



Compulsory Reversal of GST Credit by Buyers for Non-Payment of GST by Suppliers w.e.f 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 106 of the Finance Act, 2022 in the Central Goods and Services Tax Act, 2017 ("the CGST Act") w.e.f. October 01, 2022:

- **Section 100 of the Finance Act, 2022- Section 16 - Eligibility and conditions for taking input tax credit** Reference of sec 43A to be omitted: Earlier, sec 16(2)(c) of the CGST Act was amended to insert sec 43A vide sec 8 of CGST (Amendment) Act, 2018, which was not made effective and now the same is being omitted so as to remove the concept of ITC matching-mismatching i.e., two-way communication of GST return filing system is omitted.
- **Section 106 of the Finance Act, 2022- Section 41 - Claim of input tax credit and provisional acceptance thereof** Sec 41 of the CGST Act is amended so as to remove the concept of provisional ITC and provided for reversal of ITC where GST not deposited by the supplier to Govt. exchequer along with the interest @ 18% PA and e-avail the same once payment has been made

by the supplier in respect of such supplies. Sec 41(2) is to be read with sec 16(2)(c) of the CGST Act as it has been amended vide sec 106 of the Finance Act, 2022 to do away with all the litigation w.r.t vires of sec 16(2)(c) of the CGST Act by providing an option to the recipient to re-avail the credit after supplier makes the payment of the corresponding GST to the government. However, the levy of interest for a failure beyond the control of the recipient is very harsh and no provision has been envisaged for refund of such interest. Moreover, department will also collect tax along with interest from the defaulting supplier which will result into unjust enrichment by the Department at the expense of the recipient for no fault on his part. Furthermore, ITC cannot be re-availed in cases where proceedings have been initiated under sec 74, 129 or 130 of the CGST Act. It is to be noted that sec 41 is amended prospectively therefore, recipient cannot be asked to reverse the ITC for the past period i.e., the period prior to October 1, 2022 when this substituted sec 41 is notified.

Source: Notification No.18/2022-GST dated 28th September, 2022

Contact Details

3rd Floor, MJ Tower,

55, Rajpur Road,

Dehradun - 248001

T: +91.135.2743283, +91.135.2747084

E: info@vkalra.com

W: vkalra.com



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