
**CONSTITUTIONALITY OF RESTRICTION
IMPOSED TOWARDS AVAILMENT OF
INPUT TAX CREDIT (ITC) BY RULE 36(4) CGST, 2017**

Adv. Vinay Kothari and Adv. Pradeep Singh Khichi I
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Overview

- ❖ What is Input Tax Credit?
 - ❖ Restrictions under CGST Act, 2017 for availment of ITC?
 - ❖ Relevant Forms?
 - ❖ What is Rule 36(4)?
 - ❖ What are the effects of Rule 36(4)?
 - ❖ Challenges to Rule 36(4) and its constitutional validity
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WHAT IS INPUT TAX CREDIT?

- ❖ Input tax Credit simply means reduction of taxes which the assessee has already paid on the inputs in the supply chain of goods or services, which the assessee has to pay on outputs. Although the ITC is not considered as a matter of right but once the credit has accrued to the assessee then it becomes a vested right and the same cannot be taken away.
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RESTRICTIONS ON AVAILMENT OF ITC

- ❖ s. 16 sets forth certain restrictions on the availment of ITC. The following are the certain below listed restrictions:
 - The assessee must be in possession of the tax invoice, debit note or other tax paying documents given by supplier registered under the Act.
 - The assessee must have received the goods.
 - Subject to section 41, tax charged has actually been paid to the Government.
 - The assessee must have furnished return under section 39.

NOTE: *“Section 41 gives right to the assessee to claim ITC on self-assessed basis and further it casts obligation upon the department to provide such credit provisionally in electronic credit ledger of the assessee so that the same can be utilized by him against self-assessed output tax liability.”*

RELEVANT FORMS FOR THE PURPOSE OF PRESENT CONTROVERSY

- ❖ **GSTR FORM 1** – A form filed by the supplier towards his outward sales and supplies. Due date for filing the same is 10th of each month.
 - ❖ **GSTR FORM 2A** – It is an automatically generated form for the inward supplier, depending on the details being filled in by the outward supplier in his GSTR-1.
 - ❖ **GSTR FORM 3B** – It is form filed by a registered person as his monthly return showing his tax liability while considering the details in both GSTR-1 and GSTR-2A.
 - ❖ **NOTE:** *The automatically generated form i.e. 2A shows details on the basis of form filed by the supplier towards outward sales and supplies i.e. GSTR 1, therefore, in case if any supplier has not filed GSTR1 then the same will not be reflected in GSTR FORM 2A*
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What is Rule 36(4)?

- ❖ CBIC vide Notification No. 49-2019-CENTRAL TAX dated 09.10.2019 inserted sub-Rule 4 in Rule 36 of the CGST Rules, 2017.
 - ❖ By way of this Rule the department restricted the availment of ITC over and above 20% of the ITC shown to be available as per GSTR-2A.
 - ❖ CBIC vide its Notification No. 75-2019-CENTRAL TAX dated 26.12.2019 further brought down the above mentioned limit to 10%.
 - ❖ To simplify the same it can be said if the supplier has not filed details in GSTR-1 then assessee would not be able to avail ITC for the same as it won't be reflected in GSTR-2A.
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Controversy and Effects of Rule 36(4)

- ❖ Suppose total ITC as self-assessed actually available to assessee is 20 Lakh.
 - ❖ Now, total ITC as reflected in the GSTR-2A is 5 Lakh, as not all suppliers from whom the assessee made purchase properly filled in their GSTR-1.
 - ❖ Total ITC which the assessee can claim pursuant to Rule 36(4) would be; (Rs.5,00,000/- + 10% of 5,00,000) = Rs. 5,50,000/-
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Challenges to the validity of Rule 36(4) and its constitutional validity.

- ❖ The Rule is arbitrary as the assessee has no control over the supplier hence he cannot force him to file the returns in manner required.
 - ❖ The Rule does not protect the interest of bonafide purchasers.
 - ❖ The provisions of Rule 36(4), restricting the credit is contrary to the provisions of Sections 37 and 42 of the CGST Act, 2017.
 - ❖ The restrictions as contained in provisions of Section 43A, which is yet to be notified, cannot be introduced through Rules.
 - ❖ The Rule amounts to excessive delegation as it goes against Section 41 which says the credit shall be made available to assessee provisionally as self-assessed by him.
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CONTD - Challenges to the validity of Rule 36(4) and its constitutional validity.

- ❖ The Rule puts restriction beyond the scope of section 16.
- ❖ Accrued right of the availment of credit cannot be taken away.
- ❖ The credit restriction on the basis of the acts of the supplier, on which the recipient has no control, is violative of Article 14 of the Constitution.

NOTE: *The constitutional validity of the Rule has been challenged before various High Courts.*

THANK YOU

LAW DIVISION -

Adv. Meena Kothari
Adv. Anjay Kothari
Adv. Vinay Kothari
Adv. Richa Kothari
Adv. Devendra Singh Chouhan
Adv. Mehul Kothari
Adv. Pradeep Khichi
Adv. Mukesh Gurjar
Adv. Anushree Kothari
Adv. Kritika Kothari

EMAIL-ID - kotharivinay@gmail.com

CONTACT +91-291-2433947/+91 9462050200

CA DIVISION -

C.A. A.M.Kothari
C.A. Amit Kothari
C.A. Parasmani Kothari
C.A. Shalini Kothari
C.A. Abhinav Kothari
C.A. Kailash Purohit
C.A. Sumit Rathi
C.A. Shubham Vaid
Neeraj Gandhi