DAY 18; TAX INSIGHT

RECENT NOTIFICATIONS AND CIRCULARS

<u>Notifications issued as on 9th June 2020</u>

1. **Notification 45/2020 dated 9th June 2020**

   The transition procedure prescribed by CBIC to ascertain tax period, to transfer ITC and taxes for persons whose place of business was in the erstwhile Union Territory of Daman and Diu or in the Union Territory of Dadra and Nagar Haveli till the **26-1-2020** and is in the merged union territory of Daman and Diu and Dadra and Nagar Haveli from **27-2-2020** onwards, has now been extended to **July 31, 2020.**

2. **Notification 46/2020 dated 9th June 2020**

   The Central Board of Indirect Taxes (CBIC) extended the period of *<u>15 days or till June 30, 2020</u>*, whichever is later to pass the order under *Section 54(7)/(5)* of the Central Goods and Service Tax (CGST) Act, 2017.

   As per *Section 54(3) of the CGST Act, 2017*, a registered person may claim a refund of the unutilized input tax credit at the end of any tax period. A tax period is a period for which return is required to be furnished. Thus, a taxpayer can claim a refund of unutilized ITC on a monthly basis.

3. **Notification 47/2020 dated 9th June 2020**

   The validity of an e-way bill generated on or before 24 March 2020 and whose validity has expired on or after 20 March 2020 shall be deemed to have been extended till the 30 June 2020.

REFUND CLARIFICATION
CIRCULAR NO. 139/09/2020-GST
DATED THE 10TH JUNE, 2020

The issue relating to refund of accumulated ITC in respect of invoices whose details are not reflected in the FORM GSTR-2A of the applicant.

1. **Before Introduction of Rule 36(4)**
   In terms of **para 36 of circular No. 125/44/2019-GST dated 18.11.2019**, the refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A was also admissible and copies of such invoices were required to be uploaded.
2. **After Introduction of Rule 36(4)**
   It was clarified vide **Circular No.135/05/2020 – GST dated the 31st March 2020** states that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant.
   (Accordingly, para 36 of the circular No. 125/44/2019-GST, dated 18.11.2019 stands modified to that extent.
3. Now, as per the common issues faced by taxpayers, where refund sanctioning authorities have rejected the refund of accumulated ITC in respect of ITC availed on
   - Imports,
   - ISD invoices,
   - RCM etc.

   Citing the above-mentioned Circular on the basis that the details of the said invoices/ documents are not reflected in **FORM GSTR-2A** of the applicant.
   Now vide this circular it has been clarified that:-
   The aforesaid circular does not in any way impact the refund of ITC availed in respect of as stated above.
4. The treatment of refunds of such ITC relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) will continue to be the same as it was before the issuance of Circular No. 135/05/2020- GST dated 31st March 2020.

Our View:-

1. **Paragraph 2.3 of Circular No.59/33/2018-GST dated September 4, 2018,** allows refund of unutilized Input Tax Credit (ITC) in respect of invoices not available in GSTR-2A. This is permitted to deaden difficulty on the part of the recipient to obtain a refund, where the filing of GSTR-1 by the supplier is either delayed or not done.
2. In Furtherance, the clarification of **circular No. 135,** to restrict the refund of ITC to the extent of invoices reflected in GSTR-2A is not valid inter alia,
   - **Section 43(4)** provides that the procedures for availing input tax credit in respect of outward supplies not furnished sub-section (3) would be prescribed. Said sub-section also seeks to provide that the maximum amount of ITC, that can be availed in relation to supplies not furnished

under sub-section (3) shall not exceed 20% of the input tax credit available, based on the outward supplies actually reported by the suppliers.

- Now, **Rule 36(4)**, ibid it suffers from the legal frailty, Rule 36(4) has been incorporated by invoking **Section 164 instead of Section 43A**. Section 164 which is an omnibus section, empowering the Government to make Rules for any matters under the GST Act.
- Even assuming **Rule 36(4)** is valid, it does not require the invoice level matching to avail ITC, and it requires the matching only at the consolidated level.

  *The same was clarified by the **Circular No. 123/42/2019– GST dated 11.11.2019***
- This clarification in Circular is incorrect since it bars refund of ITC on unmatched invoices even though Rule 36(4) of the CGST Rules permits ITC on the same to the extent of 10%. Once law permits ITC, the refund of such ITC cannot be restricted.

3. Hence, restricting the refund to the extent of invoices reflected in GSTR-2A runs contrary to the Rule position and previous circulars. In this connection, it is worth noting that

- Circular contrary to the statutory provisions has really no existence in law. Relied on **Commissioner v. Ratan Melting and Wire Industries 2008 (12)T.R. 416 (S.C.)**
- Circulars are meant to clarify the law and not to lay down a law. Further circular cannot impose limitations/conditions which are not provided in the statute and further it cannot take away the rights conferred by statute. **Reliance is placed on Tata Teleservices Ltd. v. Commissioner 2006 (194)L.T. 11 (S.C.).**
- Circulars cannot prevail or override the express provision of law. Reliance is placed on **All Kerala Association of Chit Funds v. Union of India 2013 (29)T.R. 557 (Ker.)**
- **Hon'ble Delhi HC in case of Bharti Airtel Ltd v. UOI 2020 (5) TMI 169 – DELHI HIGH COUR**T has struck down the Circular No. 26/26/2017-GST dated 29.12.2017 to the extent that it restricts the rectification of Form GSTR-3B in respect of the period in which the error has occurred.

4. Hence, in our view, the government should look upon the issues faced by the taxpayers due to issues evolved around form GSTR-2A.

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