



NITYA'S Outlook

Issue 4 | Retrospective applicability of exclusion of interest from 'exempt supply'

December 11, 2018

Dear Reader,

Please find below 'NITYA's Outlook - Issue 4' regarding the retrospective applicability of exclusion of interest from 'exempt supply' for the purpose of reversal of Input Tax Credit ('ITC').

1. **Background**

- Interest earned on deposits, loans etc. was exempt under the erstwhile service tax regime and this exemption has continued under GST regime as well.
- While interest income qualified as an 'exempted service' for the taxpayer, the Cenvat Credit Rules, 2004 contained a specific provision that no credit reversal was required to be done for the same. Notably, no similar exclusion was provided under the GST law at the time of its introduction.
- Accordingly, vide **Notification No.3/2018-CT dated January 23, 2018**, an Explanation was inserted under Rule 42 and 43 of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') to exclude the value of interest from the ambit of exempt supply for the purpose of reversals of common ITC.
- It is important to examine as to whether such Explanation will be effective from July 1, 2017 or from January 23, 2018. If latter, the taxpayers shall have to reverse attributable common ITC in relation to interest income till January 22, 2018.

2. **NITYA comments**

On a detailed legal analysis, it emerges that the abovementioned amendment is retrospectively applicable from July 1, 2017. This is for the reasons detailed below:

- The purpose of an Explanation is to explain the provision. An Explanation harmonizes and clears up ambiguity in the main provision. In the instant case, the legislature clarified its intent by insertion of an Explanation in Rule 42 and 43 of the CGST Rules. Hence, this Explanation should have retrospective effect.
- The instant amendment is aimed at providing a remedy which the legislature initially failed to provide. It is settled legal position that the declaratory statutes have retrospective applicability. A declaratory statute is one which removes doubts regarding the law in question. Hence, considering the instant Explanation as a declaratory law which remedies the inadvertent miss in the legislation, it should be considered to be retrospectively applicable.
- After introduction of GST, several trade bodies made representations with the GST Council to remove this anomaly. Considering the representations, the GST Fitment committee suggested that position of non-reversal of credit as was available under service tax law should be restored under GST law as well.

3. **Methodology**

- Rule 42 and 43 of the CGST Rules provide the modus operandi for reversal of ITC. As per these provisions, ITC has to be reversed on monthly basis and finally determined on yearly basis.

- If credit reversed on monthly basis is different from credit reversible on yearly basis; such excess / short amount reversed can be availed or needs to be reversed accordingly.

4. **Next steps**

- Vide '*NITYA 's Outlook / Issue 2*', we had discussed that ITC for financial year 2017-18 can be taken till due date of filing of annual return.

With due date of annual return getting extended to March 31, 2019, if a taxpayer has reversed credit attributable to interest income, it can restore the same till March 31, 2019.

Hope you find this an interesting read! Please feel free to share your comments / feedback on the same.

Regards,

Team NITYA



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