

# INPUT TAX CREDIT

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# Historical Background

- Modvat 1986- Excise Duty+Additional Duty
- Cenvat 2000- Service Tax added
- Objective: Reduce Cascading Effect
- Example: Tax Payable.                      Rs. 10/-  
Less: Tax Paid on Inputs..3/-)  
          & Input Services..1/-..).Rs. 4/-  
          **Net Cash Payment      Rs.6/-**

# Right or Privilege

- Privilege: How much and on what terms can be decided by the Legislature- State of Gujarat v. Reliance Industries: (2017) 16 SCC 28 and TVS Motor Company Ltd v. State of TN (2019) 13 SCC 403
- Can prescribe time limit to avail: Osram Surya (P) Ltd v. CCE (2002) 9 SCC 20
- Vested Right: Daichi Karkaria v. Collector: (1999) 7 SCC 448

# Goods & Services Tax (GST).....2017

- Section 16: Eligibility to Credit of tax paid on all supplies which are used or intended to be **used** in the course or furtherance of **business-NEXUS**
- Definition of Business: Section 2(17): trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, **whether or not for pecuniary benefit**
- Conditions:
  1. Tax Invoice-proof of payment
  2. Actual Payment of tax to Government
  3. Payment by person taking the credit to vendor or service provider of value & tax amount within 180 days or on payment
  4. No depreciation on the tax component under ITA
  5. Time Limit: On or before 20<sup>th</sup> October (due date for September monthly return) of the following FY
  6. Credit recorded in Electronic Credit Ledger (Section 41)

# Matching & Utilisation

## Section 42-Matching

- Invoices of inward supply must match with outward supply
- Rectification if discrepancy or duplication found

## Section 49-Utilisation

- Central Tax > Central Tax and balance remaining for Integrated tax
- State Tax > State Tax and balance for Integrated Tax
- Integrated Tax > Integrated Tax and balance first towards Central, then State and lastly Integrated.

## Section 53: Adjustment if Central tax utilised for Integrated Tax

# ... Matching and Utilization (GST 14<sup>th</sup> Amendment Rules, 2020)

- New Rule 86B w.e.f. 01.01.2021 – To Curb Fake invoicing rackets

- **86B. Restrictions on use of amount available in electronic credit ledger.** -Notwithstanding anything contained in these rules, the registered person shall not use the amount available in electronic credit ledger to discharge his liability towards output tax in excess of ninety-nine per cent. of such tax liability, in cases where the value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds fifty lakh rupees:

- Provided that the said restriction shall not apply where -
  - (a) the said person or the proprietor or karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees, as the case may be, have paid more than one lakh rupees as income tax under the Income-tax Act, 1961(43 of 1961) in each of the last two financial years for which the time limit to file return of income under subsection (1) of section 139 of the said Act has expired; or
  - (b) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (i) of first proviso of subsection (3) of section 54; or
  - (c) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (ii) of first proviso of subsection (3) of section 54; or
  - (d) the registered person has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year; or

# ... Matching and Utilization (GST 14<sup>th</sup> Amendment Rules, 2020)

- New Rule 86B w.e.f. 01.01.2021 – To Curb Fake invoicing rackets
  - *(e) the registered person is –*
    - *(i) Government Department; or*
    - *(ii) a Public Sector Undertaking; or*
    - *(iii) a local authority; or*
    - *(iv) a statutory body:*
  - *Provided further that the Commissioner or an officer authorised by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit”*

# Demand & Recovery

Section 73 (General) & 74 (Exception-fraud/wilful misstatement/suppression)

- Show Cause Notice- atleast 3 or 6 months prior to expiry of period to pass an order
- Order to be passed within 3 years under Section 73 or 5 years under Section 74 from the due date for filing annual return for the FY under Section 44 ie 31<sup>st</sup> December in the following FY.



# Arrest & Prosecution ...

Section 69: Power to arrest- “reason to believe” committed offence under Section 132

Section 132(1)(b)-issues any invoice without supply of goods or services leading to wrongful availment or utilisation of ITC

Section 132(1)(c)- avails ITC using an invoice referred to in (b) above

Punishable only if minimum amount is Rs. 1 Crore

Bailable & non-cognizable upto Rs. 5 Crores

Non-bailable and cognizable in excess of Rs. 5 Crores

# ... Arrest and Prosecution...

- P.V. Ramana Reddy vs Union of India[2019-TIOL-873-HC-TELANGANA-GST
  - *the incongruity between Section 69(1) and sub-Sections (4) and (5) of Section 132 of CGST Act, 2017 is that when the very power to order arrest under Section 69(1) is confined only to cognizable and non-bailable offences, we do not know how an order for arrest can be passed under Section 69(1) in respect of offences which are declared non-cognizable and bailable under sub-Section (4) of Section 132 of CGST Act.*
  - *we do not know how a person whom the Commissioner believes to have committed an offence specified in clauses (f) to (l) of sub-Section (1) of Section 132 of CGST Act, which are non-cognizable and bailable, could be arrested at all, since Section 69(1) of the CGST Act, 2017 does not confer power of arrest in such cases.*
  - *Thus, there is some incongruity between sub-Sections (1) and (3) of Section 69 read with section 132 of the CGST Act, 2017.*
  - *despite our finding that the writ petitions are maintainable and despite our finding that the protection under Sections 41 and 41-A of Cr.P.C., may be available to persons said to have committed cognizable and non-bailable offences under this Act and despite our finding that there are incongruities within Section 69 and between Sections 69 and 132 of the CGST Act, 2017, we do not wish to grant relief to the petitioners against arrest.*

# ... Arrest and Prosecution

- SLP against Telegana High Court decision dismissed [2019-TIOL-216-SC-GST]
- Union of India vs. Sapna Jain (SC) [2019-TIOL-217-SC-GST] – Issue referred to Larger Bench
  - *As different High Courts of the country have taken divergent views in the matter, we are of the view that the position in law should be clarified by this Court. Hence, the notice.*
  - *As the accused-respondents have been granted the privilege of pre-arrest bail by the High Court by the impugned orders, at this stage, we are not inclined to interfere with the same. However, we make it clear that the High Courts while entertaining such request in future, will keep in mind that this Court by order dated 27.5.2019 passed in SLP(Crl.) No. 4430/2019 had dismissed the special leave petition filed against the judgment and order of the Telangana High Court in a similar matter, wherein the High Court of Telangana had taken a view contrary to what has been held by the High Court in the present case.*