

# Sirifort CPE Study Circle Free

Invites You on 4 Structure CPE Events

26th and 28th Jun-21 on 6:00 PM to 8:00 PM



CA Ashu Dalmia



Rakesh Gupta



CA Pawan Arora

## Discussion on Arrest Provision under GST

CA Dharam Singh – Founder Member

CA Arun Kumar – Convenor

CA Naveen Jeenger – Dy Convenor

## Discussion on ITC Provision Under GST



<https://bit.ly/SIRI26>



<https://caaura.com/live>

Contact No. 7009101102, mail: [casirifort@gmail.com](mailto:casirifort@gmail.com)

## Brief Profile of the Speaker



**Adv. (CA) Pawan Arora**

**Partner**



**M: 88000 91636**

**pawan@athenawassociates.com**

Advocate Pawan Arora is a Commerce Graduate, CA and Law Graduate.

He is Partner at Athena Law Associates.

He has more than 10 Years of relentless and steady experience of Advisory and Litigation matters in Indirect Taxation and handled matters of clients from diverse industries and his field of specialization is Indirect Taxes.

He has also worked in multinational companies at managerial positions handling their Indirect Taxation and has been instrumental in re-designing their tax policies and streamlines their systems from an indirect tax perspective. During his tenure in the industry, he gained vast experience of in-house consultancy on Indirect Tax issues.

He has experience of Advisory and Litigation of GST, VAT, and Service Tax to more than 30 Reputed Real Estate and Infrastructure Construction Companies.

He is a frequent Speaker in GST Workshops/Seminars organized by tax departments, CAG, NICF, Ph.D. Chamber of Commerce and professional forums including Study Circles of CA Institute. He also provides GST Trainings to personnel of Corporates. He has also delivered a detailed GST course of 5+ hours on Input Tax Credit well appreciated by all the participant.

He has also delivered detailed GST Course of more than 10 hours on Real Estate Sector joined by more than 250 Participants at multiple platforms. The deliberation/ Course is joined by Real Estate Organizations, Professionals and GST Department Officials. Most of the participants have appreciated the knowledge sharing by Mr. Pawan on this complicated structure of Real Estate Sector.



*INPUT TAX CREDIT  
SECTION 16  
AND  
OTHER IMPORTANT ASPECTS*

*By: Adv. (CA) Pawan Arora*

*Partner, Athena Law Associates*

**28<sup>th</sup> June 2021**



# Objects & Reasons of GST Law

---

*2. The present tax system on goods and services is facing certain difficulties as under—*

*(i) there is cascading of taxes as taxes levied by the Central Government are not available as set off against the taxes being levied by the State Governments;*

...

*4. Due to the seamless transfer of input tax credit from one stage to another in the chain of value addition, there is an in-built mechanism in the design of goods and services tax that would incentivise tax compliance by taxpayers.*

*5. The Central Goods and Services Tax Bill, 2017, inter alia, provides for the following, namely:—*

*(b) to broad base the input tax credit by making it available in respect of taxes paid on any supply of goods or services or both used or intended to be used in the course or furtherance of business;*

# Section 16(1)

---

Section 16 CGST Act, 2017

## Eligibility and conditions for taking input tax credit –

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

## Points for Deliberation

- **Every Registered Person** – plethora of favorable cases in previous tax regime in absence of this word in Cenvat Credit Rules, 2004

# Contd..

---

- **used or intended to be used in the course or furtherance of his business** – Judgments on definition of Input Service under CCR prior to its amendment – Courts has interpreted the term for business very widely.
- Fate of ITC restricted through Tax Rate Notification like Real Estate, Restaurant Services etc.
  - Notification can be challenged through Writ
  - Avail the ITC and either keep unutilized or reverse under protest.

# Section 16(2)

---

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

- (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.

[Explanation.— For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

- (i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;
- (ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;]

# Contd..

---

- **possession of a tax invoice or such other tax paying documents as may be prescribed** – Since introduction of GST asking to ensure that RCM invoices are issued on goods/ services received from unregistered person. Although non issuance of self invoicing is a procedural lapse, but department has started to deny ITC on this ground.
- **he has received the goods or services or both** – Very Technical to look this compliance in case of services e.g. Air Ticket/ Hotel booked in advance.



# Section 16(2)(c)

---

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply;

- **the tax charged in respect of such supply has been actually paid to the Government**

# Athena Knowledge Sharing : AKS | 2021 | 1

---

- **Before denying credit to buyer, catch/enquire the Supplier at first place – Madras High Court**
  1. Section 16(2)(c) of CGST Act, provides that tax has been actually paid to the Government as condition for claiming Input Tax Credit by buyer.
  2. During VAT regime multiple High Courts have held that if seller has not paid the tax, credit cannot be denied to buyer specially where transaction is bonafide.

# Athena Knowledge Sharing : AKS | 2021 | 1

---

3. Recently the Hon'ble Madras High Court in the matter of *D.Y. Beathel Enterprises, 2021-TIOL- 890-HC-MAD-GST* has held as under:

- a. Proposition laid down in the context of the previous tax regime may not be straight-away applicable to the current tax regime.
- b. If the tax had not reached the kitty of the Government, then the liability may have to be eventually borne by one party, either the seller or the buyer.
- c. Order demanding reversal of ITC from purchaser must be quashed due to following reasons:
  - Non-examination of Supplier in the enquiry
  - Non-initiation of recovery action against Supplier in the first place

# Athena Knowledge Sharing : AKS | 2021 | 1

---

## Author's Comment

- Two important observations are given by the Hon'ble High Court:
  - The Court has not straight-away accepted the proposition laid down by the Courts during VAT regime. Further, the Court after reading Section 16 has held that if the tax is not paid to the Government, that has to be borne by either of the party i.e., seller or buyer.
  - Nonetheless the Court has given relief to the buyer that seller must be examined in such cases and recovery proceedings must be initiated against seller at first place.
  - The relief given in the judgment is one step in favour of genuine buyers.
  - Food for thought : How to enforce this judgment in case of Inter-State transaction where Supplier will be under different jurisdiction of SGST department ?

Watch 15 Minutes Discussion on YouTube

<https://www.youtube.com/watch?v=XJC0x1bqF3M>

# Athena Knowledge Sharing : AKS | 2021 | 3

---

- **INPUT TAX CREDIT : Mismatch in GSTR-3B Vs. GSTR-2A/2B : Rule 36(4)**

## **Whether ITC can be denied merely on the ground of mismatch between ITC claimed in GSTR-3B and reflected in GSTR-2A/2B ?**

1. From last one year, discrepancy notices in GST ASMT-10 have been issued by GST department of almost all States. The said Notice sought explanation from the Assessee for difference between ITC claimed in GSTR-3B and ITC available in GSTR2A. Thus, a question may arise that whether ITC can be denied merely on the ground of mismatch between ITC claimed in GSTR-3B and reflected in GSTR-2A/2B?
2. Mechanism provided under Section 42 r/w Rule 69 for matching of ITC is not into effect. Section 43A provides for procedure of availment of credit in a prescribed manner (manner to be provided by Rules). Rule 36(4) was inserted w.e.f. 09.10.2019. Thus, effectively no matching of ITC was required upto 08.10.2019.

## Athena Knowledge Sharing : AKS | 2021 | 3

---

3. CBIC in Press Release dt. 18.10.2018 clarified that:

*“Furnishing of outward details in FORM GSTR-1 by the corresponding supplier(s) and the facility to view the same in FORM GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis”.*

4. Rule 36(4) inserted w.e.f. 9th October 2019 and is applicable on the invoices on which credit is availed after the said date. Presently as per Rule 36(4) Input Tax Credit can be availed upto 105% of GST paid on inward supplies the details of which are uploaded by Supplier on GSTN Portal and reflected in GSTR 2A/2B of the recipient in a tax period.

## Athena Knowledge Sharing : AKS | 2021 | 3

---

5. Writ Petitions have been filed by taxpayers to challenge condition of Rule 36(4) on one of the grounds that the said condition is imposed through Rules only and is not provided under the CGST/SGST Act. It is to be noted that Section 43A provides for only PROCEDURE of availing credit in a prescribed manner. It does not empower the Government to provide any restrictions on availment of ITC through Rules.
6. Section 16(2) of the CGST Act provides the conditions to avail the ITC. A new condition is inserted under said Section vide Finance Act 2021, quoted as under:

*(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37.*

\* The above condition [Section 16(2)(aa)] is yet to come into effect.

# Athena Knowledge Sharing : AKS | 2021 | 3

## **Author's Comment**

7. At least upto 08.10.2019, ITC cannot be denied merely on the ground of mismatch between ITC in GSTR-3B and GSTR-2A.
8. Rule 36(4) is inserted without any authority of law. Newly inserted Section 16(2)(aa) is yet to be made effective. Thus, for the period post 08.10.2019, plea can be taken that credit cannot be denied merely on the ground of mismatch of credit.
9. However, it is advisable to ensure filing of GSTR-1/ IFF and GSTR-3B from the Supplier to avoid any unnecessary litigation.

**Watch 15 Minutes Discussion on YouTube**

[https://www.youtube.com/watch?v=giKR8vB9\\_SQ](https://www.youtube.com/watch?v=giKR8vB9_SQ)



## Section 16(2)(d)

---

(d) he has furnished the return under section 39: Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further 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 on 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.

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

# Contd..

---

## Points for Deliberation

- Fails to pay means when due but not paid. Language is different from second proviso to Rule 4(7) of CCR “...*payment...is not made within three months*”
- Not Applicable on supplies on which tax is payable on reverse charge basis
- Interest is payable from the date of availment – different from CCR
- Deemed Supply – Deemed Payment
- Deemed Addition in Value under Section 15(2)(b) – Deemed to be paid.
- No limit of Section 16(4) shall be applicable for Re-availment of ITC after payment to Supplier

# Section 16(3)

---

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

➤ **If ITC is eligible – Better to avail ITC than claiming Depreciation**

# Section 16(4)

---

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both **after the due date** of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

[Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]

# Section 16(4)

---

- Section 35: Every registered person shall keep and maintain a true and correct account of:
  - (b) inward and outward supply of goods or services or both;
  - (d) input tax credit availed;
- Input Tax Credit Register maintained in books of accounts is a Statutory Document under GST Law.
- Section 16(4) nowhere provides that ITC to be availed through GSTR-3B only.
  - It is for sure that unless credit is claimed through GSTR-3B, it would not reflect in Electronic Credit Ledger.
  - Section 41 & 49 talks about availment and utilization of ITC
  - However, as far as time limit to avail ITC is concerned, if availed in books of accounts within the time limit prescribed under Section 16(4), stand may be taken that it is availed on time.

# Section 16(4)

---

- Rule 61(1) of the CGST Rules provides that the return specified under sub-section (1) of section 39 in Form GSTR-3
- The Hon'ble Gujarat High Court in the case of AAP and Co. MANU/GJ/1379/2019, has held that GSTR- 3B is not a return which is required to be filed under Section 39 of the CGST Act. [Stayed by Hon'ble Supreme Court]
- Central Government *vide Notification No. 49/2019 - Central Tax dated 09.10.2019* has brought in a retrospective amendment in Rule 61 w.e.f. 01.07.2017 by substituting sub rule (5) to provide that:
  - where the time limit for furnishing details in Form GSTR-1 or GSTR-2 has been extended, the return u/s 39(1) shall be furnished in Form GSTR-3B.
  - the proviso to the newly inserted Rule 61(5) provides that where a return in form GSTR-3B is required to be furnished by a person, then such person shall not be required to furnish return in Form GSTR-3.

# Section 16(4)

---

- Proviso to Section 16(4) is relaxation in availment of ITC by extending the time limit to avail credit for the FY 2017-18 upto March' 2019
- However, with an additional condition of matching which is not required under main provision.
- Writ is pending on this issue before Hon'ble Punjab & Haryana High Court.

# ITC: CGST + SGST paid in other State

---

- **Whether tax paid in one state is allowed as credit in other State**
  - i. Input tax is defined u/s 2(62) to mean Central Tax, State Tax, Integrated tax and Union Territory Tax
  - ii. Input Tax credit is defined u/s 2(63) to mean credit of input tax
  - iii. State tax is defined u/s 2(104) to mean the tax levied under *any* State Goods and Services Tax
  - iv. Thus, credit of input tax would include credit of any State tax paid on inward supplies.
  - v. Section 16(1) uses the words *credit of input tax charged*. Thus, unless expressly restricted elsewhere in the GST Law, Section 16(1) of the CGST Act allows credit of all taxes levied under CGST Act, IGST Act, UTGST Act and all State SGST Acts irrespective of the “place of supply”.



# Contd...

---

- vi. Section 41(1) of CGST Act entitles every registered person, subject to conditions and restrictions as may be prescribed, to take credit of eligible input tax on self-assessment basis and the same shall be credited to his ECL on a provisional basis.
- vii. Rule 86(1) provides that every claim of ITC **under the Act** shall be credited to Electronic Credit ledger
- viii. ITC on inward supplies having place of supply outside the state where a person is registered is not restricted under any provision of the CGST Act. Since the credit of such input taxes are not restricted under the CGST Act or rules made thereunder, ITC of the same shall be available under the CGST Act.

# ITC on construction of building for leasing business

---

- The division bench of the Hon'ble Orissa High Court in the case of *Safari Retreats Private Limited, 2019 (25) G.S.T.L. 341 (Ori.)* has interpreted section 17(5)(d) the CGST Act as regards the admissibility of ITC on goods or services received for construction of building, for the purpose of leasing.
- The said decision of the Orissa High Court is pending in appeal filed by the GST department before the Supreme Court *2020 (32) G.S.T.L. J120 (S.C.) [SLP No. 26696/2019]*. However, the decision of the Orissa High Court has not been stayed and hence has full effect as on date.

## **ITC on Plant & Machinery**

- In any Case, credit of Plant and Machinery is not restricted under Section 17(5)(c) & (d).
- ITC can be availed when works contract services/ goods or services are used for construction of immovable property being plant and machinery subject to satisfaction of criteria specified in the definition of Plant and Machinery.
- Better to Segregate the Contract or have different contract for construction service and for supply of plant and machinery.

# Investment in mutual Funds – Reversal of Common ITC

---

- Hardly one or two employee(s) are involved in trading of securities. But department ask for reversal of ITC of common inputs/input service as per Rules i.e. on the basis of value of exempt supply
- Better to segregate this division in such a manner that ITC can be separately identified.
- Where this activity is outsourced – check common credit cautiously
- Trading in Mutual Funds is different from redemption of Investment – Hon’ble CESTAT (Bang.)
  - Ace Creative Learning Pvt. Ltd.
  - Space Matrix Design Consultants
    - Trading in mutual fund is different from redemption of Mutual Funds. Makes Investment in Mutual Funds to earn profit. No reversal required under Rule 6(3) of CCR.

---

## **ITC Restriction through Tax Rate Notification**

**Is it Allowed by Section 16 or 17 of CGST Act ?**

# ITC restricted on Construction of Residential Apartment w.e.f. 01.04.2019

---

- **W.e.f. 01.04.2019**
  - ITC is restricted to be availed on construction of residential apartments.
  - Accumulated ITC cannot be used for payment of outward tax liability @5% / 1% on residential apartment. Thus, Unutilized ITC available for previous periods is like cash stuck.
- **Notification 11/2017 – CT Rate (conditions)**
  - *Provided that the central tax at the rate specified in column (4) shall be paid in cash, that is, by debiting the electronic cash ledger only;*
  - *Provided also that credit of input tax charged on goods and services used in supplying the service has not been taken except to the extent as prescribed in Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP;*

# Section 16 of CGST/SGST Act

---

- Section 16 of CGST Act allows the ITC on all goods/ services received in course or furtherance of business.
- Section 16 does not empower the Government to restrict the credit through tax rate notification.

## **Section 16:**

*Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person*

# Section 17(5)(c) & (d)

---

- **Section 17(5)(c) & (d) do not restrict the Credit to Developers.**

## **Section 17(5)(c) & (d)**

*S.17(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:-*

*(c) **works contract services** when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;*

*(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) **on his own account** including when such goods or services or both are used in the course or furtherance of business.*

*Explanation.- For the purposes of this Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes,-*

- (i) land, building or any other civil structures;*
- (ii) telecommunication towers; and*
- (iii) pipelines laid outside the factory premises.*

# Way forward

---

- **Way forward:**
  - Challenge the notification no. 11/2017-CT(R) which restricts the Credit
  - In the meanwhile take ITC and reverse
  - If notification quashed, the balance ITC and the ITC availed later would become available.



---

## **Interest Liability on wrongly availed but Unutilized ITC**

# M/s Commercial Steel Engineering Corporation Civil Writ Jurisdiction Case No. 2125 of 2019- Patna High Court

---

Hon'ble Patna High Court has held that words "availed" or "utilized" used in Section 73 each denote a positive act, and when such positive act is substantiated, only then can the dealer concerned be liable for recovery of such amount of tax availed from the input tax credit or utilized by him. However, such credit must have been used by him i.e. the credit balance must have reduced.

The Hon'ble Court further stated that recovery u/s 73(1) can be initiated only where the input tax credit has been availed or utilized to reduce tax liability. Mere reflection of credit in electronic credit ledger would not amount to an act of availment for initiating proceedings u/s 73(1). The relevant extracts of the judgement are reproduced as under:

*32. In my opinion, the Assistant Commissioner of State Taxes has somewhere got confused to treat the transitional credit claimed by the dealer as an availment of the said credit when in fact **an availment of a credit is a positive act and unless carried out for reducing any tax liability by its reflection in the return filed for any financial year, it cannot be a case of either availment or utilization.** It is rightly argued by Mr. Kejriwal that **even if the respondent No. 3 was of the opinion that the petitioner was not entitled to such transitional credit at best, the claim could be rejected but such rejection of the claim for transitional credit does not bestow any statutory jurisdiction upon the assessing authority to correspondingly create a tax liability especially when neither any such outstanding liability exists nor such credit has been put to use.***

## Contd...

---

33. *Had it been a case where the credit shown in electronic ledger, was availed or utilized for meeting any tax liability for any year, there would be no error found in the action complained but it would be stretching the term 'availment' beyond prudence to treat the mere reflection of the transitional credit in the electronic credit ledger as an act of availment, for drawing a proceeding under Section 73(1) of 'the BGST Act'. The provisions underlying Section 73 is self eloquent and it is only if such availment is for reducing a tax liability that it vests jurisdiction in the assessing authority to recover such tax together with levy of interest and penalty under Section 50 but until such time that the statutory authority is able to demonstrate that any tax was recoverable from the petitioner, **a reflection in the electronic credit ledger cannot be treated as an 'availment'**.*

[Emphasis Supplied]

## **CASES RELATED TO ERROR IN FILING GST TRAN-1**

## Vision Distribution Pvt. Ltd. W.P.(C) 8317/2019- Delhi HC

---

The Hon'ble Delhi High Court while allowing refund of tax paid in cash on exports due to not availability of option to claim carry forward ITC on 01.07.2017 held that

The business activity in the country could not be expected to come to a standstill, only to await the Respondents making the GST system workable. The failure of the Respondents in first putting a workable system in place, before implementing the GST regime, reflects poorly on the concern that the Respondents have shown to the difficulties that the trade faced throughout the length and breadth of the country. Unfortunately, even after passage of over two years, the Respondents have not remedied their omissions and failures by taking corrective steps. They continue to take shelter of the limitations in, and the inability of their software systems to grant refund, despite the same being justified. The rights of the parties cannot be subjugated to the poor and inefficient software systems adopted by the Respondents. The software systems adopted by the Respondents have to be in tune with the law, and not vice versa. The system limitations cannot be a justification to deny the relief, to which the Petitioner is legally entitled.

[Emphasis Supplied]

## SRC AVIATION (P) LTD W.P.(C) 12167/2019- Delhi HC

---

The Hon'ble Delhi High Court directed the Department to either open online portal to enable the petitioner to file Form TRAN-1 electronically or accept the same manually on or before 31.12.2019 while noting that it is not fair to expect that each person who may not have been able to upload the Form GST TRAN-1 should have preserved some evidence of it such as, by taking a screen shot. Many of the registered dealers/traders come from rural/semiliterate background. They may not have had the presence of mind to create any record of their having tried, and failed, to upload the Form GST TRAN-1. The Hon'ble Court also held credit to be "property" protected by Article 300A. The relevant extracts are reproduced as under:

*9. The factual position in the present case is not any different and petitioner is also entitled to similar relief. At this juncture, it may be noted that as per Notification No. 49/2019 dated 09.10.2019 issued by CBIC, the date prescribed for filing of Form GST TRAN-1 under Rule 117 (1A) of the CGST Rules has been extended to 31.12.2019. This itself demonstrates that the Respondents recognise the fact that the registered persons were not able to upload the Form GST TRAN-1 due to the glitches in the system. It is not fair to expect that each person who may not have been able to upload the Form GST TRAN-1 should have preserved some evidence of it – such as, by taking a screen shot. Many of the registered dealers/traders come from rural/semiliterate background. They may not have had the presence of mind to create any record of their having tried, and failed, to upload the Form GST TRAN-1. They cannot be made to suffer in this background, particularly, when the systems of the Respondents were not efficient.*

## Contd...

---

*From the documents placed on record, it emanates that the Respondents have no cogent ground to deny the benefit of the Notification No. 49/2019 dated 09.10.2019 issued specifically to grant relief to taxpayers who faced difficulty in filing Form GST TRAN-1 due to technical glitches.*

*10. We may further add that the credit standing in favour of an assessee is “property” and the assessee could not be deprived of the said property save by authority of law in terms of Article 300 (A) of the Constitution of India. There is no law brought to our notice which extinguishes the said right to property of the assessee in the credit standing in their favour.*

*[Emphasis Supplied]*

## Hans Raj Sons CWP 36393/2019- P&H HC

---

The Hon'ble P&H High Court while allowing the petitioner to avail ITC by filing Form TRAN-1 by 31.12.2019 in alternative also allowed the petitioner to avail benefit of unutilized credit in their GSTR-3B for January 2020 if the petitioner is hampered in any way for filing TRAN-1 due to non opening of the Portal by the Department. The relevant extract is reproduced as under:

*In view of above, present petition is allowed in terms of the said CWP No.30949 of 2018 decided on 04.11.2019 with permission/modification to file the said Statutory Form TRAN-I by 31.12.2019.*

*It is clarified that in case the petitioner is hampered in any manner from availing the benefit of aforesaid judgment, due to non opening of the Portal by the Respondents, then the petitioner shall be permitted, in the alternative to claim the benefit of unutilized credit in their GST-3B Forms to be filed for the month of January,2020 either electronically or manually.*

*[Emphasis Supplied]*



# THE TYRE PLAZA W.P.(C) 8970/2019- Delhi HC

---

The Hon'ble High Court observed that the entire GST system is still in a trial and error phase and it will be too much of a burden to place on the Assesseees to expect them to comply with the requirement of the law where they are unable to even connect with the system on account of network failures or other failures. Thus, the Hon'ble Court directed the Department to open the Portal to enable the Petitioner to file Tran-1, failing which they shall accept the Form Tran-1 manually filed by the Petitioner. The relevant extracts are reproduced as under:

*7. As observed by this Court in several orders i.e. in **Bhargava Motors v. Union of India 2019 SCC OnLine Del 8474, Kusum Enterprises Pvt. Ltd. v. Union of India [WP(C) 7423/2019] and Sanko Gosei Technology India Pvt. Ltd. v. Union of India & Ors. [WP(C) 7335/2019]**, the entire GST system is still in a trial and error phase and it will be too much of a burden to place on the Assesseees to expect them to comply with the requirement of the law where they are unable to even connect with the system on account of network failures or other failures.*

## Contd...

---

8. *The Court would urge the ITGRC to review the policy it has adopted in such cases, and acknowledge instances like the present one, where the Petitioners are not able to link with the Portal and therefore, the fact of a technical glitch is not able to be accounted for in the system.*

9. *The Court therefore, directs that the Respondents to either open the Portal to enable the Petitioner to again file the TRAN-1 Form electronically, failing which they will accept the TRAN-1 Form already filed manually by the Petitioner.*

*[Emphasis Supplied]*

## Recent Judgments

---

- *Brand Equity – Delhi High Court [Stayed by Hon'ble Delhi High Court]*
- *SKH Metal Sheet – Delhi High Court*
- *Super India Limited - Delhi High Court*



# Athena Knowledge Sharing : AKS | 2021

*An effort to share Knowledge*

To receive AKS on Emails: Share your details at: <https://forms.gle/mtQZfMAn197ittLw9>

## Discussions on You tube

### GST & Indirect Taxes by Adv. Pawan Arora

[https://www.youtube.com/channel/UCR\\_JDkwNyFb2-UGe6W-faUg](https://www.youtube.com/channel/UCR_JDkwNyFb2-UGe6W-faUg)



GST & Indirect Taxes by Adv. Pawan Arora  
62 subscribers

CUSTOMIZE CHANNEL

MANAGE VIDEOS

HOME

VIDEOS

PLAYLISTS

CHANNELS

DISCUSSION

ABOUT



Uploads ▶ PLAY ALL



Athena Knowledge Sharing : AKS | 2021  
**Online Games**  
Value & Rate of Tax under GST Law  
19<sup>th</sup> May 2021

16:36

Online Game - Valuation and Tax Rate under GST Law of...  
81 views · 5 days ago



Input Tax Credit  
GSTR 3B vs GSTR 2A/2B  
**Whether ITC can be denied merely on the ground of mismatch between ITC claimed in GSTR-3B and reflected in GSTR-2A/2B?**  
19<sup>th</sup> May 2021

9:06

ITC Mismatch GSTR 3B vs 2A - ITC cannot be denied...  
150 views · 1 week ago



Section 162(c) of CGST Act - Input Tax Credit  
Non payment of Tax by Supplier to Government  
**Before denying credit to Buyer - Catch/ Enquire the Supplier at First Place - How the Madras High Court**  
19<sup>th</sup> May 2021

11:42

Non Payment of GST by Supplier, Catch/ enquire th...  
124 views · 3 weeks ago



News On AIR  
**सामयिकी**  
ऑनररी परिषद की सिफारिशों पर चर्चा  
39<sup>th</sup> GST Council Meeting  
19<sup>th</sup> May 2021

9:21

39th GST Council Meeting - All India Radio (Hindi)  
11 views · 1 month ago



ऑनररी परिषद की सिफारिशों पर चर्चा  
32<sup>nd</sup> GST Council Meeting  
19<sup>th</sup> May 2021

9:36

32nd GST Council Meeting - All India Radio (Hindi)  
7 views · 1 month ago

# THANK YOU

**Request to provide your fair feedback on**

<https://forms.gle/mtQZfMAn197ittLw9>

Adv. (CA) Pawan Arora

Partner, Athena Law Associates

+91-88000-91636, [pawan@athenalawassociates.com](mailto:pawan@athenalawassociates.com)

**Linkedin Profile of Adv. (CA) Pawan Arora:**

<https://in.linkedin.com/in/adv-ca-pawan-arora-96748636>

