

A.P. TAX PRACTITIONERS AND CONSULTANTS ASSOCIATION

Dt:11-03-2024

To

Smt. Nirmala Sitaraman,
Hon'ble Finance Minister,
Union of India,
New Delhi,

Respected Sir,

The Goods and Services Tax Act, 2017 is a land mark legislation that has the potential to transform the Indian Economy. The Act has been hailed as a major step towards economic integration and simplification of the tax regime. However, there are some challenges that need to be addressed in order to ensure the success of the GST regime. There is a need to address the concerns of the business community. Among others, one such challenge is the application of sec 16(4) which is proving major burden for the business community at large. Many businessmen owing to various reasons could not comply with the provisions and hence are now facing huge demand notices.

Chankya in his Artha Sastra Says that

“Collect taxes from a Tax payer just like a bee collects honey from a flower with out disturbing its petals”

We are the Body of Advocate, Tax Practitioners & Tax Consultants having more than 2000 registered members and 26 Associated bodies, one of the largest association in South India. Working for the Trade and Tax fraternity from last 10 years.

As well know, the Government do every effort to deny the benefit of Input Tax Credit to the tax payers. One of the effort is made under Sec 16(4) of CGST/SGST Act,2017 in which the time limit is prescribed for availment of input tax credit.

As per Sec 16(4):-

A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

The Condition given in Sec 16(4) can be easily complied in the normal course of business, however the problem may arise where the GST Registration is cancelled by the authorities and we cannot deny the fact that the appeal to appellate authority or writ petition to Hon'ble High Court is a time taking process and due to which there may be possibility that the tax payer could not claim input tax credit GST Returns within the time prescribed in Sec 16(4) of **CGST/SGST Act,2017**. In other words, delayed GST Returns may be filed after revocation of GST Registration and input tax credit is availed in such delayed GST returns. In the given situation where delayed GST returns is filed it is difficult to comply with in time limit mentioned in Sec 16(4) for availment of Input Tax Credit.

Further recently through **Notification No. 03/2023 (CT) dated 31-03-2023** Government has provided one-time amnesty scheme for revocation of GST Registration. However the Government has not given any relief to avail the input tax credit in delayed returns in case of cancelled registrations.

Previously through Notification No.19/2021 (CT) dated:01-06-2021

“Provided also that for the registered persons who failed to furnish the return in FORM GSTR-3B for the months/quarter of July, 2017 to April, 2021, by the due date but furnish the said return between the period from the 1st day of June, 2021 to the 31st day of August, 2021, the total amount of late fee under section 47 of the said Act, shall stand waived which is in excess of five hundred rupees:

Provided also that where the total amount of central tax payable in the said return is nil, the total amount of late fee under section 47 of the said Act shall stand waived which is in excess of two hundred and fifty rupees for the registered persons who failed to furnish the return in FORM GSTR-3B for the months/ quarter of July, 2017

to April, 2021, by the due date but furnish the said return between the period from the 1st day of June, 2021 to the 31st day of August, 2021:

Later Through **Notification No:33/2021 (CT) dated:29-08-2021** the period extended up to 30th Day November,2021.

It would be welcome step by the government if relaxation is provided to avail the input tax credit in the delayed returns in the case of cancelled registration.

That will avoid huge litigation which is going to arise on this single issue

Few GST Citations wherein ITC claimed held to be allowed or disallowed for belated filing or claim of the input tax credit:

The Madurai Bench of Madras High Court, The Hon`ble high Court grants relief to assessee for financial hardship leading to belated filing of GST-3B, causing disallowed ITC under section 16(4) CGST act, 2017. Tvl. Kavin HP Gas Gramin Vitran v. Commissioner Of Commercial Taxes.

We are requesting the Hon`ble Finance Minister look the issue in a broader way and issue some relaxations to the Business people to claim their eligible legitimate input tax credit in the light of issuance of one time Circular instructions for the period 01-07-2017 to 31-3-2023. Because of the various reasons registered business persons in GST had missed out the time lines prescribed under sec 16(4) of CGST/SGST Act, 2017

Previously also to protect the interest of the business people in India with a great heart the department Issued 2 Circular instructions **183/15/2022-GST dated 27-12-2022**

Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19.

193/05/2023-GST dated 17-7-2023

Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period 01.04.2019 to 31.12.2021

We will hope that due hard ship to business fraternity and especially MSME be avoided by the Government , by taking necessary corrective steps / clarifications even before the judgements come up and give relief to many innocent business persons (Registered Tax Payers) which will ultimately lead to a situation of creation of good faith in the broader business community.

Thanking you sir,

Yours Sincerely,

P.Sharik khan

(president)

D.Srinivasa Rao
DAMACHERLA
SRINIVASA RAO
(Vice President)