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# Article on Section 16(2)(aa) of CGST Act,w.e.f.1.04.2022.

Dear Colleagues, Greetings of the day. I am preparing this article on claiming of Input Tax Credit on inwards supply of goods or services or both after making amendment to Section 16(2) of the CGST Act, 2017, w.e.f.01.04.2022 as per Finance Act,2022.

Section 16 of the CGST Act, 2017, states that “Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course of or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person”.

# Conditions for taking input tax credit “Prior to amendment to Sec.16(2) w.e.f.1.1.2022”:

Section 16(2) of the CGST Act,2017,states that “ Notwithstanding anything contained in this section, no registered taxable person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,

1. He is possession of a tax invoice or debit note issued by a supplier registered under this act, or such other tax paying document as may be prescribed,
2. He has received the goods or services or both,

**Explanation:** For this purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise , before or during movement of goods, either by way of transfer of documents of title to goods or otherwise,

1. Subject to the provision of Section 41, the tax charged in respect of such supply has been actually paid to the government , either in cash or through utilization of input tax credit admissible in respect of the said supply, and
2. He has furnished the return under Section 39.

A new condition was inserted to Section 16(2) of the CGST Act,2017, by way of Section 109 of the Finance Act,2021, viz--

”After clause (a),in sub-section(2) of Section 16, the following clause shall be inserted,

(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37);

# The CBIC notified vide Notification No.39/2021-Central Tax, dated.21.12.2021.

As per amendment to Sec.16(2)(aa) of CGST Act, 2017, it ‘s an additional condition to claim Input Tax Credit (ITC) based on Form GSTR-2A and newly introduced Form GSTR- 2B, that means , Input Tax Credit on invoice or debit note can be availed only **when the in details of such invoice or debit note have been furnished by the vendor the statement of outward supplies through Form GSTR-1** as specified in section 37 of the CGST Act,2017 and such details have been communicated to the recipient of such invoice or debit note.

Therefore, from 01.01.2022 onwards the taxpayer shall be following the below conditions under Section 16 (2) of the CGST Act, 2017 for availing Input Tax Credit on inward supplies of goods and services or both:-

* 1. The recipient is in possession of tax invoice or debit note issued by supplier
  2. The details of above –mentioned invoice or debit note have been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient in the manner specified under section 37 of the CGST Act,2017,
  3. The recipient has received goods and services or both,
  4. The tax charged in respect of such supply has been actually paid to the Government, and
  5. The recipient has furnished the return under section 39 of the CGST Act,2017.

Many of the taxpayers are unable to claim Input Tax Credit (ITC) on their inward supply of goods or services or both, because of their vendors not uploading supply invoice in the GST Portal within the prescribed time and not followed compliances as per GST Law, 2017.

Further, the taxpayers are unable to claim Input Tax Credit (ITC) on their inward supplies because of Section 38 under these following circumstances:

(i). The supplier is newly registered dealer under the GST Law,

1. The supplies are furnished by a supplier who has not paid taxes on such supplies for a certain tax periods,
2. The supplier’s output tax liability payable is greater than the output tax liability paid during the said period,
3. The supplier has claimed more than what was lawfully allowed,
4. The supplier has not paid their taxes in accordance with Sec.49 (12)of CGST Act,2017. To simply it, the supplier has utilized more Input Tax Credit (ITC) from their electronic credit ledger than what was allowed under the law,

# The following compliances are also to be noted.

1. .Automatic reconciliations run at frequent intervals in time through a compliance solutions that is accompany to the business.
2. .Automatic vendor communication in case of missing invoices, followed by automatic withholding of payments for frequently defaulting vendors.
3. .Certainly, doing all of this could be easier for large taxpayers that may have the money and manpower but will obviously be burdensome for small taxpayers.

**Conclusion:** After introduction of amended to Section 16(2)(aa) of CGST Act,2017,w.e.f. 1st January,2022,” Every tax payer must claim ITC on their inward supplies of goods and services or both are cross check with their supplier about whether they have filed Form GSTR-1 and Form GSTR-3B along with tax payment or not. Otherwise don’t claim ITC on their inward supplies of goods and services or both to avoid penalty on wrong claim of ITC.

**Disclaimer**: The contents of this article have been prepared on the basis of Notification No.39/2021-Central Tax, dated.21.12.2021,issued by the CBIC. A new condition was inserted to Section 16(2) of the CGST Act,2017, by way of Section 109 of the Finance Act,2021. Although care has been taken to ensure the accuracy, completeness and reliability of the information available, the author assumes no liability. Therefore, users of this information are expected to refer the relevant law, the information as given in no case shall be constructed as a professional advice or opinion.

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**THANK YOU**