

01. Sec 16: Eligibility & Conditions for taking ITC

CCP 07.01.01.00

Rimjhim Sales, a registered supplier, receives 100 invoices (for inward supply of goods/ services) involving GST of ₹ 10 lakh, from various suppliers during the month of January, 20XX. Out of 100 invoices, details of 80 invoices involving GST of ₹ 6 lakh have been furnished by the suppliers in their respective GSTR-1s filed on the prescribed due date therefor and such details have also been duly communicated to the recipients of such invoices in Form GSTR-2B.

Compute the ITC that can be claimed by Rimjhim Sales in its GSTR-3B for the month of January, 20XX to be filed by 20th February assuming that GST of ₹ 10 lakh is otherwise eligible for ITC.

Answer:

Legal Provision:

- As per **Section 16(2)(a)** of the CGST Act 2017, taxpayer must be in possession of the tax invoice or other tax paying document in respect of which he is claiming the ITC.
- As per **Sec 16(2)(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.
- Further As per **Rule 36(4)** of CGST Rules 2017, No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under section 37(1) **unless,-**
 - a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in **GSTR 1 & GSTR 1A** or using the invoice furnishing facility and
 - b) the details of input tax credit in respect of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under rule 60(7).

Discussion & Conclusion: Computation of ITC that can be claimed by Rimjhim sales in its GSTR-3B for the month of January 20XX

Invoices	Amount of ITC involved in the invoices (₹ in Lakhs)	Amount of ITC that can be availed (₹ in Lakhs)
80 invoices furnished in GSTR-1	6	6 (Note-1)
20 invoices not furnished in GSTR-1	4	Nil (Note -2)
Total	10	6

Notes:

- 1) Full ITC can be availed on the invoices uploaded by the supplier in their **GSTR 1 & GSTR 1A** u/s 16(2)(aa) read with rule 36(4).
- 2) Input tax credit in respect of any supply of goods or services or both is available to a registered person only, if the details of the invoice/debit note in respect of said supply has been furnished by the supplier in the statement of outward supplies (**GSTR 1 & GSTR 1A**) and such details have been communicated to the recipient of such invoice/debit note in the manner specified under section 37. Thus, in respect of 20 invoices not furnished in GSTR-1s, no ITC is available.

Answer:

Legal Provision:

- ⇒ As per **section 7(1)(a) & (c)** of CGST Act, 2017, If any goods or services which are supplied free of cost (without any consideration) shall not be treated as supply **except** in case of activities given in Schedule I.
- ⇒ CBIC has **clarified** that the entitlement of ITC in the hands of supplier for sales promotional scheme like 'buy one get one free'. Such promotional offers are not individual supplies of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply. It can be treated as supplying two goods for the price of one.
- ⇒ Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and tax rate shall be determined as per **section 8**.
- ⇒ Also, ITC shall be **available** to the supplier for the inputs, input services and capital goods used for supply of goods or services or both as part of such offers.

Discussion & conclusion:

- ⇒ Since, the given case is not the case of individual supplies of free goods, but a case of three individual supplies where a single price is being charged for the entire supply.
- ⇒ Thus, Jumbo Sales Pvt. Ltd. will be **entitled to avail ITC** on inputs, input services and capital goods used for supply of T-Shirts as part of such offer.

Sec 17(5)(1) : No ITC in Fraudulent Cases

CCP 07.03.09.00

Xenon Pvt. Ltd., a registered supplier in Agra is engaged in the manufacture of taxable goods. Goods valued at ₹ 10,50,000 were supplied by the company to Freshbite Pvt. Ltd., a registered supplier located at Firozabad, without the cover of an invoice with a fraudulent intent. Since the company evaded tax by not issuing the invoice for the supply, a show cause notice was issued by the proper officer under section 74 requiring the company to pay tax @ 12% [₹ 1,26,000] and applicable interest and penalty. The company paid the tax, interest and penalty after the order was passed by the proper officer. Examine the ITC entitlement of Freshbite Pvt. Ltd. in respect of tax of ₹ 1,26,000 paid by Xenon Pvt. Ltd. [Study Mat]

Answer: Legal Provision:-

- ⇒ As per **section 17(5)(i)** of CGST Act, 2017, tax paid under **sections 74** is not available as ITC.
- ⇒ Further, as per **rule 36(3)** of CGST Rules, 2017, tax paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts cannot be availed as ITC by a registered person.

Discussion & Conclusion:-

- ⇒ In the given case, Xenon Pvt. Ltd. has paid tax in pursuance of an order issued **under section 74**.
- ⇒ Therefore, Freshbite Pvt. Ltd. **cannot avail ITC** of such tax.