

PROPOSED AMENDMENTS IN CGST ACT, 2017 AS RECOMMENDED BY THE LAW COMMITTEE:

The Law Committee has recommended several important amendments to existing provisions and has proposed the introduction of new provisions that may majorly impact the process and the nature of claiming of Input Tax Credit moving ahead. Due to the above, statutory validity and power shall be provided to the existing use of GSTR-2B statement, restrictions on use of amount in Input Credit Ledger i.e. Rule 86B and by introduction of new provisions, additional conditions and restrictions are proposed to be imposed on the eligibility and the availment of Input Tax Credit.

Therefore, in the times to come, claiming Input Tax Credit shall become a cumbersome process and the importance of *"know your supplier"* shall be of paramount importance since the eligibility and availment of Input Tax Credit for the recipient shall be majorly dependent on the actions and inactions of his supplier.

Further, several amendments have been proposed to replace the earlier envisaged automated GST Return filing system of GSTR-1/2/3 model related provisions with the current GSTR-1/3B return filing system which is in line with the recommendation made in the 42nd GST Council Meeting held in October, 2020 that the present system of GSTR-1/3B return filing is to be continued and the GST laws may be amended to make the GSTR-1/3B return filing system as the default return filing system.

Further, few amendments have been proposed which shall impact the existing provisions on due dates for rectification of details furnished in GSTR-1, GSTR-3B and other return filings for specified registered persons, late fees on certain returns, interest on ineligible Input both availed and utilized and refund of cash balance.

The proposed amendments in CGST Act, 2017 along with its rationale and analysis are mentioned as below:

Note: (1) Text in **Red** is the text of the proposed new provision, (2) Text highlighted in **yellow** and ~~struck-through~~ is the text of current provision which is proposed to be amended.

S. NO.	TITLE OF SECTION PROPOSED FOR AMENDMENT	TEXT OF SECTION PROPOSED FOR AMENDMENT	ANALYSIS OF AMENDMENT ALONG WITH RATIONALE
1	Section-16(2)(e) (Newly inserted) - Eligibility and	(e) input tax credit in respect of the said supply has not been restricted in the details communicated to such registered person under section 38:	Before Amendment: Only 4 notified conditions u/s 16(2) were to be fulfilled to be eligible to claim ITC.

	conditions for taking input tax credit.		<p>Also, till now statutorily, the eligibility to claim ITC was not dependent on its availability in GSTR-2A/2B since Section 16(2)(aa) is yet to be notified.</p> <p>After Amendment:</p> <ol style="list-style-type: none"> 1) Section 16(2)(e) gives statutory validity to the sixth condition to claim ITC and restricts the eligibility of ITC in case the said supply falls in any of the restrictions as enumerated in the amended Section 38. 2) Amendment has been proposed in section 38, which, inter-alia, provides that details of outward supplies furnished by the suppliers that are to be communicated to the recipients may be restricted in specified cases. Accordingly, it is proposed to provide in law that the recipient shall not be eligible for ITC corresponding to such details which have not been communicated for which clause (e) is proposed to be added in section 16(2). 3) Section 16(2)(aa), whenever notified, would work in tandem with Section 16(2)(e) and would provide statutory enablement and power to GSTR-2A/2B in regard to the eligibility of
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			<p>ITC on the basis of its availability in such forms. (Fifth Condition to claim ITC.)</p> <p>Therefore, now claiming of eligible ITC shall become more cumbersome and shall be majorly dependent on the actions of the Supplier in regard to him paying his output tax and/or claiming ITC correctly.</p>
2	Section- 16(4)- Eligibility and conditions for taking input tax credit.	<p>(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 thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier</p>	<p>Before Amendment:</p> <ol style="list-style-type: none"> 1) Rectification of particulars in GSTR-1 is presently linked with furnishing of return for September month. 2) Rectification of particulars in GSTR-3B is linked with due date of furnishing of return for September month. 3) The last date to claim Input Tax Credit for the immediately preceding financial year is linked with due date of furnishing of return for September month of the current year or the due date of Annual Return of preceding year, whichever is earlier. <p>After Amendment:</p> <p>It is recommended that a fixed date 30th November be fixed for both, rectification in GSTR-1 and GSTR-3B returns as well and also to claim pending Input Tax Credit of the preceding year:</p>

			<p>a. In the portal, after the cutoff date no amendment would be permitted.</p> <p>b. It provides one more month to taxpayer to amend their returns and also to claim Input tax Credit.</p>
3	Section- 37(1)- Furnishing details of outward supplies.	<p>Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, subject to such conditions and restrictions and in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall, subject to such conditions and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed:</p> <p>Provided that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period:</p>	<p>Brief:-</p> <p>Sub section 1 is to be amended to include conditions and restrictions through proposed Rules for filing GSTR1 and for passing on the Input Tax credit (ITC) to the recipient in GSTR 2A/2B.</p> <p>Analysis of Amendment of Sec 37(1) :-</p> <ol style="list-style-type: none"> 1. Conditions for the claiming and passing on of ITC and the communication to the recipient will be included within section 37 itself and to be read with rules. 2. The words “conditions” and “restrictions” have been inserted in this section. This essentially links to the newly inserted Section 16(2)(e) and therefore only such ITC shall be eligible which are not restricted under amended Section 38, provided other conditions to claim ITC are fulfilled as per Sec 16(2). 3. Restrictions on furnishing the details between 11th to 15th have been deleted, because the freezing of data before the 2-way communication is proposed to be done away with.

4	Section- 37(2)- Furnishing details of outward supplies.	To Be Omitted and removed	Provision related to communication, acceptance and rejection of invoices has been incorporated u/s 37 (1) and hence Section 37(2) is proposed to be deleted and also since the 2-way communication is proposed to be done away with.
5	Section- 37(3)- Furnishing details of outward supplies.	<p>(3) Any registered person, who has furnished the details under sub-section (1) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:</p> <p>Provided that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after the due date of furnishing of the return under section 39 for the month of September the thirtieth day of November following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.</p>	<p>Analysis of Amendment of Sec 37(3) :-</p> <p>1. Since Sections 42 and 43 are proposed to be deleted, therefore there remains no relevance of Matching/Mismatching under section 37(3).</p> <p>2. The proposed due date for amendment or rectification in GSTR-1 shall be the 30th of November following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier. For Eg: The due date for amendment in any GSTR-1 of F.Y. 2021-22 would be now 30.11.2022 rather than 20.10.2022 or 22.10.2022/24.10.2022 for monthly filers and QRMP filers respectively.</p>
6	Section- 37(4) (New Sub-Section inserted)- Furnishing details of outward supplies.	(4) A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period, if the details of outward supplies for any of the previous tax periods has not been furnished by him. Provided that the Government	<p>Analysis of Amendment :-</p> <p>1. Similar to section 39(10), a new sub-section 37(4) is proposed to be introduced which restricts a registered person to furnish GSTR-1 for a tax period if the GSTR-1 for</p>

		may, on the recommendations of the Council, by notification and subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies under subsection (1), even if he has not furnished the details of outward supplies for one or more previous tax periods.	<p>any previous tax period has not been furnished by him.</p> <p>2. Relaxation may be provided from applicability of Section 37(4) subject to such notified conditions and restrictions to notified specified registered person.</p> <p>3. This Section shall permit GSTR-1 to be filed only sequentially which shall further allow seamless transmission of Input Tax Credit.</p>
7	Section 38(New Section Inserted)-Furnishing details of Inward Supplies.	<p>38. Communication of details of inward supplies and input tax credit.—</p> <p>(1) The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and such other supplies as may be prescribed, and an auto-drafted statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.</p> <p>(2) The auto-drafted statement under sub-section (1) shall consist of:</p> <p>(a) details of inwards supplies in respect of which credit of input tax may be available to the recipient, and</p> <p>(b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the</p>	<p>Analysis of Amendment of Sec 38 :-</p> <p>1)The present sub-sections to be omitted in entirety as there is no requirement of furnishing details of inward supplies under automated return filing system.</p> <p>2) Sub-section (1) of Section 38 states to provide details of inward supplies which shall be made available to the recipients in a prescribed manner and brings the legal validity to Form GSTR-2B which is subject to such conditions, restrictions, form, manner and within such time as notified.</p> <p>2) The Form GSTR-2B is essentially split in two parts in regards to ITC:-</p> <p>a. Credit of Input Tax Credit may be available.</p> <p>b. Credit of Input Tax Credit cannot be availed.</p> <p>The following situations would restrict the passing of Input Tax</p>

		<p>details of the said supplies being furnished under sub-section (1) of section 37:</p> <p>(i) by any registered person within such period of taking registration as may be prescribed; or</p> <p>(ii) 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</p> <p>(iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or</p> <p>(iv) 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</p>	<p>Credit on the invoices uploaded by such specified suppliers:</p> <p>i) Newly registered suppliers may not be able to pass on Input Credit within the prescribed periods. For Eg: 1-month old newly registered supplier may not be able to pass on ITC for a period of 3 months from the date of his GST Registration, in case such time period is prescribed.</p> <p>ii) Defaulter supplier who has not filed his GSTR-3B return and has not paid tax and such default has continued for a prescribed time period. For Eg: In case the supplier has not filed his previous 2 GSTR-3B returns, he may not be able to pass on ITC on his sale invoice, in case such time period is prescribed.</p> <p>iii) if output tax payable by the supplier under GSTR- 1 is in excess of the output tax paid in GSTR-3B by a prescribed limit for such prescribed period. For Eg: ITC may be restricted for the recipient in case the</p>
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		<p>with clause (a), by such limit as may be prescribed; or</p> <p>(v) by any registered person who has defaulted in discharging his tax liability through the electronic cash ledger, in accordance with the provisions of sub-section (12) of section 49;</p> <p>(vi) or by such other class of persons as may be prescribed.</p>	<p>supplier in his GSTR-1 of May 2022, has declared Taxable Outwards supplies of Rs. 1,00,000 and applicable taxes and in GSTR-3B of May 2022, only Rs. 75,000 and applicable taxes have been reported, in case such limits are prescribed.</p> <p>iv) where the supplier has availed the eligible and available credit in excess of the credit which is available to him as per GSTR-2B under clause (a) of section 38(2). For Eg: ITC for the recipient may be restricted in case the supplier has claimed Rs. 80,000 under IGST in his GSTR-3B of May 2022 but in his GSTR-2B for May 2022, amount of eligible ITC is Rs. 50,000 under IGST, in case such limits are prescribed.</p> <p>v) The ITC for recipient shall be restricted if the supplier has paid its tax liability by using the Input Tax Credit in excess of the permissible proportion and in violation of Section 49(12).</p>
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8	Section 39- Furnishing of Returns.	<p>(5) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within twenty thirteen days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.</p> <p>(7) Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, the tax due taking into account inward and outward supplies of goods or</p>	<p>Analysis of the Amendment in Sec 39(5):-</p> <ol style="list-style-type: none"> 1. Now Non- Resident persons are required to file their Return GSTR-5A up to 13th and not the 20th after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier. 2. This is in line with the proposed dates on which GSTR- 2B picks up data in the System.

	<p>services or both, input tax credit availed, tax payable and such other particulars during a month, in such form and manner, and within such time, as may be prescribed:-</p> <p>Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, in such form and manner, and within such time, as maybe prescribed -, (a) an amount equal to the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month, or (b) in lieu of the amount referred to in clause (a), an amount determined in such manner and subject to such conditions and restrictions as may be prescribed.</p> <p>(9) Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter the thirtieth day of November following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.</p> <p>(10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods or the details of outward supplies under sub-section (1) of section</p>	<p>Analysis of the Amendment in First Proviso to Sec 39(7):-</p> <p>In regard to QRMP Dealers:-</p> <p>Status Before Amendment:-</p> <p>QRMP Dealers have the option to pay the tax under two methods which were namely, self-assessment basis or fixed sum method, but these methods were not provided in law and were governed through specially notified procedures only.</p> <p>After Amendment-</p> <p>Above provisions have been inserted in law by a new proviso by substituting the first proviso to Subsection 7 of Section 39. The new proviso provides for:</p> <ol style="list-style-type: none"> Self-Assessment Basis. Fixed sum Method. <p>Analysis of the Amendment in First Proviso to Sec 39(9):-</p> <p>Time limit for amendment and rectification of any omission, error or incorrect particulars in GSTR-3B shall be allowed on or before the 30th of November following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.</p>
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9	Section 41- Claim of Input tax Credit and provisional acceptance.	<p>Claim Availment of input tax credit and provisional acceptance thereof.—</p> <p>(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.</p>	<p>Analysis of the Amendment in Section 41(1):-</p> <p>Substitution of the word “claim” and bring in the concept of availment and eliminate the concept of provisional availment of ITC in this section.</p> <p>The concept of provisional availment was the crux of the</p>

		<p>(2) The credit referred to in sub-section (1) shall be utilised only for payment of self-assessed output tax as per the return referred to in the said sub-section.</p> <p>(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:</p> <p>Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, along with applicable interest, the said registered person shall be entitled to re-claim the amount of credit reversed by him, as aforesaid, in such manner as may be prescribed.</p>	<p>Automated GST Return System model in GSTR-1,2,3.</p> <p>Analysis of the Amendment in Section 41(2):-</p> <p>The Old sub section (2) has been deleted.</p> <p>Impact of newly inserted Sec 41(2) and first proviso to it:-</p> <p>A restriction on the availment of Input Tax Credit has been created in the event the Tax collected by the supplier has not been paid, resultantly the recipient may have to reverse such ITC along with applicable Interest.</p> <p>Subsequently, the recipient is entitled to re-claim the reversed credit whenever the supplier discharges the output tax along with applicable interest.</p> <p>Note: Therefore, the inaction of payment of tax by unscrupulous suppliers may lead to reversal of ITC of an inadvertent recipient or supply.</p>
10	Section 42- Matching, reversal and reclaim of input tax credit	To Be Omitted	<p>Since, Section 42 provides for the matching, reversal and reclaim of ITC in the Automated GST Return System of GSTR-1,2,3, it remains of no relevance. Moving ahead, matching of ITC will be governed by the yet to be notified Section 16(2)(aa).</p>
11	Section 43- Matching,	To Be Omitted	<p>The existing section 43 may be omitted as a whole as the concept</p>

	reversal and reclaim of reduction in output tax liability		of 2-way communication is being replaced by self-assessment. Further, Credit note and duplication related checks have already been incorporated in the GSTR-2B statement . Moving ahead, matching of Credit notes will be governed by the same appearing in GSTR-2B.
12	Section 43A- Procedure for furnishing return and availing input tax credit	To Be Omitted	Section 43A which is yet to be notified is of no relevance and shall be replaced with the procedures mentioned in Section 37 and Section 38.
13	Section 47- Levy of late fees	Amendment is brought in Section 47 to include Section 52 in sub section (1) so that late fee shall be levied in case registered persons do not file GSTR-8 by the due date.	Before the Amendment- There were no late fees in case of late filing of GSTR-8. After the Amendment:- Late fees are proposed to be levied in case of late filing of both, GSTR-8 (TCS collected by E-commerce Operator) and GSTR-9B (Annual Return of E-Commerce Operator).
14	Section 29(2)- Cancellation of Registration	(b) A person paying tax under section 10 has not furnished returns for three consecutive tax periods the return for a financial year beyond three months from the due date of furnishing the said return. (c) any registered person, other than a person specified in clause (b), has not furnished returns for a such continuous tax period of six months as may be prescribed	Before the Amendment:- (b) Composition Dealers may have defaulted in filing of Annual Return in GSTR-4 for up to 3 Tax periods i.e 3 years without having their GSTIN cancelled. (c) Normal Dealers i.e. Monthly and QRMP filers may continue default in filing of GST Returns up to Six Months without having their GSTIN cancelled. After the Amendment:- (b) Composition Dealer shall have to file their GSTR-4 within 3 months

			from the due date, otherwise their GSTIN shall be cancelled (c) Return default period for Normal Dealers will be prescribed by the rules.
15	Section 34(2) - Credit and debit notes.	Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than September thirtieth November following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed.	<p>Before the Amendment:-</p> <p>A Registered person who issues a credit note can declare the details of such credit note in the return for the month during which such credit note has been issued but not later than the due date of GSTR-3B of the month of September. I.e. 20/22/24 October.</p> <p>After the Amendment:- Now the registered person can declare the same credit note till 30th of November following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed.</p>
16	Section 52 (6)- Collection of Tax at Source.	Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of statement for the month of September thirtieth day of November following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier	<p>Before the Amendment:-</p> <p>E-Commerce operator Can rectify any omission or incorrect particulars till the due date for furnishing the statement for the month of September i.e. 10 October or the actual date of filing of Annual statement, whichever is earlier.</p> <p>After the Amendment:-</p> <p>Now E-Commerce Operator can rectify any omission or incorrect particulars till the 30th of November following the end of the</p>

			financial year or actual date of filing of Annual statement, whichever is earlier.
17	Amendment in 49(4) & new subsection 49(12) has been Inserted- Payment of tax, interest, penalty and other amounts.	<p>(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and restrictions and within such time as may be prescribed.</p> <p>(12) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, subject to such conditions and restrictions, prescribe the maximum proportion of output tax liability under this Act or under the Integrated Goods and Services Tax Act, which may be discharged through the electronic credit ledger, by a registered person or a class of registered person.</p>	<p>1) Word “Restrictions” have been added in Section 49(4) to enable the restrictions for utilizing the existing balance of credit Ledger. Such restriction may be partial or full as may be prescribed.</p> <p>2)Sub-Section (12)- A new Section 49(12) has been inserted to prescribe certain conditions and restrictions in using Input Credit ledger by restricting the maximum proportion of Output Tax liability which may be allowed to be set off against such Input Credit. This sub-section shall provide statutory power for swift implementation of Rule 86B. (i.e. 99% use of credit ledger)</p>
18	Section 50(3)- Interest on delayed payment of tax.	<p>(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43 shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty four per cent., as may be notified by the Government on the recommendations of the Council.</p> <p>Where the input tax credit has been wrongly availed and</p>	<p>Analysis of Amendment of Sec 50(3):-</p> <p>Following the rationale of amendment of First Proviso to Sec 50(1) of charging interest only on net cash liability of output tax, amended Sec 50(3) proposes for charging interest on ineligible ITC which is both, availed and utilized (on the basis of net cash liability).</p> <p>Before the Amendment:- Interest under section 50(3) at the rate of 24% will be levied in case of Section 42(10) and 43(10).</p>

		<p>utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty four per cent., as may be notified by the Government, on the recommendations of the Council.</p>	<p>After the Amendment:- Section 42 and 43 have been deleted. Now, Interest under section 50(3) shall be levied on ineligible Input Tax Credit, which have been both wrongly availed and utilised.</p> <p>The Interest rate shall be notified by the government with a maximum rate of 24% Per Annum.</p>
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19	Section 54- Refund of tax	<p>(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed:</p> <p>Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such form and manner as may be prescribed.</p>	<p>Amendment in First Proviso to Sec 54(1):</p> <p>Before amendment: Even though the refund of balance in electronic cash ledger was made via RFD-01, still such a provision was not mentioned in law and was mentioned to be allowed through GSTR-3, which was eventually not implemented.</p> <p>After Amendment : Now, such refund of cash balance may be allowed through Form RFD-01.</p>
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