

INPUT TAX CREDIT ARREST UNDER GST

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RELEVANT PROVISIONS

- CGST Act, 2017 – Sec. 16 to 21
- CGST Rules, 2017 – Rule 36 to 45 & 86A

SINE QUA NON FOR CLAIMING ITC

CGST ACT, 2017 - SEC. 16(2) :

**POSSESSION OF TAX
PAYING DOCUMENT**

**GOODS / SERVICES
RECEIVED**

TAX PAID TO GOVT.

**RECIPIENT FILED THEIR
RETURNS**

TAX PAYING DOCUMENT

CGST RULES, 2017 – RULE 36:

TAX INVOICE U/S. 31

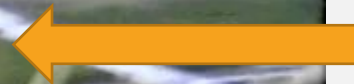
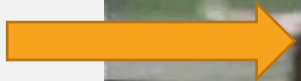
DEBIT NOTE U/S. 34

BILL OF ENTRY (FOR IMPORTS)

ISD INVOICE U/S. 54(I)

ITC ISSUES

Assesse



ITC

ITC ISSUES

**False ITC
through Bogus
Bills**

**Mismatch of
Invoices**

**Non-payment
of GST by
Seller or Chain**

**Circular
Trading S
16(2)**

**Excess Claim
of ITC [36 (4)]**

**Time Barred
Return Filing
S. 16(4)**



ITC ISSUES

**Non Payment
within 180 Days
S.16(2) P**

**Demand
Quantified And
Paid By
Assessee R
36(3)**

**Restrictions U/s
17(5)**

**Order Passed
under section
74**

**Exempted
Supplies**

**No ITC –
Restaurant /
Builders**



RESTRICTION TO ITC [SEC. 16(4)]

- No ITC can be claimed for invoice / DN pertaining to a F.Y. after the due date of filing of returns for September following the end of the F.Y. to which the invoice relates. **[Sec. 16(4)]**
- **Proviso: For F.Y. 2017-18 time limit for claiming ITC extended to due date of filing of March, 2019**
- Notices issued to various Registered person all over the Country.
- **ONLY RECOURSE:** Challenge constitutional validity of provision before the High Court by invoking the Writ Jurisdiction.

RESTRICTION TO CLAIM OF ITC [SEC. 43A R.W. RULE 36(4)]

- ITC restricted to 10% of eligible ITC in respect of Invoice / debit notes not uploaded by Supplier in their GSTR-I in accordance with Section 37(I) of CGST Act, 2017.
- For eg. Out of total ITC of Rs. 200 Eligible ITC is Rs. 100 and ITC relating to Invoice not uploaded by the Supplier is Rs. 100. Total available ITC for the relevant period would be Rs. 110 i.e. $100 + (100 * 10/100)$

BLOCKING OF ITC [RULE 86A]

- **Who:** Commissioner or an officer authorized not below the rank of Assistant Commissioner.
- **When:** He has **REASONS TO BELIEVE** that ITC is fraudulently availed or is ineligible. On the grounds:
 - Credit availed on the basis of invoice issued by a non-existent registered person or in case where there is no receipt of goods or services;
 - Tax not paid to the Government;
 - Registered person taking credit is non-existent;
 - Registered person availing credit is not in possession of tax invoice

Reasons to believe are to be recorded in Writing.

BLOCKING OF ITC [RULE 86A]

- **What:** Disallowance of debit of Electronic Credit Ledger for discharging liability under Section 49 or claim refund of unutilised ITC.
- Restriction can be lifted where the officer is satisfied that conditions for blocking of credit no longer exists.
- Restriction shall cease to have effect after expiry of **one year** from the date of imposition of such restriction.

RATIONALE BEHIND INTRODUCTION OF RULE 86A

- Prevent fraudulent and ineligible claims of Input Tax Credit
- To apply stringent risk parameters-based checks driven by rigorous data analytics and artificial intelligence.
- To impose additional conditions/restrictions on use of the amount of ITC in Electronic Credit Ledger.

BOGUS BILLS

REVERSAL OF CREDIT / TAX PAYMENT



DUMMY FIRM

**CIRCULAR
TRADING**

BILLS SOLD

ARREST (S. 69)

**SUPPLY OF GOODS
W/O ISSUE OF
INVOICE**

**ISSUANCE OF FAKE
INVOICES**

**COLLECT TAX
BUT FAILS TO
DEPOSIT FOR > 3
MONTHS**

**FOR WRONGFUL
AVAILMENT OF ITC /
REFUND**

**COLLECT TAX W/O INTENTION TO DEPOSIT OR CLAIMS
ITC OR OBTAINS REFUND OF MORE THAN 1 CR. OR A
REPEAT OFFENDER**

ARREST (S.69)

OFFENCES	NATURE OF PUNISHMENT
Amount of tax evaded exceeds 500 lacs for offences under Section 132(I) clause (a), (b), (c) and (d)	Cognizable and Non-bailable
Amount of tax evaded exceeds 200lacs but does not exceed 500lacs for offences under section 132(I) clause (a), (b), (c) and (d)	Non-Cognizable and bailable
Repeated offences (S. 132(2))	Non-Cognizable and bailable

IMPORTANT TERMS

- **“Bailable offence”** means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence; [S. 2(a) of CrPC]
- **“Cognizable offence”** means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant; [S. 2(c) of CrPC]
- **“Non-cognizable offence”** means an offence for which, and "non- cognizable case" means a case in which, a police officer has no authority to arrest without warrant; [S. 2(l) of CrPC]

ARREST

OFFENCES	PUNISHMENT
Amount Of Tax evaded exceeds 500lacs	5 years imprisonment and fine
Amount of Tax evaded 200lacs but not exceeds 500lacs	3 years imprisonment and fine
Amount of Tax evaded 100lacs but not exceeds 200lacs	1 years imprisonment and fine
For three specified offences under clause (f), (g), (j)	6 month imprisonment or fine or both
Repeated Offence	5 year imprisonment and fine
Minimum Imprisonment for clause (i), (ii) & (iii) of section 132 (1) and 132(2)	Not less than 6 months

ASSISTANCE (S. 72)

- Following department officer shall assist in implementation of the Act:
 - Police;
 - Railways;
 - Customs;
 - State/Central Government engaged in collection of GST;
 - Officers collecting land revenue;
 - Village Officers

RECOURSE

- Reply to Summons and Notices be drafted carefully and precisely.
- Utmost care to be taken while giving statements during investigation.
- In case of arrest, the first step should be to file a bail Application
- In case of rejection, bail application should be moved before the Hon'ble High Court u/s. 439 of CrPC.

RECOURSE - BAIL

IN CASE OF AN OFFENCE FOR WHICH ARREST HAS BEEN
PRESCRIBED UNDER GST LAW

REGULAR BAIL
APPLICATION

S. 439

Filed after the Arrest before
the Court of Sessions / High
Court

ANTICIPATORY
BAIL APPLICATION

S. 438

Filed before the Arrest on
such apprehension before the
Court of Sessions / High
Court

JUDICIAL PRONOUNCEMENT

Sapna Jain vs. Union of India:

Bombay High Court Interim Order dt. 11.04.2019:

Anticipatory Bail allowed. {No coercive action shall be taken against the petitioner till the next date}

Union of India vs. Sapna Jain (SLP Filed by the Government):

Supreme Court of India Order dt. 29.05.2019:

No interference with the Order of the High Court as to privilege of Pre-arrest bail.

However, remarks were made: ***As different High Courts of the country have taken divergent views in the matter, we are of the view that the position in law should be clarified by this Court.*** However, we make it clear that the High Courts while entertaining such request in future, will keep in mind that this Court by order dated 27.5.2019 passed in SLP(Crl.) No. 4430/2019 had dismissed the special leave petition filed against the judgment and order of the Telangana High Court in a similar matter, wherein the High Court of Telangana had taken a view contrary to what has been held by the High Court in the present case.

JUDICIAL PRONOUNCEMENT

Sapna Jain vs. Union of India:

Bombay High Court Interim Order dt.
08.07.2019:

Ad-interim relief to continue

Remarks: Since the Apex Court has proposed to decide the issue in question by referring it to the Bench of three Judges, awaiting the decision of Apex Court, we continue the ad-interim relief granted earlier till further orders

JUDICIAL PRONOUNCEMENT

IN FAVOUR OF THE ASSESSEE

Jayachandran Alloys (P.) Ltd. v. Superintendent of GST & Central Excise, Salem [2019]

105 taxmann.com 245 (Madras)

MADRAS HIGH COURT Order dated 04.04.2019:

Writ Petition allowed. The interim protection sought for to prevent the respondents from invoking the powers under section 69 read with section 132 thereof in respect of petitioner is liable to be granted, and was answered in favour of the petitioner.

Remarks: Whether act of committal of offence is to be fixed first before punishment is imposed - Held, yes - Whether thus, power to punish set out in section 132 would stand triggered only once it is established that an assessee has 'committed' an offence that has to necessarily be post-determination of demand due from an assessee, that itself has to necessarily follow process of an assessment - Held, yes

JUDICIAL PRONOUNCEMENT

C. Pradeep vs. Commissioner of GST & Central Excise Selam & Anr.:

Supreme Court of India Interim Order dt. 06.08.2019:
Interim protection (Anticipatory Bail) granted till the disposal of SLP.

Rakesh Kumar Khandelwal vs. Union of India:

Rajasthan High Court Order dt. 14.10.2019

Bail Application under Section 439 of the CrPC. Bail rejected by Session Judge, Jaipur.

High Court allowed the Bail Application on furnishing of personal bond of Rs. 1000000.00

JUDICIAL PRONOUNCEMENT

Vimal Yashwant Giri Goswami vs. State of Gujarat:

Gujarat High Court Order dt. 07.08.2019:

Anticipatory Bail granted.

Remarks: The powers of arrest under Section 69 of the Act, 2017 are to be exercised with lot of care and circumspection. Prosecution should normally be launched only after the adjudication is completed. To put it in other words, there must be in the first place a determination that a person is “liable to a penalty”. Till that point of time, the entire case proceeds on the basis that there must be an apprehended evasion of tax by the assessee. In the two decisions referred to above, emphasis has been laid on the safeguards as enshrined under the Constitution of India and in particular Article 22 which pertains to arrest and Article 21 which mandates that no person shall be deprived of his life and liberty for the authority of law. The two High Courts have extensively relied upon the decision of the Supreme Court in the case of D.K. Basu vs. State of West Bengal reported in 1997 (1) SCC 416. In the meantime, **no coercive steps of arrest shall be taken against the writ applicant.**

JUDICIAL PRONOUNCEMENTS

AGAINST THE ASSESSEE (BAIL DENIED)

Bharat Raj Punj v. Commissioner of Central Goods & Service Tax Department, Jaipur [2019] 104 taxmann.com 174 (Rajasthan)

ORDER DATED 12.03.2019 BY HON'BLE RAJASTHAN HIGH COURT:

Where petitioner was Managing Director of a company 'L' and Competent Authority conducted raid upon company 'L' and its two officials and served summons under section 70 upon petitioner, company 'L' and its two officials and after recording statements of officials arrested them on plea that company 'L' had fraudulently availed input tax credit of Rs. 40.53 crores, petitioner being Managing Director was responsible and department had right to proceed under sections 69 and 70 against him

JUDICIAL PRONOUNCEMENTS

Sanjay Dhingra v. Director General of Goods & Services tax Intelligence [2020] 116 taxmann.com 35 (Punjab & Haryana)

ORDER OF HIGH COURT OF PUNJAB AND HARYANA dated 23.01.2020:

Where assessee for commission of economic offence of high magnitude punishable under section 132 was arrested on 7-10-2019, he was not entitled for grant of bail

JUDICIAL PRONOUNCEMENTS

Himani Munjal v. Union of India [2019] III taxmann.com 509 (Rajasthan)

ORDER DATED 30.09.2019 BY HON'BLE RAJASTHAN HIGH COURT:

Where assessee (a lady) for offence punishable under section 132(1)(i) and (iv) was in custody since 3-8-2018, keeping in view seriousness of allegations levied against assessee, bail application required to be rejected

JUDICIAL PRONOUNCEMENTS

Mohammed Yunus v. State of Rajasthan [2020] 114 taxmann.com 159 (Rajasthan)

ORDER DATED 16.12.2019 BY HON'BLE RAJASTHAN HIGH COURT:

Where assessee for offences punishable under section 132(1)(b) and (c) was in custody and he applied for grant of bail, since as per revenue matter was still at stage of investigation and assessee had issued fake invoices to facilitate claiming of input tax credit to tune of Rs. 108.36 crores, bail application required to be rejected

ARREST OF PROFESSIONALS

Akhil Krishan Maggu v. Deputy Director, Directorate General of GST Intelligence [2019] III taxmann.com 367 (Punjab & Haryana)
Order dated 15.11.2019 by HIGH COURT OF PUNJAB & HARYANA:

HELD: Arrest of Chartered Accountant or Advocates who had filed returns or otherwise assisted in business but are not beneficiary or part of fraud merely on the basis of statement without any corroborative evidence linking the professional with alleged offence should be avoided.

Where there was no evidence against petitioner Advocate and his father to indicate that they were connected with alleged illegal refund sought by Exporters and petitioners were neither proprietor nor partners/shareholders of any Exporter Concern/Firm/Company, who availed fraudulently refund of IGST and also there was no evidence of transfer of funds in accounts of petitioners or withdrawal of cash by any one of them, they could not have been arrested

ARREST OF PROFESSIONALS

**Paridhi Jain v. State [2020] 114 taxmann.com 401
(Rajasthan)**

**Order dated 20.01.2020 by HIGH COURT OF
RAJASTHAN:**

Where assessee, a practising lady Chartered Accountant, for offence punishable under section 132(1)(i) was in custody, in view of undertaking submitted by assessee to fully cooperate with investigating agency and provide information/documents asked for by investigating agency, bail application deserved to be accepted

THANK
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