

Jumbo Trumpets...

Putting the cart before the horse

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1. Section 41(2) of the CGST Act, 2017 (hereinafter referred to as 'Act') states that where the supplier has not made payment of tax, the recipient shall reverse the Input Tax Credit along with interest and further re-avail the Input Tax Credit reversed in such manner as maybe prescribed. The relevant provision is reproduced below:

Section 41. Availment of Input Tax Credit – w.e.f 1-10-2022

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:

Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.



2.0 The manner of reversal and re-availment of input tax credit in accordance with Section 41(2) of Act, is provided in Rule 37A of the CGST Rules, 2017 (hereinafter referred to as the 'Rules'). The said rule states that where the supplier has filed the GSTR-1 and has not filed the GSTR-3B returns until 30th September of the subsequent financial year, then the recipient has to reverse the input tax credit availed on or before 30th November of the subsequent financial year. Relevant rule is reproduced below:

Rule 37A. Reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment thereof (w.e.f 26.12.2022)

Where input tax credit has been availed by a registered person in the return in FORM GSTR-3B for a tax period in respect of such invoice or debit note, the details of which have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility, but the return in FORM GSTR-3B for the tax period corresponding to the said statement of outward supplies has not been furnished by such supplier till the 30th day of September following the end of financial year in which the input tax credit in respect of such invoice or debit note has been availed, the said amount of input tax credit shall be reversed by the said registered person, while furnishing a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year:



Provided that where the said amount of input tax credit is not reversed by the registered person in a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year during which such input tax credit has been availed, such amount shall be payable by the said person along with interest thereon under section 50:

Provided further that where the said supplier subsequently furnishes the return in FORM GSTR-3B for the said tax period, the said registered person may re-avail the amount of such credit in the return in FORM GSTR-3B for a tax period thereafter.

2.1 First Proviso to Rule 37A states that if the ITC is not reversed by 30th November of the subsequent financial year, then the recipient has to pay the input tax credit along with interest under section 50. The following questions arise

- a. Interest to be paid from the date of availment to the date of payment or
- b. From 01st October of the subsequent financial year to the date of payment or
- c. From 01st December the subsequent financial year to the date of payment.
- d. What if the input tax credit taken is not utilised and such excess input tax credit is available in the electronic credit ledger and the amount of ITC is not reversed by 30th November of the subsequent financial year whether interest will still be applicable?



2.2 Second Proviso to Rule 37A states that once the supplier files the GSTR-3B for the particular tax period, the recipient can re-avail the ITC in GSTR-3B.

3.0 It is pertinent to note that Section 41(2) of the Act deals with non-payment of tax by the supplier whereas Rule 37A deals with non-filing of GSTR-3B by the supplier. There is no iota of doubt that payment of tax and filing of GSTR-3B are two different things. Filing of GSTR-3B does not guarantees payment of tax by the supplier.

3.1 The rule states that on recipient can re-avail the ITC on filing of GSTR-3B return by the supplier, whereas the proviso to Section 41 states that the recipient can re-avail the ITC only when the supplier makes payment of tax.

4.0 The GST Portal has issued advisory in implementation of Rule 37A. The GST portal for FY 2022-2023 has computed from system the input tax credit to be reversed as per Rule 37A and has communicated the same via mail to the concerned taxpayers. It also states that the input tax credit is to be reversed in Table 4(B) (2) of GSTR-3B while filing GSTR-3B. (GSTN Advisory dt. 14.11.2023).

4.1 The primary question is the provision in the Act is with effect from 01.10.2022 and Rule with effect from 26.12.2022, then how can the portal compute and communicate reversal for the period from 01.04.2022 as the advisory in the portal states that for the FY 2022-2023 it has computed the input tax credit reversal and has communicated the same to the respective taxpayers.



5.0 Neither the Act/ Rule nor the Portal provides a mechanism for arriving at a conclusion that the recipient has taken such ITC and liable to reverse such input tax credit when the supplier has not paid the tax or filed GSTR-3B returns.

5.1 There may be cases where the recipient would not have taken the input tax credit or would have already reversed ITC from 01.10.2022 as it may be a blocked credit under Section 17(5) or, the goods or services used for other than business purposes as under section 17(1) or where they are used for exempt supplies under section 17(2).

5.2 In all such situations the recipient in the first place would not have taken such input tax credit but how will the GST portal identify whether the supplier has taken the input tax credit pertaining to the supplier who has not filed GSTR-3B as there is no one to one correlation between the liability reflecting in GSTR-1 and GSTR-3B of the supplier and input tax credit reflecting in GSTR-2B and GSTR-3B of the recipient.

5.3 It would have been wise if the law was enacted and implemented in such manner where an option appears in the FORM in GST portal to the recipient to communicate that the recipient has not at all taken the input tax credit invoice wise pertaining to the suppliers who have not filed the GSTR-3B, then there would not be requirement of any further proceedings.

