F. No. CBEC – 20/06/14/2019 – GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
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New Delhi, the 11th November, 2019

To

The Pr. Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Central Tax (All),

The Principal Director Generals / Director Generals (All)

Madam / Sir,

Subject: Restriction in availment of input tax credit in terms of sub-rule (4) of rule 36 of CGST Rules, 2017 – reg.

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Sub-rule (4) to rule 36 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules) has been inserted vide notification No. 49/2019- Central Tax, dated 09.10.2019. The said sub-rule provides restriction in availment of input tax credit (ITC) in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act).

2. To ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act hereby clarifies various issues in succeeding paragraphs.

3. The conditions and eligibility for the ITC that may be availed by the recipient shall continue to be governed as per the provisions of Chapter V of the CGST Act and the rules made thereunder. This being a new provision, the restriction is not imposed through the common portal and it is the responsibility of the taxpayer that credit is availed in terms of the said rule and therefore, the availment of restricted credit in terms of sub-rule (4) of rule 36 of CGST Rules shall be done on self-assessment basis by the tax payers. Various issues relating to implementation of the said sub-rule have been examined and the clarification on each of these points is as under: -

Sl. No	Issue	Clarification
1.	What are the invoices	The restriction of availment of ITC is imposed only in respect

	/ debit notes on which the restriction under rule 36(4) of the CGST Rules shall apply?	of those invoices / debit notes, details of which are required to be uploaded by the suppliers under sub-section (1) of section 37 and which have not been uploaded. Therefore, taxpayers may avail full ITC in respect of IGST paid on import, documents issued under RCM, credit received from ISD etc. which are outside the ambit of sub-section (1) of section 37, provided that eligibility conditions for availment of ITC are met in respect of the same. The restriction of 36(4) will be applicable only on the invoices / debit notes on which credit is availed after 09.10.2019.
2.	Whether the said restriction is to be calculated supplier wise or on consolidated basis?	The restriction imposed is not supplier wise. The credit available under sub-rule (4) of rule 36 is linked to total eligible credit from all suppliers against all supplies whose details have been uploaded by the suppliers. Further, the calculation would be based on only those invoices which are otherwise eligible for ITC. Accordingly, those invoices on which ITC is not available under any of the provision (say under sub-section (5) of section 17) would not be considered for calculating 20 per cent. of the eligible credit available.
3.	**FORM GSTR-2A** being a dynamic document, what would be the amount of input tax credit that is admissible to the taxpayers for a particular tax period in respect of invoices / debit notes whose details have not been uploaded by the suppliers?	The amount of input tax credit in respect of the invoices / debit notes whose details have not been uploaded by the suppliers shall not exceed 20% of the eligible input tax credit available to the recipient in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub- section (1) of section 37 **as on the due date of filing of the returns in FORM GSTR-1 of the suppliers for the said tax period**. The taxpayer may have to ascertain the same from his auto populated **FORM GSTR 2A as available on the due date of filing of FORM GSTR-1 under sub-section (1) of section 37.**
4.	How much ITC a registered tax payer can avail in his **FORM GSTR-3B** in a month in case the details of some of the invoices have not been uploaded by the suppliers under sub-section (1) of section 37.	Sub-rule (4) of rule 36 prescribes that the ITC 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. The eligible ITC that can be availed is explained by way of illustrations, in a tabulated form, below. In the illustrations, say a taxpayer "R" receives 100 invoices (for inward supply of goods or services) involving ITC of Rs.

10 lakhs, from various suppliers during the month of Oct, 2019 and has to claim ITC in his **FORM GSTR-3B** of October, to be filed by 20th Nov, 2019.

	Details of suppliers' invoices for which recipient is eligible to take ITC	**20% of eligible credit where invoices are uploaded**	**Eligible ITC to be taken in GSTR-3B to be filed by 20th Nov.**
Case 1	Suppliers have furnished in **FORM GSTR-1** 80 invoices involving ITC of Rs. 6 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers.	Rs.1,20,000/-	Rs. 6,00,000 (i.e. amount of eligible ITC available, as per details uploaded by the suppliers) + Rs.1,20,000 (i.e. 20% of amount of eligible ITC available, as per details uploaded by the suppliers) = Rs. 7,20,000/-
Case 2	Suppliers have furnished in **FORM GSTR-1** 80 invoices involving ITC of Rs. 7 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers.	Rs. 1,40,000/-	Rs 7,00,000 + Rs. 1,40,000 = Rs. 8,40,000/-
Case 3	Suppliers have furnished in **FORM GSTR-1** 75 invoices	Rs. 1,70,000/-	Rs. 8,50,000/- + Rs.1,50,000/-* = Rs. 10,00,000 * The additional

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			having ITC of Rs. 8.5 lakhs as on the due date of furnishing of the details of outward supplies by the suppliers.		amount of ITC availed shall be limited to ensure that the total ITC availed does not exceed the total eligible ITC.
5.	When can balance ITC be claimed in case availment of ITC is restricted as per the provisions of rule 36(4)?	The balance ITC may be claimed by the taxpayer in any of the succeeding months provided details of requisite invoices are uploaded by the suppliers. He can claim proportionate ITC as and when details of some invoices are uploaded by the suppliers provided that credit on invoices, the details of which are not uploaded (under sub-section (1) of section 37) remains under 20 per cent of the eligible input tax credit, the details of which are uploaded by the suppliers. Full ITC of balance amount may be availed, in present illustration by "R", in case total ITC pertaining to invoices the details of which have been uploaded reaches Rs. 8.3 lakhs (Rs 10 lakhs /1.20). In other words, taxpayer may avail full ITC in respect of a tax period, as and when the invoices are uploaded by the suppliers to the extent Eligible ITC/ 1.2. The same is explained for Case No. 1 and 2 of the illustrations provided at Sl. No. 4 above as under:			
			Case 1	"R" may avail balance ITC of Rs. 2.8 lakhs in case suppliers upload details of some of the invoices for the tax period involving ITC of Rs. 2.3 lakhs out of invoices involving ITC of Rs. 4 lakhs details of which had not been uploaded by the suppliers. [Rs. 6 lakhs + Rs. 2.3 lakhs = Rs. 8.3 lakhs]	
			Case 2	"R" may avail balance ITC of Rs. 1.6 lakhs in case suppliers upload details of some of the invoices involving ITC of Rs. 1.3 lakhs out of outstanding invoices involving Rs. 3 lakhs. [Rs. 7 lakhs + Rs. 1.3 lakhs = Rs. 8.3 lakhs]	

4. It is requested that suitable trade notices may be issued to publicize the contents of this Circular. Hindi version will follow.

(Yogendra Garg)
Principal Commissioner (GST)