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Tax & Corporate Laws of INDIA

**INDUSTRY 2020:
EMERGING
GST ISSUES DUE TO
COVID-19**

(21st May 2020 | Vishal Raheja | Sunil Kumar)

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- ▶ Your mike is on mute. You will not be able to communicate during the session
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- ▶ Your questions will be answered by the speakers after the session or during the session by our Indirect Tax R&D Team
- ▶ After the session, you will get the copy of this presentation along with detailed write up on each issue for your future references

EMERGING GST ISSUES DUE TO COVID-19

01 ITC on invoices not uploaded by vendors – Amendment in Rule 36(4)

02 Refund/Adjustment of GST already paid on bad debts, and discounts

03 ITC implications if goods are destroyed/disposed off

04 Eligibility of ITC on masks and sanitizers

Tax & Corporate Laws of INDIA

01. ITC on invoices not uploaded by vendors – Amendment in Rule 36(4)



BACKGROUND

GSTR 2A: Auto populated invoices and Debit/Credit notes

GSTR 1:
Statement of outward supplies

Uploading Tax Invoice, Debit notes, Credit notes, etc.

CALCULATION OF ITC

Invoices appearing in **GSTR 2A**

100% of eligible ITC

Invoices not appearing in **GSTR 2A**

10% of above*

ITC on other transactions e.g. Import of Goods, etc.

100% of eligible ITC

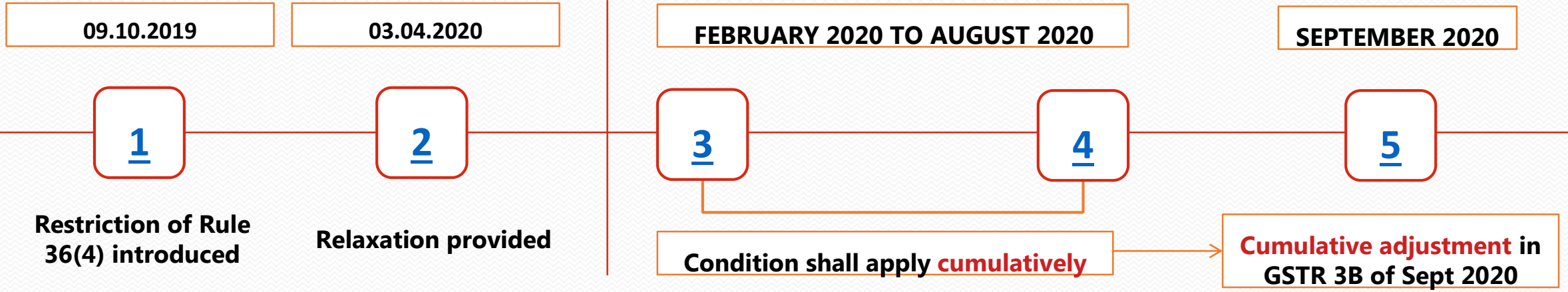
GSTR 3B:

Uploading Tax Invoice, Debit notes, Credit notes, etc.

*Subject to the maximum ITC otherwise available

LEGAL PROVISION – AMENDMENT IN RULE 36(4)

ANALYSIS OF RELAXATION



Legal text of Rule 36(4) of the CGST Rules:

Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been upbaded by the suppliers under sub-section (1) of section 37, shall not exceed 10 percent 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.

Provided that the said condition shall apply **cumulatively** for the period February, March, April, May, June, July and August, 2020 and the return in FORM GSTR-3B for the tax period September, 2020 shall be furnished with the **cumulative adjustment** of input tax credit for the said months in accordance with the condition above.

OPEN QUESTIONS



How to claim ITC on Invoices of February to August 2020?

Whether full ITC can be availed on invoices pertaining to period 09.10.2019 to 03.04.2020 on which no ITC was previously availed?

Whether remaining ITC can be claimed in any of the subsequent months GSTR 3B's where partial ITC (10/20%) was availed previously as per Rule 36(4)?



ANALYSIS AND OUR COMMENTS

09.10.2019	03.04.2020	February 2020 to August 2020		September 2020
1	2	3	4	5
Restriction of Rule 36(4) introduced	Relaxation provided			
Invoices dated	Whether benefit of 10/20% was availed?	Availability of ITC - Our Comments		Interest Implications if invoice is not uploaded by supplier
From February 2020 to August 2020	N.A.	100% ITC can be claimed in the respective month or in subsequent months		N.A.
From 09.10.2019 to 31.01.2020	No	100% ITC can be claimed in the any of the tax periods if vendors uploads invoice by August 2020		Interest may not be levied if ITC is reversed in GSTR 3B of Sept 2020
From 09.10.2019 to 31.01.2020	Yes	Remaining ITC can be claimed in the any of the tax periods if vendor uploads invoice by August 2020		Interest may be levied



02. GST Implications on bad debts, and discounts



BACKGROUND



01

GST treatment where discount is given for timely payment of consideration

02

Treatment where consideration is not realized

LEGAL PROVISION-TREATMENT OF DISCOUNT & BAD DEBTS

DISCOUNT VIS-À-VIS VALUE OF SUPPLY

Time of supply

Discount before or at the time of supply

Post supply Discount

Excluded from value of supply
Condition – Discount is mentioned in invoice

Excluded from value of supply
Condition-If established before or at the time of supply.

Legal text of Section 15(3) of the CGST Act:

The value of the supply shall not include any discount which is given—

- a) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and
- b) after the supply has been effected, if—
 - i. such discount is **established in terms of an agreement entered into at or before** the time of such supply and specifically linked to relevant invoices; and
 - ii. Input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply

ANALYSIS AND OUR COMMENTS – DISCOUNTS

GST, in general, is payable on **transaction value** viz. price paid or payable for the supply of goods/ services

Deduction of post supply **discount** is available where it is **established in terms of an agreement entered into at or before the time of such supply**



Whether the discount for timely payment is established in terms of an agreement entered into at or before the time of supply?

Answer, in general, would be '**No**', as it was not pre-agreed. Thus, benefit would not be available

Deduction of payment on account of deficiency: Deduction made on account of deficiency in supply of services or non supply of goods as desired by recipient is not equivalent to discount. In this case, Credit Note under Section 34 of the CGST Act can be issued and GST already paid can be adjusted against the tax liability.

ANALYSIS AND OUR COMMENTS-TREATMENT OF BAD DEBTS

As discussed, GST, in general, is required to be paid on **transaction value**, which is the price paid or payable for the supply of goods/services

The valuation provisions are **silent** on specifying the point of time at which, this value should be referred.



Does this mean that the amount which is not recoverable at a later date will not form part of the value of the supply?

One may argue that as valuation provisions are silent, therefore, the transaction value on which GST is levied can be referred at any point of time. Thus, amount not recovered by recipient shall not form part of the value of supply

ANALYSIS AND OUR COMMENTS-TREATMENT OF BAD DEBTS

In our considered view, value should be taken at the time of supply because of the following reasons:

Statute must be read as whole - By combined reading of provisions of meaning of supply, levy of tax, time of supply, value of supply, etc. under the CGST Act, it can be construed that the value of supply is to be computed when the event becomes taxable i.e. at the time of supply

▶ If the intention of law is to allow determination of value of supply at any other point of time, it wouldn't make **special provisions of treatment of discount** under GST

The value of supply is transaction value, which is, price **paid or payable** for such supply. In case of bad debts, the **amount is actually payable** but it is just not realised.

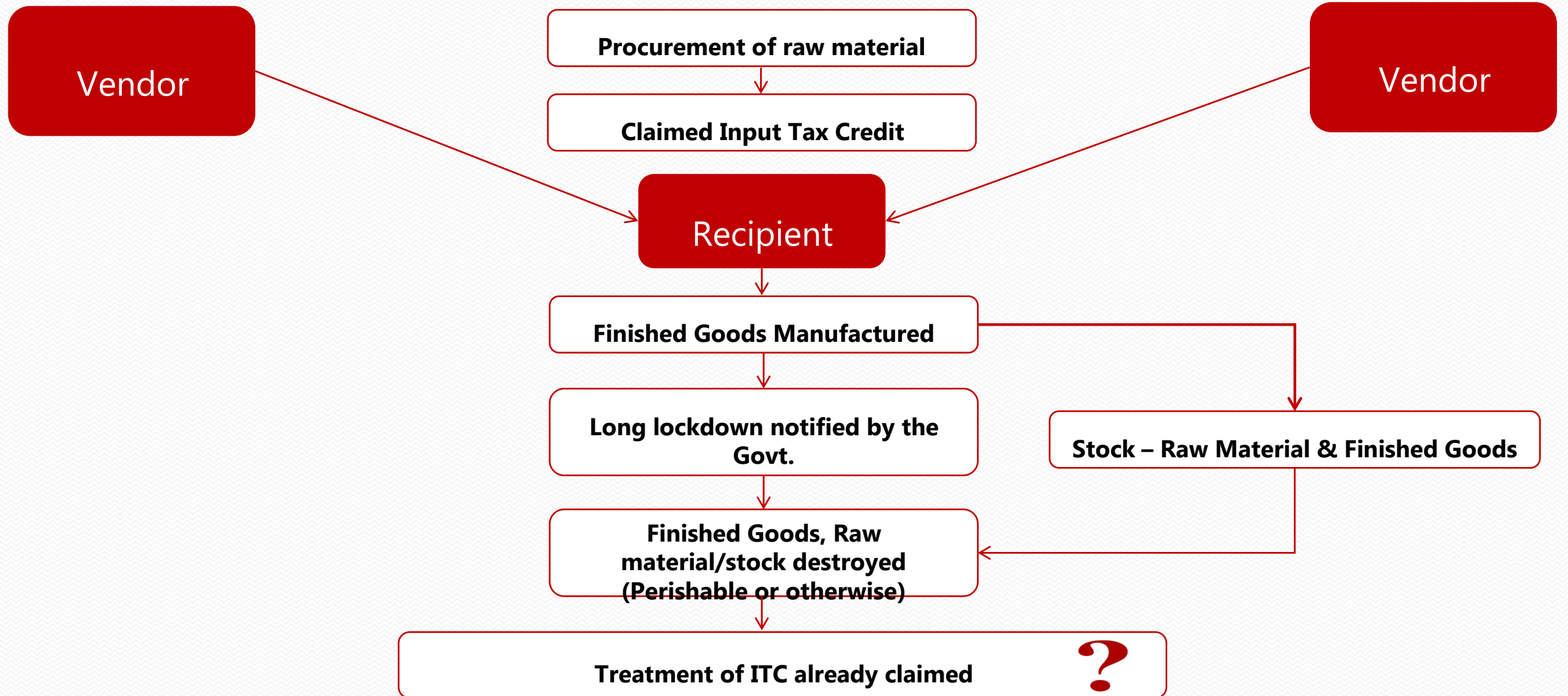
Therefore, **benefit** of refund/adjustment of GST paid bad debt would not be available to the supplier.

Department has taken a similar view in its Question No. 48 of FAQ's issued for Banking and Financial Sector.

03. GST Treatment of Goods destroyed due to COVID 19



BACKGROUND



LEGAL PROVISIONS – ~~INPUT TAX CREDIT~~

ITC is available on goods or services which are used or intended to be **used in the course or furtherance of business**

Section 17(5) prescribes list of few goods or services on which **ITC is not available**

Relevant clause reads as under:

Section 17: Apportionment of credit and blocked credits

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

(a).....

(b) Goods, lost, stolen, destroyed, written off or disposed of by way of gift or free samples

As per above, ITC shall **not** be admissible in respect of goods lost, stolen, **destroyed**, etc.

ANALYSIS AND OUR COMMENTS

Section 17(5)(h) of the CGST Act provides that ITC shall not be available in respect of goods that are destroyed



Whether under the GST regime ITC is available in respect of finished goods?

Eligibility of claiming ITC and its conditions are linked to the inward supply.



Should applicability of Section 17(5) not be limited to ITC taken on the very goods (i.e. raw material) lost or destroyed?

To answer these questions, we need to understand meaning of expression 'in respect of' used in Section 17(5)

Supreme Court in case of Swasthik Tobacco Factory-1966 taxmann.com 5 (SC), held that in India tax laws the **expression** 'in respect of' **is a synonymous** of expression 'on'

Given the above, one must read Section 17(5) as **ITC on goods** destroyed. As ITC is not available on finished goods but on inward supply, therefore, **its scope should not be extended to finished goods**

04. Eligibility of ITC on Masks & Sanitizers



BACKGROUND

MHA have mandated compulsory wearing of face cover in work places and availability of hand wash/sanitizer at entry, exit and common areas

Therefore, in order to resume operations, the businesses would purchase face masks and sanitizers



Whether GST paid on purchase of face masks and hand sanitizers for employees will be eligible for ITC under GST?

It may be noted that recent guidelines issued by MHA have also provided that wearing of face cover is compulsory and sanitizer will be made available in entry & exit points and common areas but it does not mention anything about maintaining a stock of abovementioned goods.

LEGAL PROVISIONS

ITC Provisions

Section 16 of CGST Act

Registered person can claim *ITC* of GST paid on inward supply of goods/services that are used or intended to be used by him **in the course or furtherance of his business**

Section 17(5) of CGST Act

*ITC shall not be available in respect of Goods or services or both used for **personal consumption***

ANALYSIS AND OUR COMMENTS

Expression 'in the course or furtherance of business' is not defined under the CGST Act. It should be read as the way **the business is conducted**

Masks and sanitizer are purchased to look after the health of employees so that **business can operate smoothly**

As per MHA guidelines, wearing masks and having sanitizer at work place is mandatory which itself indicates that for operating business it would be required to be purchased



Will it be treated as personal consumption of goods or services under Section 17(5)(g)?

Where expense is incurred **for employee at large in the organisation**, it cannot be referred as consumed personally (e.g. Issue of Cenvat Credit on outdoor catering under the erstwhile regime of Cenvat Credit Rules, 20004)

Therefore, ITC on purchase of face masks and sanitizer can be said to be available.



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