

October 14, 2019

To,

Smt. Nirmala Sitharaman.  
Hon'ble Minister of Finance,  
Government of India  
Ministry of Finance,  
North Block, New Delhi-110 001



**Reg: Representation with respect to newly inserted sub-rule (4) of Rule 36 of the Central Goods and Services Tax Rules 2017**

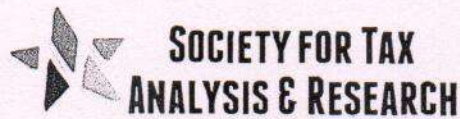
Respected Madam,

At the outset we thank the government for giving due consideration to the problems faced by the taxpayers from time to time. As a result of your kind rumination of the issues, changes are brought in the system from time to time. We write to your good office to highlight the following perceived issues that may come due to the recent Notification No 49/2019 – Central Tax dated 09.10.2019.

Madam, we hereby anticipate the following issues which are requires immediate consideration and clarification else the intention might get defeated and the application of the notification may become a challenge for most of the honest tax payers. Kindly allow me to first reproduce the exact provision that is inserted by way of sub-rule (4) of Rule 36 of the Central Goods and Services Tax Rules 2019:

*"(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37."*





We understand that the intent of the above provision is to allow the Input Tax Credit as per the following working:

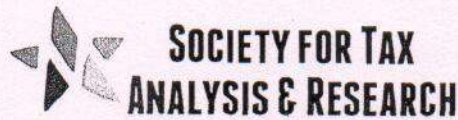
| Case | Month  | Eligible ITC as per Books | Total ITC as per 2A | Eligible ITC as per 2A | Available ITC<br>(max: GSTR 2A + 20%) | ITC Aailed | Remarks        |
|------|--------|---------------------------|---------------------|------------------------|---------------------------------------|------------|----------------|
| 1    | Oct-19 | 1,00,000                  | 80,000              | 80,000                 | 96,000                                | 96,000     | Ideal Scenario |

Madam, we would like to submit before your honour the following issues to be considered and clarified as soon as possible. We do appreciate the intention with which the said sub-rule is inserted but the under mentioned observations may not allow the intentions to be fulfilled and will cause hardship to a honest tax payer:

#### 1. Impact on small suppliers filing GSTR 1 on quarterly basis

- 1.1. It is humbly provided in the sub-rule that the input tax credit in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent. of the eligible credit. *The issue which is not addressed here, what will happen in a situation where the supplier is small entity (having turnover upto Rs. 1.5 Crores) and covered under the special class of persons who are required to file their outward supply return on quarterly basis.*
- 1.2. In this situation the Input tax credit will get reflected in GSTR 2A of the recipient only after the end of quarter and hence the recipient may be deprived of the eligible credits (to the extent of 80% of the eligible credit as not so reflected) also just because the supplier is a small tax payer required to file returns quarterly under the scheme of law.
- 1.3. This may also lead to a situation where the recipient shall stop purchasing from such small tax payer and hence this will cause a big loss to such small suppliers. This we believe is not at all the intention of the law makers but can emerge as a consequence





of this amendment and insertion as sub-rule(4) to Rule 36 of the Central Goods and Services Tax Rules, 2017.

**Suggestion:** It is humbly suggested that suitable amendment be made in the form GSTR-3B to provide a separate table / column for filling figures of Input Tax Credit related to purchases from small taxpayers. Further, to make it effective, suitable amendment to this extent be made in the Rule to allow full credit during quarter in respect of small taxpayers.

## 2. Input tax Credit differences arising out of month end movement of goods or services

2.1. Madam, it may so happen that while the supplier has dispatched the goods at the month end or has provided the services at the month end and has raised invoices, the goods / services or invoice thereof is received by the recipient after the month end.

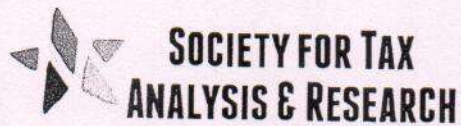
2.2. Section 16(2) of the Central Goods and Services Tax Act, 2017 provides the following  
 (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed  
 (b) he has received the goods or services or both.

2.3. Thus, any invoice is uploaded by the supplier and is being reflected in Form GSTR 2A but the goods or service is not received by the recipient, there shall be difference in the month of reflection in GSTR 2A viz a viz, the month where the buyer is eligible to claim such Input tax Credit in his GSTR 3B. There is no mechanism using which such wrongly availed credits can be checked and also, the mechanism which will compare the availment viz a viz, GSTR 2A shall issue unwarranted notices as the subsequent period shall show higher availment of Input Tax Credit. This scenario shall be eminent more towards the end of quarter or financial year.

2.4. Thus, even when the availment is in subsequent period, the system may find such Input Tax Credits as availed more than the eligible limits. The same is explained by way of a numerical example as under:

| Month | ITC as per GSTR<br>2A | ITC as per GSTR<br>3B | Difference |
|-------|-----------------------|-----------------------|------------|
|       |                       |                       |            |





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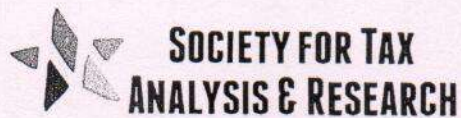
|                      |                |                |                 |
|----------------------|----------------|----------------|-----------------|
| January 2020         | 100,000        | 100,000        | -               |
| February 2020        | 80,000         | 85,000         | (5,000)         |
| March 2020           | 200,000        | 100,000        | 100,000         |
| <b>Quarter Total</b> | <b>380,000</b> | <b>285,000</b> | <b>95,000</b>   |
| April 2020           | 80,000         | 196,000        | (116,000)       |
| May 2020             | 30,000         | 24,000         | 6,000           |
| June 2020            | 100,000        | 80,000         | 20,000          |
| <b>Quarter Total</b> | <b>210,000</b> | <b>300,000</b> | <b>(90,000)</b> |

The system might find that in quarter April – June 2020, the assessee has availed a higher Input Tax Credit.

- 2.5. Also, in the vice versa situation, in case of any ingenuine claim, there is no mechanism whereby the system can check the wrongful availment by the Assessee merely on the basis of GSTR 2A and hence the recipient may take such credit on the basis of reflection in Form GSTR 2A although legally he is ineligible to take those credits.
- 2.6. Hence once again we reiterate that, mere reflection in Form GSTR 2A shall not be the basis of allowing credit and at the same time mere non reflection cannot be the basis of disallowance of the credit. While, notices on latter shall cause undue hardship for genuine taxpayers, the former can become tool for tax evaders.

**Suggestion:** It is humbly suggested that suitable amendment be made in the form GSTR-3B to provide a separate table / column for filling figures of Input Tax Credit of purchases whose amounts are reflected in GSTR 2A but are not claimed and are carried forward and such balances be added to GSTR 2A balance for all comparison purposes in subsequent periods. Also, the suitable amendment be made in the Rule to allow this limit of 20% to be considered at quarter as a whole so that matching can be done atleast at quarter rests which would decrease such kinds of movement differences.



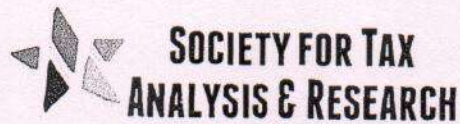


### 3. Input Tax Credit reclaimed as reversed under Section 16(2)

- 3.1. Section 16(2) of the Central Goods and Services Tax Act, 2017 require that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable under reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed.
- 3.2. While the reversal is made in Table 4(B) of the form GSTR 3B, the re-availment of such Input Tax Credit happens in Table 4(A)(5) of form GSTR 3B, which is again the table for availing regular monthly credits. Thus, in absence of any difference in the tables, the amounts as appearing in Table 4(A)(5) shall be higher than the requisite limit of 20% and again shall become a reason for issuance of a notice to assessee for availing higher credits. The same is explained in the example below:

| Month  | Eligible ITC as per Books | Total ITC as per 2A | Eligible ITC as per 2A | Available ITC | ITC Availed  | Remarks  |
|--------|---------------------------|---------------------|------------------------|---------------|--|--|
| Oct-19 | 100,000                   | 100,000             | 90,000                 | 90,000+20%    | 100,000<br>minus<br>reversed<br>30,000<br>(for non<br>payment) | Rs. 30,000 Input Tax Credit has been reversed for non payment within 180 days. |





|        |          |        |        |        |  |   |
|--------|----------|--------|--------|--------|--|---|
|        |          |        |        |        | 1,20,000<br>(90,000<br>for current<br>month and<br>30,000 of<br>reversed<br>tax) | Issue: Credit of<br>ITC of Rs.<br>30,000 reversed<br>earlier under<br>Section 16(2)<br>(for non payment<br>within 180 days)<br>now availed. |
| Mar-20 | 1,00,000 | 80,000 | 80,000 | 96,000 |  |   |

As seen above, the system cannot differentiate such availment in Table 4(A)(5) and thus, might lead to issue of notices for wrongful availment.

- 3.3. Thus, this differentials which are not evident and may look like excess availment and may become a reason for issuance of notice of enquiry to the asseesee.

**Suggestion:** It is humbly suggested that suitable amendment be made in the form GSTR-3B to provide a separate table / column for filling figures of reclaimed Input Tax Credit.

#### 4. Absence of mechanism of verification of ineligible credits

- 4.1. Another very important aspect which needs the consideration and attention of your good self is there seems to be no mechanism to cross verify the ineligible credits reflected in Form GSTR 2A. Act and Rules are very clear about the eligibility of input tax credit but as per the above sub-rule, if a recipient avails some ineligible credit on the basis of Form GSTR 2A, what is the mechanism to disallow such ineligible credits.
- 4.2. The issue is, there is no such system available which provide for segregation of such Input Tax Credits. The present Table 4(D) does not provide for ineligible Input Tax Credits as per GSTR 2A but as per books and thus, it cannot be used for proper comparison of the Input Tax Credit availability between the two forms. And the dishonest tax payers can misuse the same. And the result can be he take credit of those inputs also invoices of which are not uploaded by the supplier. Hence mere reflection in Form GSTR 2A shall not be the basis of allowing credit and at the same time mere non reflection cannot be the basis of disallowance of the credit.



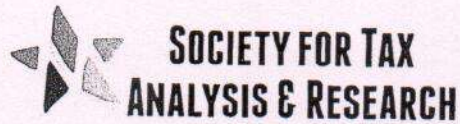
**Suggestion:** It is humbly suggested that suitable amendment be made in the form GSTR-3B to provide a separate column to fill amount of ineligible Input Tax Credits as appearing in GSTR 2A.

**5. Absence of matching tool shall put constrains on taxpayer resources**

- 5.1. We respectfully submit before your good self that this new insertion of sub rule (4) to Rule 36 of the Central Goods and Services Tax Rules 2017 will increase the compliance costs of the assesses in a way that every month he will be required to reconcile and map the input tax credits.
- 5.2. The monthly matching would require change in systems and resources of the taxpayers which should be robust enough to match the Input Tax Credit as per books and as per GSTR 2A on monthly basis and that too within (effective) 5 days. GSTR 1 is filed by 11<sup>th</sup> of next month and thus, data in GSTR 2A shall be available between 12<sup>th</sup> and 20<sup>th</sup> of subsequent month. Within this period, the taxpayer is supposed to reconcile, pay tax and file his GSTR 3B return. We keep one day as Sunday within these 9 days and one day for tax payment, three days shall be required for other aspects like reverse charge liabilities, import data, reversal under Section 16(2), reversal under Rule 42 and 43, net computation etc.
- 5.3. Further, tax professionals shall be required to vet the details prepared by assessee in most of the cases and thus, effectively, the entire process within the given timelines is prone to errors due to strict timelines.
- 5.4. Moreover the taxpayers are not given an effective tool for online matching. This may require them to rely on private software leading to unplanned increase in their costs.
- 5.5. Thus, it is humbly submitted that the monthly exercise shall be a constrained and expensive exercise for the taxpayers.

**Suggestion:** It is humbly suggested that suitable matching software should be provided to taxpayers which should match and suggest available Input Tax Credit to them. Also, to make





*it an effective and less costly exercise, suitable amendment to this extent be made in the Rule to provide for quarterly matching.*

Prayer

Madam, we pray before your good self to kindly consider the practical challenges of tax payers as well as professionals and consider the suggestions as above. This will help all the stake holders to comply with all the laws without any haste or anxiety. And that will save lot of probable litigations and enquiries.

Madam, we shall be obliged if your good self can consider our representation on behalf of all members of Society for Tax Analysis and Research("STAR"). Our Society is a 'not for profit' Society which aims to disseminate proper information of tax to masses and to act as a catalyst between government and taxpayers and other stakeholders in bringing an efficient, transparent and corruption free nation. We trust our suggestions would find space in your kind consideration.

Thanking you,

Yours faithfully,

For Society for Tax Analysis and Research

(CA Man Mohan Gupta)

President

+91 98103 42400

(CA Ashu Dalmia)

Member - Indirect Tax Committee

+91 98108 93243

(CA. Gaurav Gupta)

Member - Indirect Tax Committee

+91 98110 13940

(CA Jaspal Singh Sethi)

Member - Executive

+91 98102 30246