 - Eligibility and conditions for taking input tax credit. New condition to avail ITC under sec 16(2): Clause (ba) is inserted in sec 16(2) after sub-sec (b) to allow registered persons to avail ITC only if the details of ITC w.r.t supply of goods or services or both communicated in Form GSTR-2B to the registered person i.e., the recipient, under sec 38 of the CGST Act and these are not restricted in 6 specified cases. Accordingly, sec 38 of the CGST Act ibid has been wholly substituted vide Section 104 Finance Act, 2022.

Our Comments:

- Originally there were 4 conditions under Section 16(2) of the CGST Act to avail ITC. Buyer should have tax invoice or other eligible credit document 2.
- Originally there were 4 conditions under Section 16(2) of the CGST Act to avail ITC. Buyer should have tax invoice or other eligible credit document 2.
- Buyer must have received goods or service 3.
- Supplier must have paid tax 4.
- Buyer must be filing GST return regularly.

Subsequently, clause (aa) got inserted vide the Finance Act, 2021 w.e.f. January 01, 2022 i.e., Credit availed must be matched with GSTR 2B. Now, clause (ba) got notified, as inserted vide sec 100 of the Finance Act, 2022 which states that ITC auto-populated in GSTR 2B, should not be restricted as per substituted Sec 38 of the CGST.

Section 104 of the Finance Act, 2022- Section 38

- Furnishing details of inwards supplies

- Changes have been made corresponding to insertion of clause (ba) in sec 16(2) of the CGST Act. Substituted sec 38 of the CGST Act prescribing the manner as well as conditions and restrictions for communication of details of inward supplies and input tax credit to the recipient by means of an autogenerated statement i.e., Form GSTR -2B and to remove the concept of ITC matching mismatching i.e., two-way communication of GST return filing system is omitted.

Further, provided the particulars of auto-generated statement i.e., Form GSTR -2B:

- Details of inward supplies on which ITC is available and
- Details of inward supplies on which ITC is not available, wholly or partly:
 - by any registered person within such period of taking registration as may be prescribed; or
 - 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
 - by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him in Form GSTR-01 during such period, as may be prescribed, exceeds the output tax paid by him in Form GSTR-3B during the said period by such limit as may be prescribed; or

- 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) of sec 38(2), by such limit as may be prescribed; or
- by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-sec (12) of sec 49 subject to such conditions and restrictions as may be prescribed; or
- by such other class of persons as may be prescribed.

Source: Notification no. 18/2022 - Central Tax dated September 28, 2022

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