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Interest on ITC Wrong Availed but Not Utilized Under GST Credit and Reversal: Research Review

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Abstract
The GST Department has received complaints nationwide about incorrectly claimed but unutilized ITC. Such objections and the relevant legal laws will be covered in this article. First, interest payments are only made in cases when the output tax burden is reduced, as stated in the CGST Act Section 50(3) read with Section 42(10). Therefore, interest liability is not triggered in situations where the assessed has not used the unnecessary excess input credit, and there is no decrease in output tax due. Second, the company does not lose money because the assessed does not profit financially from using the surplus ITC. It is therefore against the rule of law. Government by laws and the administration of justice by the individuals who are currently in charge of government are both considered aspects of the rule of law. Under the rule of law, judgments must be rendered using established norms and principles, and they must generally be fair and alleviate the suffering of the populace. Thirdly, the GST Council agreed to amend Section 50(3) of the CGST Act to provide that interest would only be charged "on the amount payable through the electronic cash ledger" of the taxpayer after considering this scenario at its 31st meeting on December 22, 2018. The press release read as follows: Section 50 of the CGST Act should be amended to stipulate that interest should only be assessed on the taxpayer's net tax due after accounting for the allowable input tax credit; in other words, interest would only be assessed on the amount owed via the electronic cash ledger. In our opinion, then, there was no amount payable through the electronic cash ledger in circumstances where the excess input credit was mistakenly obtained but not used, and it was reversed through the unutilized credit balance available in the electronic credit ledger in the GST Portal.

Keywords: GST, IGST, CGST, Interest, ITC Share, Credit, Reversal Interest, Availed Interest, Legal Law.

Introduction

Section 50 of the CGST Act was recently revised retroactively from 1.7.2017 to stipulate that interest would be assessed on ITC that is improperly claimed and utilised. Interest was charged on ITC that was improperly used or obtained prior to the modification. Interest was therefore assessed on ITC that was incorrectly obtained but not used. Interest is only payable on ITC that has been improperly claimed and used after the change. When ITC is incorrectly obtained but not used, interest is not charged. However, section 122 still applies when it comes to penalties for "ITC wrongly availed or utilised." This suggests that penalties are assessed for ITC that is incorrectly obtained but not used.

Provisions of sec 122: Penalties for Specific Offences

Any registered individual who provides goods or services, or both, on which taxes have not been paid, have been underpaid, or have been incorrectly refunded, or where input tax credit has been improperly used or accessed, (a) for any reason other than fraud or wilful falsification or suppression of facts to avoid paying taxes, shall be subject to a penalty of ten thousand rupees, or ten percent. (b) be subject to a penalty equal to ten thousand rupees or the tax owed from that individual, whichever is larger, for engaging in fraud or wilfully disclosing or concealing information in order to avoid paying taxes. From the foregoing, it is clear that if ITC is improperly claimed or used, a penalty will be assessed. Consequently, there may be a 10% or 100% penalty if ITC is incorrectly claimed but not used. In order to impose a higher penalty of 100%, the Department typically tries to claim that there was a malicious intent to dodge taxes. Since Section 50 has been modified but Section 122 has not, it appears that penalties for incorrectly availing but not using can still be applied [1].

Justifications for the Interpretation that a Penalty is Due

- The Supreme Court clarified the distinction between tax, interest, and penalties in the Pratibha Processors case. The nature of interest is compensatory. It is used for tax withholding payments. However, interest is not the same as a penalty. The nature of it is punitive. It is imposed in response to some disruptive behaviour or wilful disregard for the specific statute's provisions. Since there is no tax withholding if an ITC is incorrectly claimed but not used, interest cannot be assessed. However, because there was wrongful use, the Act's restrictions were broken, and as a result, a fine was imposed. Naturally, the issue of whether the breach was intentional or unintentional still exists. However, subclauses a and b address that, prescribing 10% and 100% penalties for innocuous and intentional infractions, respectively.

- The phrase "cenvat credit wrongly availed or utilised" was used in Rule 14 of the Cenvat Credit Rules during the previous administration as well. The phrase was changed to "cenvat credit wrongly availed and utilised" later in 2012. Therefore, interest was only due on cenvat that was improperly obtained and used. Interest was not due on the incorrectly obtained but unused cenvat. However, Rule 15, which deals with penalties, did not undergo a matching alteration when Rule 14 was changed in 2012. In such rule, the phrase "cenvat credit wrongly availed or utilised" is still used. This suggests that, even under the previous administration, penalties were still due under Section 15, even if there was no interest due on cenvat (ITC) that was incorrectly obtained but not used. For the same reason, even if section 50 is changed in GST, section 122 remains unchanged. Penalties for ITC that is obtained but not used are therefore still due.
- If it is claimed that clauses a and b only use the phrase "tax due from such person" and not any other words, such as "input tax credit wrongly availed or utilised," and that penalty is therefore not applicable, then the phrase "or where the input tax credit has been wrongly availed or utilised" in subsection 2 becomes redundant, which is untrue. As a result, a penalty is due.

Related Literature

According to Hrishikase's (2026) research, the Supreme Court's Hon [2]. Justice Manmohan recently stated in a speech that the assessing officers frequently treat taxpayers unfairly when it comes to both the Goods and Services Tax (GST) and the Income Tax (IT). Treating taxpayers in this way discourages people from innovating or thinking more broadly, which hinders the nation's progress. The regular mechanical comparison of GSTR-2A and GSTR-3B forms by assessing authorities is a recurring problem in the GST domain. Due to the glaring discrepancy in the periods, the claimed ITC (Input Tax Credit) is ultimately rejected. Such a mechanical comparison of forms without giving the assessee a chance to provide pertinent documentation to support his or her claim would be invalid, according to recent rulings from the Kerala High Court and the Madras High Court.

According Суреκа, A. In their research, there is a significant inverse relationship between ITC mismatch and business compliance [3]. Furthermore, the study demonstrates that 46% of the variation in stakeholder satisfaction with the GST system may be explained by ITC mismatch. ($F (3,496) = 141.23$, $p < 0.001$, $R2 = 0.46$). The findings show that in order to lessen the detrimental effects of ITC mismatch, better technology integration and more efficient compliance procedures are required. Future research should evaluate the effectiveness of legislative reforms intended to improve GST compliance and look into the long-term financial effects of persistent ITC mismatches.

Joy Dhingra defined in his research the main feature of the destination-based GST is the Input Tax Credit [4]. The foundation of GST is laid by the Input Tax Credit, which serves to prevent the GST's cascading tax effects. ITC is regarded as the foundation of the GST system. Actually, the ITC provision is what essentially turns GST into a value-added tax, meaning that taxes are collected at every stage of the supply chain after allowing for the credit of taxes paid at previous stages. Only through the fundamental feature of Input Tax Credit can the GST regime guarantee smooth credit on products and services across the whole supply chain. In order to help suppliers and recipients of taxable supply across the country benefit from the tax paid when buying inputs, this document aims to clarify the fundamental idea of the Goods and Services Tax (GST), also known as the Input Tax Credit.

Purpose of the Study

- **Purpose:** The study emphasises that no interest is due if a taxpayer reverses an incorrectly claimed ITC before using it to pay output tax. The main objective is to guarantee compliance without subjecting taxpayers to harsh financial penalties for insignificant mistakes.
- **Main Objective:** To investigate whether interest, penalties, and reversal procedures under the GST/IGST system are applicable and lawful for Input Tax Credit (ITC) that has been incorrectly claimed in the computerised credit ledger but has not been used to lower the output tax burden.

Core Goal

- **"Availment" vs. "Utilisation" and Their Legal Interpretations:** To be clear, merely entering an incorrectly obtained credit in the electronic credit ledger does not deprive the government of revenue, and as a result, Section 50(3) should not impose interest.
- **Evaluation of Retroactive Amendments:** To assess the effect of the Finance Act 2022, which retroactively modified Section 50(3) (effective July 1, 2017) to limit interest liability to ITC that has been improperly used and obtained
- **Defining "Utilisation" and "Reversal":** To specify the precise point at which the electronic credit ledger balance drops below the incorrectly obtained amount, as well as the process for reversal (for example, through DRC-03) in order to prevent charging interest.
- **Effect of Judicial Precedents:** To examine high court rulings that have repeatedly rejected the imposition of interest on unused ITC, such as Refax Industries and Utpal Das v. State of West Bengal.
- **Comparing "Net" to "Gross" Interest Liability:** In accordance with CBIC explanations, interest is computed on the net tax liability paid through the electronic cash ledger rather than the gross liability (Circular No. 192/04/2023-GST).
- **Making the Difference Between Ineligible Credit and Error:** To identify when an incorrect ailment is a clerical error (no interest) and when it is a deliberate misrepresentation or suppression (possible Section 74 penalty).
- **Reviewing IGST Credit Utilisation:** To examine how improperly used IGST credit is handled when the entire credit balance (IGST + CGST + SGST) is still adequate, arguing against the application of interest in cases where there is no real tax loss.

Discussion and Result

Discussion: Information about interest charges under section 50(3) of the CGST Act of 2017 in situations when an IGST credit is incorrectly claimed and subsequently reverted [5]. Trade references have been received asking for clarification on the charging of interest under sub-section (3) of section 50 of the Central Goods and Services Tax Act, 2017 (henceforth referred to as the "CGST Act") in situations where a registered person has mistakenly claimed IGST credit. The question of whether the improperly used IGST credit would be deemed to have been used to charge interest under sub-section (3) of section 50 of the CGST Act, read with rule 88B of the Central Goods and Services Tax Rules, 2017 (henceforth referred to as the "CGST Rules"), is being clarified. The total amount of input tax credit in the registered person's electronic credit ledger under the heads of IGST, CGST, and SGST combined stays greater than the amount of the incorrectly obtained IGST credit, even if the available balance of IGST credit in the said registered person's electronic credit ledger is less than the amount of the incorrectly obtained IGST credit. This is true at all times, until the said incorrectly obtained IGST credit is reversed.

The Board, using the authority granted by section 168 (1) of the CGST Act, has reviewed the matter and, in order to guarantee consistency in the application of the legislation throughout the field formations, hereby explains the following issues:

Issues

- For the purposes of calculating clarification, if a registered person incorrectly claims and reverses an IGST credit Whether the balance of input tax credit available in the electronic credit ledger under the head of IGST alone needs to be taken into consideration, or the total amount of input tax credit available in the electronic credit ledger under the heads of IGST, CGST, and SGST taken together, must be taken into consideration because the amount of input tax credit available in the electronic credit ledger, under any of the heads of IGST, CGST, or SGST, can be Page 1 of 3 Page 2 of 3 interest under rule 88B of the CGST Rules.

- When calculating interest under sub-rule (3) of rule 88B of the CGST Rules regarding incorrectly obtained and used IGST, CGST, or SGST credit, the balance of the electronic credit ledger will be considered, along with the credit of compensation cess available in the electronic credit ledger.

Clarifications

- In order to calculate interest under rule 88B of the CGST Rules, as well as to determine whether the balance in the electronic credit ledger has fallen below the amount of incorrectly availed credit of IGST, and to what extent the balance in the electronic credit ledger has fallen below the said amount of incorrectly availed credit, the total amount of input tax credit available in the electronic credit ledger under the heads of IGST, CGST, and SGST taken together must be taken into consideration. This is because the amount of credit can be used to pay the liability of IGST. Therefore, in situations where an IGST credit has been improperly used and then reversed on a specific date, there won't be any interest due under sub-section (3) of section 50 of the CGST Act if, both during the period beginning with the improper use and up until the reversal, the balance of input tax credit (ITC) in the electronic credit ledger under the combined heads of IGST, CGST, and SGST has never dropped below the amount of the improperly used ITC, even if the available balance of IGST credit in the electronic credit ledger falls below the amount of the incorrectly used IGST credit. On the other hand, if the total balance in the electronic credit ledger under the heads of IGST, CGST, and SGST taken together falls below the amount of IGST credit that was wrongfully obtained, it will be considered utilisation of that credit. The amount of utilisation will be determined by the sub-section (3) of section 50 of the CGST Act, read with section 20 of the Integrated Goods and Services Tax Act, 2017 and sub-rule (3) of rule 88B of the CGST Rules.

- According to the Goods and Services Tax (Compensation to States) Act, 2017's proviso to section 11, input tax credits for compensation cess on supply of goods and services that are leviable under section 8 of the same Act may only be used to pay compensation cess on supply of goods and services. The compensatory cess credit cannot, therefore, be used to pay any taxes under the CGST, SGST, or IGST heads, or to reverse credit under any of the heads. Subrule (3) of rule 88B of the CGST Rules states that when calculating interest on improperly obtained and used IGST, CGST, or SGST credit, the credit of compensation cess available in the electronic credit ledger cannot be taken into consideration when evaluating the balance of the electronic credit ledger [5].

Facing GST Notices on ITC Denial due to RC Cancellation & Supplier Non-Filing 3B

The Central and State GST Authorities have recently sent us notifications requesting the reversal of ITC on two main grounds: the cancellation of the supplier's registration and the failure to file GSTR-3B. We are challenging these demands on the grounds of "Lex Non Cogit Ad Impossible," which states that "the law does not compel the impossible."

The Following Criteria form the General Basis of Our Submissions

- GSTR-1 ITC Filed, but GSTR-3B Unfiled. In the event that the supplier submitted bills in GSTR-1, the Department was already equipped to notify the supplier of the discrepancy between GSTR-1 and GSTR-3B. ITC cannot be denied to a recipient once tax has reached the Government treasury (Sec. 16(2)(c)) unless the Department can demonstrate otherwise.

- RC Cancellation of Supplier Due process, including the jurisdictional officer's assessment, is required prior to cancellation under Sec. 29. Before revoking the registration, the Department may have carried out such assessment procedures.

- Sections 62 and 63 of the Assessment Proceedings, which have a longer statute of limitations than Sections 73 and 74, give the authority to assess non-filers and unregistered individuals. Therefore, it is the Department's responsibility to evaluate and collect taxes from the provider. Court Cases Encouragement of the Recipient's ITC Right Numerous High Courts have ruled that, without examining the authenticity of the transactions, the beneficiary cannot be denied ITC simply because the supplier's GSTIN was cancelled retroactively: 1. Kesarwani Traders vs State of UP – Allahabad HC.2. Solvi Enterprises vs Addl. Commissioner, Grade 2 – Allahabad HC.3. Sanchita Kundu vs AST, South Bengal – Calcutta HC [6-12].

- Niranjan Paul vs AST, Siliguri Charge – Calcutta HC.
- Gargon Traders vs JC, State Tax – Calcutta HC.6.
- LGW Industries Ltd. vs UOI – Calcutta HC.
- Himalaya Communication Pvt. Ltd. vs UOI – Himachal Pradesh HC.

Result: The legal provisions governing ITC should be discussed for the sake of thoroughness. The CGST Act's Section 16(2) explains the requirements needed to qualify for ITC. The burden of meeting all requirements rests with the individual claiming ITC. ITC can be claimed after these are fulfilled. The appropriate official, who is obligated by Section 61 read with Rule 99 of the CGST Rules, must take the next stages in the procedure. When scrutinising, the officer is constrained by a stringent timeline and available actions. The officer may decide to escalate the assessment, advise the assesses of the status, or take no further action based on the veracity of the claim. Naturally, the GST Acts and Rules, as well as several rulings from the Supreme Court, High Courts, and Tribunals, will govern their acts [2].

An Issue of Law

The assessors in the situations in question denied the ITC claim automatically without requesting any supporting documentation from the assesses. Upon his own initiative, the assesses sent a letter to the assessing authorities stating his desire to provide supporting documentation for the GMA Pinnacle case. The assesses in this case did not receive the proper consideration in spite of these attempts. Additionally, Sri Shanmuga Hardware's' situation wasn't all that dissimilar. The question at hand is thus whether an assessing officer can deny a claim without allowing the assesses to be heard, based only on a form mismatch.

- **Court Cases and Citations**
  In its ruling in **Ind-Swift Laboratories Ltd. Vs. Union of India** [2009-240-ELT-328 (P&H)], the Punjab & Haryana High Court had examined the matter and determined that no interest was due if the CENVAT Credit was only used to pay taxes [13]. In CCE vs. Maruti Udyog Ltd. [2007 (214) ELT 173 (P&H)], the Punjab and Haryana High Court once more ruled that an assessee was exempt from paying interest in cases where credits had simply been received incorrectly and were not used [14]. Articles 14, 19, and 301 of the Indian Constitution would be violated if interest were to be demanded even though it is obvious that no interest is due if the ITC is only used to pay taxes. This would be arbitrary and restrict the freedom to conduct business without any reason.

- **Hon. Madras High Court's Ruling in the Aathi Hotel Case:** The Hon. Madras High Court ruled that interest was not due on ITC that was earned but not used. Additionally, it decided that there was no penalty to pay. In this context, two points are noteworthy, though: 1. The HC noted that in this instance, section 122 should have been used to impose the penalty, but it was not. Penalty under s. 74 was applied. Maybe the outcome would have been different if Section 122 had been used. 2. The Hon. HC did levy a nominal fine of Rs. 10,000 for improperly claiming the ITC, despite the fact that it was never used. It appears from the foregoing that this ruling will not preclude the imposition of a penalty under s. 122(2) for improperly claiming an ITC, even if it is not used.

The **Allahabad High Court held in M/s Kesarwani Traders v. State of U.P. & Others** (2025: AHC:140085) that a buyer cannot be denied Input Tax Credit (ITC) merely because the supplier's GST registration was revoked retroactively. According to the court, the buyer is eligible for ITC provided the transaction was legitimate, backed up by legitimate tax invoices, and the supplier was operating at the time of the transaction [6]. Case Citation: WRIT TAX No. 1235 of 2025 (Aug 18, 2025). The validity of ITC is reaffirmed by this ruling if the seller was registered at the time of the transaction and the transaction was lawful, even if the registration is subsequently cancelled.

- **Potential Litigation Cases:** In some cases, where the taxpayer is doubtful of the eligibility of ITC, he may decide to avail the ITC but not to utilise it. For instance, the Hon. SC is still considering M/s Safari Retreats' ineligibility for the ITC on the building in the reality leasing business case. In some situations, the taxpayer may decide to claim the ITC but not to use it. If the decision is beneficial, he will use it; if it is unfavourable, he will reverse it. Penalties may also be applied for unintentional incorrect ailments that the assesses may be able to remedy on his own, but that are discovered during the audit.

- **Practical Consequences for Professionals:** The tax community has two key lessons to learn. The key lesson is that the assessing officer must allow the assesses to present pertinent documentation to bolster his or her claim and refrain from being autocratic in the manner they evaluate the forms that are submitted. Natural justice principles are violated when such an opportunity is not provided. In addition, assesses should be mindful of deadlines when answering correspondence and notices from the assessment officers. Original records, including invoices and payment amounts, must be arranged and stored securely so they may be submitted in the event of a discrepancy. GSTR-2B is the more secure form to use when claiming ITC. Since it freezes on the fourteenth of each month, it is a much safer option for simpler analysis. Before the next month's freeze date, all invoices raised after this date can be recorded. The forms' design makes it possible for the claim procedure to be more efficient. When a suitable officer is auditing or examining the claims and returns, the conclusions of the aforementioned situations will be very helpful. The CBIC has also issued circulars that specify the guidelines that authorities must adhere to when interacting with assesses. Therefore, it is critical that businesses and tax professionals understand the steps that both the assessor and the assesses must do throughout an assessment [2].

Conclusion

The government should clarify this matter, and if it does not intend to impose a penalty on ITC that has been obtained but not used, then section 122(2) should be amended along the lines of section 50. In other words, the phrase "input tax credit has been wrongly availed or utilised" should be changed to "input tax credit has been wrongly availed and utilised." If not, this will lead to preventable legal action. A research review on "Interest on ITC Wrongly Availed but Not Utilised" aims to analyse the shift from penalising simple clerical errors to ensuring compliance only when there is an actual loss of revenue. This is based on the legal framework, amendments (Section 50 of the CGST Act), and recent judicial trends (e.g., Calcutta HC, Madras HC) [15].

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