

# SKKA IDT ALERT

2023-2024/17

*Circular No. 192/04/2023-GST dated 17.07.2023*

**CBIC issues Circular no 192/04/2023-GST dated 17.07.2023 to provide clarification on charging of interest under Section 50(3) of CGST Act read with Rule 88B**

*Issue -In case of wrong availment of IGST credit, is the interest to be calculated on the total input tax credit or only on the balance of the IGST credit?*

When an assessee 'avails and utilises' ITC in violation of the law, interest is levied under Section 50(3) of the CGST Act 2017. Rule 88B of the CGST Rules, 2017 specifies the method of computing interest obligation and states that interest is only applied if there is insufficient balance in the electronic credit ledger at the time of utilisation of such irregular ITC availed. As per Rule 88B, the IGST ITC balance must be depleted mandatorily, therefore any IGST that was incorrectly claimed must be used to pay CGST and SGST as well.

Now, if the balance of the IGST ledger falls below the IGST incorrectly claimed, explanation 1 to Rule 88B is triggered, and the IGST incorrectly claimed input tax credit is deemed to have been used. As a result, the taxpayer must pay interest under Section 50(3) of the CGST Act on the amount of the IGST ITC used to offset the payment of CGST and SGST. **According to the clarification, IGST+CGST+SGST balance is to be included for determining the amount of ITC actually utilised under IGST head. In other words, interest obligation does not arise if the overall ITC balance does not fall below the incorrectly utilised IGST ITC amount, even if the individual IGST credit balance falls below the incorrectly utilised IGST credit.** However, if the entire sum of IGST+CGST+SGCT combined falls below the incorrectly utilised IGST ITC, it amounts to usage of such incorrectly availed IGST and would incur interest at the rate of 18% from the date of utilisation to the date of reversal.

Further it clarified that compensation cess ITC shall not be added to the combined balance as the same can be set off against only cess output liability.

## ***Our Comments***

*The above circular will immensely help in reducing unnecessary litigation by the department, wherein ITC balance of IGST was seen individually by department to levy interest. However, it is important to note that the above provides clarification for only IGST ITC availed and utilised irregularly. In our considered view, similar position should be taken for CGST/SGST ITC also and for such cases combined balance of ITC of CGST AND IGST / SGST AND IGST has to be verified before levying interest on such amounts availed and utilised irregularly.*

*Compiled by Adv Muskan Balasaria and Adv Ankit Kanodia.*



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