

Special Audit in the Area of Excess Credits

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In order to check "frivolous and fraudulent" tax credit claims by businesses, the CBEC has decided to verify demands of top 50,000 tax payers claiming maximum GST transitional credit, starting with those where the quantum exceeds Rs 25 lakh.

The verification of "unreasonable" transitional credit claims would be conducted in four phases. In the first phase, the tax officers will verify transitional credit claims where the growth is more than 25 per cent or the credit availed is in excess of Rs 25 lakh. One-third of the remaining claims of 50,000 taxpayers will be verified in three phases -- July-September, October-December and January-March (2019). Credit verification will remain one of the focus areas in 2018-19. One of the important tools for credit verification available with the government is special audit u/s 66. As per section 66, at any stage of scrutiny, inquiry, investigation or any other proceedings direction to registered person to get accounts examined and audited can be given. Direction has to be given by Proper Officer before whom scrutiny, inquiry, investigation or any other proceeding is done (and none else). Direction for special audit can be made only by officer not below the rank of Asstt Comm. Direction for special audit is given having regard to nature and complexity of the case and the interest of the revenue

Direction for special audit can be given only if officer is of the opinion that

- a) value has not been properly declared or
- b) the credit availed is not within normal limits**

Hence if proper officer wants to direct special audit to examine proper claim of credit he has to form opinion that **the credit availed is not within normal limits**. The following areas of excessive input tax credit in general, industry specific and transitional credit can be identified triggering the special audit by Chartered Accountant or Cost and Works Accountant.

Areas where excess credit may be taken:

1	ITC being claimed for the period prior to application/grant of registration in case of compulsory/voluntary registration (in respect of purchases not being represented by inputs available on the effective date of registration) [[S. 16(1), 18(1) & S. 2(62)]
2	ITC of some other establishment in different state being used against output tax of impugned unit.[S. 16(1) and S. 2(62)]
3	ITC being taken against supplies not for use in course or furtherance of business e.g. personal expenditure.[S. 16(1), 17(1) & 17(5)(g)].
4	ITC of following input supplies taken which are not qualified for ITC u/s 17(5) in normal course i.e. a) Food and Beverages b) Outdoor Catering c) Beauty Treatment d) Health Services e) Cosmetic and Plastic surgery f) Membership of a club, health and fitness centre g) Rent a Cab h) Life Insurance i) Health Insurance j) Works Contract Service supplied for construction of an immovable property k) Goods or services covered by composition scheme u/s section 10. l) Travel benefits extended to employees on vacation such as leave or home travel concession m) Goods or Services received by non-resident taxable person n) Goods or Services used for personal consumption

5	Taking credit of tax payable on RCM without making payment of the same. [S. 16(2)(c) & 49(4)]
6	Taking Credit without being in possession of a) tax invoice issued by supplier or b) self Invoice made u/s 31(3)(f) in case of RCM c) debit note or d) bill of entry e) ISD Invoice f) ISD Credit Note [S. 16(2)(a) read with Rule 36(1)]
7	Taking ITC on Invoice without mention of particulars specified in Rule 46 [Rule 36(2)]
8	Taking ITC against amount paid u/s 74, 129 or 130 [S. 17(5)(i)]. Taking credit against demand paid u/s 73 is not prohibited.
9	Taking ITC without evidence of receipt of goods or service [S. 16(2)(b)]. One may be claiming ITC on advance payment against services on account of invoice issued by prospective supplier of service.
10	Taking ITC against goods shipped to impugned person while billed to some other person [Expl. to S. 16(2)(b)]
11	Taking ITC on goods received on lots without receipt of last lot [First proviso to S. 16(2)]
12	ITC not reversed against goods or services for payment not made within 180 days from date of issue of invoice.[2 nd Proviso to S. 16(2)]
13	ITC not reversed for Depreciation claimed on ITC part of capital goods [S. 16(3)]
14	Taking ITC for omissions/commissions of earlier financial years after 20 th October following relevant financial year [S. 16(4)]
15	ITC claimed against tax paid on purchase of securities, petroleum products and supplies notified in 2/2017-CTR and 12/2017-CTR [S. 17(2)]
16	ITC against inputs/input services being used exclusively for non business purpose/exempt supply/Prohibitive ITC u/s 17(5) not disallowed at Invoice level in GSTR-2 and allowed to be taken in common credit [Rule 42(1)(g) read with Rule 42(1)(b)/(c)/(d)]
17	Not including stamp duty value of land and building and 1% of sale value of securities in exempt supply [Explanation to Rule 45]
18	Non reversal of 5% of Common Credit on account of non business use of inputs/input services [Rule 42(1)(i)]
19	Non Inclusion of non taxable supplies in total turnover while calculating ITC attributable to exempt supplies [Rule 42(1)(i)]

20	Non Adjustment of final eligible ITC u/R 42(2), where aggregate of D1 and D2 for tax periods is lesser than final calculation of D1 and D2, D1= Ineligible ITC attributable to exempt supplies and D2= Ineligible ITC attributable to supplies for non business purpose
21	Not segregating capital goods being exclusively used in making exempt supplies and allowing ITC to merged for ITC of common capital goods u/R 43(1)(c)
22	Not reducing 5% per quarter or part of quarter out of ITC taken for capital goods earlier being used exclusively for exempt supplies and subsequently used for common purpose [Proviso to Rule 43(1)©]
23	Not reducing 5% per quarter or part of quarter out of ITC taken for capital goods in earlier tax periods being used exclusively for taxable supplies and subsequently used for common purpose [Proviso to Rule 43(1)(d)]
24	Taking 100% ITC on common capital goods instead of taking credit on proportionate basis i.e. aggregate of 5% per quarter or part of Total credit on Common Capital Goods
25	Not disallowing 50% of ITC on capital goods in case of banking company, if option given u/s 17(4) has exercised.
26	ITC taken against motor vehicles and other conveyance [not used for transportation of goods and also not used in providing taxable supplies of further supply of such vehicle, and further also not used for transportation of passenger, and imparting training .]
27	ITC taken against works contract service or goods or services used for construction of immovable property other than plant and machinery except when used for further supply of works contract service or such goods or service [S. 17(5)©/(d)]
28	ITC taken on goods or services received by non-resident taxable person [S. 17(5)(e)]
29	ITC taken against goods or services or both used for personal consumption [S. 17(5)(g)]
30	ITC taken against goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples [S. 17(5)(h)]
31	Taking credit against capital goods against for pre-registration date [S. 18(1)(a)]
32	Taking credit against input held in stock on date of application for registration inspite applying for registration after 30 days from the date of liability to get registered [S. 18(1)(a)]

	<p>Taking ITC for input held in stock on registration date without making declaration in Form GST ITC -01 by providing information of stock [Rule 40(1)(b)]</p> <p>CA/ CWA Certificate also required where aggregate of CGST/SGST/IGST exceeds Rs. 2 lakhs [Rule 40(1)(d)]</p>
33	Not making Proportionate Reduction on capital goods in case of Switch from Composition Scheme by five percentage points per quarter of a year or part thereof from the date of the invoice [proviso to S. 18(1)(c) read with Rule 40(1)(a)]
34	Not making Proportionate Reduction on capital goods in case of Switch from exempted supply to taxable supply by five percentage points per quarter of a year or part thereof from the date of the invoice [proviso to S. 18(1)(d) read with Rule 40(1)(b)]
35	Taking credit against inputs or capital goods older than one year from date of registration/switch to normal scheme/transition to taxable category. [S. 18(2)]
36	Non reversal of ITC on switch to composition scheme/Exemption /Cancellation of registration against inputs on transition date and on capital goods , reduced by 5% for every quarter or part.[S. 18(4)/S. 29(5) and Rule 44]
37	Not making ITC reversal against prevailing market price of goods on switch to composition scheme/Exemption /Cancellation of registration where the tax invoices related to the inputs held in stock are not available, supported by CA/CWA certificate
38	<i>In case of supply of capital goods including cancellation of registration/discontinuance of business non reversal of ITC reduced by 5% per quarter (or part), where the amount is higher than tax calculated on transaction value.[S. 18(6) read with Rule 44(6) and Rule 40(2)]</i>
39	<i>Taking credit when tax is paid u/R 32(5) Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and the value of supply is the difference between the selling price and the purchase price.</i>
40	<i>Taking ITC where 5% tax is payable for supply of Services by way of house-keeping, such as plumbing, carpentering, etc. where the person supplying such service through electronic commerce operator is not liable for</i>

	<i>registration under sub-section (1) of section 22[Sl No. 3(ix)of 11/2017-CTR]</i>
41	<i>Taking ITC where 5% tax is payable for supply of Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied, other than those located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having declared tariff of any unit of accommodation of seven thousand five hundred rupees and above per unit per day or equivalent. [Para 7(i) of 11/2017-CTR]</i>
42	<p>Utilization of ITC on goods where 5% tax is payable on</p> <p>a) <i>Transport of passengers, with or without accompanied belongings, by rail in first class or air conditioned coach.[Sl 8(i) of 11/2017-CTR]</i></p> <p>b) <i>Transport of goods by rail [Sl 9(i) of 11/2017-CTR]</i></p> <p><i>Hence taking of credit is not prohibited, only utilization is prohibited.</i></p>
43	<i>Taking ITC on goods and services</i> where 5% tax is payable on <i>Transport of passengers, with or without accompanied belongings by air conditioned contract carriage other than motorcab or AC stage carriage or Radio Taxi [Sl. 8(ii) of 11/2017-CTR]</i>
44	<p>Taking ITC on goods where 5% tax is payable on</p> <p>a) <i>Transport of passengers, with or without accompanied belongings, by air in economy class.or</i></p> <p>b) <i>Transport of passengers, with or without accompanied belongings, by air, embarking from or terminating in a Regional Connectivity Scheme Airport, as notified by the Ministry of Civil Aviation.[8(iii) and (iv) of 11/2017-CTR]</i></p> <p>c) <i>Leasing of aircrafts by an operator for operating scheduled air transport service or scheduled air cargo service by way of transaction covered by clause (f) paragraph 5 of Schedule II of the Central Goods and Services Tax Act, 2017 i.e. transfer of right to use [Sl. 15(iv) of 11/2017-CTR]</i></p>

45	<i>Taking ITC on goods and services taken where 5% tax is payable on Renting of motor vehicle or Transport of passengers by any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, except input tax credit of input service in the same line of business [Sl. 10(i) and 8(vi) of 11/2017-CTR]</i>
46	<i>Taking ITC on goods where 5% tax is payable on Transport of goods in a vessel or Time charter of vessels for transport of goods. [Sl. 9(ii) and 10(ii) of 11/2017-CTR]</i>
47	<i>Taking ITC on goods and services by GTA where 5% tax is payable on Services of goods transport agency (GTA) in relation to transportation of goods (including used household goods for personal use).[Sl. 9(iii) of 11/2017-CTR]</i>
48	<i>Taking ITC on goods and services where 5% tax is payable on Transportation of natural gas, petroleum crude, motor spirit (commonly known as petrol), high speed diesel or aviation turbine fuel] through pipeline [Sl. 9(v) of 11/2017-CTR]</i>
49	<i>Taking ITC on goods where 12% tax is payable on Services provided by a foreman of a chit fund in relation to chit [Sl No. 15(i) of 11/2017-CTR]</i>
50	<i>Taking Credit of input tax charged on goods and services used in supplying the service ², other than the input tax credit of input service in the same line of business (i.e. tour operator service procured from another tour operator)]taken where 5% tax is payable on Supply of Tour Operator services</i>

Areas of Excessive Transitional Credit

1	Credit taken against Return of goods by unregistered person on or after 01-07-2017 against goods supplied between 01-01-17 to 30-6-2017 on payment of tax Tax paid on goods returned by unregistered person on or after 1-7-17, can be claimed back as refund under the existing law. [S. 142(1)]
3	ITC taken on goods in transit on 30-6-17, Invoice of which has not been recorded in books of accounts upto 31-07-2017. [Sec. 140(5)].
4	ITC taken against amount refundable pertaining to pre GST regime
5	Credit of CST paid on stock as at 30-6-17 taken.

6	Credit taken against pending Vat assessment for which C/H/F forms are not available.
7	Transitional Credit taken both in TRAN-1 as well as GSTR-3B.
8	100% Transitional Credit taken on the basis of Credit transfer document against non identifiable goods not bearing distinct number and/or, not bearing brand name of manufacturer and/or goods having unit value lesser than Rs. 25000
9	Transitional Credit taken against stock without being in possession of invoice or invoice being older than 1-7-2016
10	Enhanced Input credit taken on the basis of revised return for period ending 30-6-2017 whereas law does not allow to take higher credit in revised return as compared to original return. S
11	50% Credit of tax taken against capital goods inspite credit not being admissible under existing law
12	ITC taken against reversal of credit under 2 nd Proviso to Rule 4(7) where consideration and tax was not paid within 3 months from the date of invoice, inspite the payment not made within 3 months from appointed date.
13	ITC taken against carry forward of service tax without reversal of cenvat credit under 2 nd Proviso to Rule 4(7) where consideration and tax was not paid within 3 months from the date of invoice
14	ITC against inputs taken by supplier u/s 140(3) who though liable to be registered under existing law failed to take registration.
15	ITC taken against goods entitled to credit on sale without reversing credit under existing law
16	Credit of service tax taken against services used against inputs lying on 30-6-17
17	Deemed Transitional Credit taken against non-identifiable goods.
18	Deemed credit under proviso to S. 140(3) taken by service provider or manufacturer where tax amount is not indicated in invoice.
19	Deemed Credit of SGST taken by trader against sale of stock (other than first stage goods) lying on 30-6-17, where tax amount was not mentioned in supporting invoices.
20	Deemed credit of CGST and SGST taken against stock without there being any evidence for procurement of goods
21	Deemed credit of CGST taken by trader against taxable goods which enjoyed conditional exemption under CETA.

Prior approval of Commissioner is required for special audit. Direction for Special audit has to be made by communication in writing to Registered Person. Direction for special audit has to be communicated in ADT-03. Direction to special audit shall involve getting records including Books of accounts examined and audited. Special audit has to be done by Chartered Accountant or Cost and Works Accountant nominated by Commissioner. Expenses And Remuneration of CA/CWA shall be determined and paid by Commissioner and such determination shall be final.. Report of Audit has to be submitted by such nominated CA or CWA within 90 days. Special Audit may be directed even if accounts of the registered person have been audited under any other law or under other provisions of this Act. Registered Person shall be given an opportunity of being heard in respect of material gathered on the basis of special audit which is proposed to be used in any proceedings against RP under this Act or Rules. On conclusion of special audit Registered Person shall be informed about the findings of special audit in ADT-04. Where audit results in detection of tax not paid/short paid etc, Proper Officer may initiate action u/s 73 or 74

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- Indirect Taxes Committee