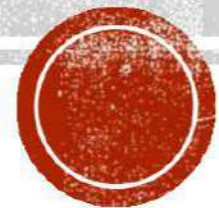


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CHARTERED ACCOUNTANT

Payment made to Vendors
after 180 days



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Is Reversal of Credit Required for Non-payment within 180 days?

There has been a lot of debate around the necessity of the provision under GST, which restricts credit of taxes paid in respect of supplies received, where payment to the vendor is made after 180 days of the issue of invoice. A similar provision existed under the service tax regime as well.

However, complying with this provision is practically cumbersome for the industry coupled with the fact that the only implication finally would be interest liability, if the consideration is paid to the vendor at any point of time. Also, a strict compliance with this provision could lead to working capital stress.

In this article, we would examine how this provision is to be complied with and what are the implications in case of non-compliance.

Provision

In respect of any credit availed, in case of failure to make payment¹ to the vendor within 180 days from the date of invoice, the taxpayer would be required to add such input tax credit (ITC) to the output tax liability, to the extent of non-payment, in terms of 2nd proviso to section 16(2) of the CGST Act, 2017. As per the rules, on payment to the vendor, the credit can be reavailed.

As per this proviso, an amount equal to such ITC shall be added to output tax liability² in the manner prescribed under Rule 37 of the CGST Rules, 2017. Referring to this rule provides the following:

- a. As per rule 37(1), The disclosure regarding this ITC3 shall be made in **Form GSTR-2**.
- b. This disclosure shall be made in the month immediately following the period in which limit of 180 days is crossed.
- c. As per rule 37(2), this amount of ITC shall be added to the output tax liability for the **month in which the above disclosure is made**.
- d. Interest @18% would be payable from the date of availing such credit till the date it is added to output tax liability as above.

Thus, the provision requires addition to output tax liability only after 180 days and not before.

Can the above be complied?

The above cannot be complied with for the following reasons:

- Form GSTR-2 was never implemented, and no other substitute is available to disclose the information mentioned in 'a' above.
- The addition to the output tax liability as mentioned in 'c' above is to be done in the month in which the disclosure in GSTR-2 is to be done, and It is a settled principle that when any statute prescribes the manner in which something is to be done, it must be done in the same manner only and not otherwise. The Hon'ble Supreme Court in the case of Canon India Pvt. Ltd. 2021 376 ELT 3 (SC) stated that "when a statute directs that things to be done in a certain way, *it must be done in that way alone*". Applying this to the present scenario, the Act and the Rules require the taxpayer to disclose this kind of credit, first in GSTR-2 and in the month in which it is disclosed in GSTR-2 it has to be added to output tax liability.

So, can it be said that since GSTR-2 is not operational, it is not possible for the taxpayer to comply with this provision in the manner set out in the statute and thereby it is not required to be complied with? If this be the conclusion, the taxpayer need not comply with this provision until GSTR-2 is made effective. Even till date the Government has not scrapped GSTR-2 but seems to have a plan to revive it once the taxpayers slowly get used to that type of compliance.

What if complied?

However, if on a conservative note, the taxpayers choose to reverse this credit by disclosing it in table 4(B)(2) of Form GSTR-3B, would this be in the nature of being added to the output tax liability? Maybe not if the taxpayer has credit balance, in which case it would be in the nature of reversing credit and not paying output tax liability.

This would also not lead to compliance with the procedure set out in rule 37 *ibid*. So, does this mean that the disclosure made by taxpayers in GSTR-3B by way of reversal of credit is not in line with the law? Even if not, this would be regarded only as a procedural non-compliance at the most.

Further to note that in Form GSTR-9 as well, this amount u/r 37 is to be disclosed as ITC reversal in table 7A and not as part of the output tax liability. Thus, it seems that the Government needs to amend the statute to bring it in line with the portal practicalities.

Interest in case of reversal

As per rule 37 *ibid* the following are relevant:

- a. Rule 37(3) is relevant in this regard, which reads as below

The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid

As per this provision, interest liability would arise from the date of availing the credit till the date it is added to the output tax liability in the manner specified in sub rule 2. Sub rule 2 requires adding to the output tax liability only after 180 days is crossed.

So, does this mean that in case the taxpayer reverses credit before 180 days is crossed, no interest liability will arise? Thereby, in case it is known that any particular vendor is not likely to be paid before 180 days and if the credit is reversed before this 180 days is reached, no interest liability should attract.

- b. However, if the taxpayer reverses this kind of credit after the completion of 180 days, then interest liability @18% would be liable for the period from the date of availing credit till the date of reversing the credit, even if the taxpayer has not utilised the credit. This is for the reason that rule 37 ibid refers to section 50 of the CGST Act, 2017 only for rate of interest and not for the manner.

Conclusion

With the changes made in the statute to bring in Form GSTR-2B into it in the right place now, it is time that the same exercise is done for every provision in the law. This will help to check and amend suitably the law relating to forms and provisions which are now redundant. This will give the taxpayer more clarity in compliance. It is time that the portal law and the Statute are the same. If not, these would create confusion for the taxpayers and thereby making the law difficult and confusing to comply.

When it comes to the taxpayer, in case he wishes to comply with rule 37, suggested to reverse credit before 180 days is crossed in order to save interest liability on this. In case of noncompliance, the stand mentioned in this article can be taken to defend, in addition to various other grounds that may be available

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