

12th February 2019

Shri Upender Gupta,
Honorable Commissioner – GST, CBEC
Government of India

Subject: Concern of retail trade arising out of the introduction of Section 49A vide Central Goods and Services Tax ('CGST') (Amendment) Act, 2018.

Honorable Commissioner,
Greetings from Retailers Association of India (RAI)!

Retailers Association of India (RAI) is the apex body of retailers in India that works with all the stakeholders for creating the right environment for growth of modern retail industry in India. As the unified voice of Indian retailers, RAI encourages, develops, facilitates and supports retailers to modernize and adopt best practices to delight customers. RAI's mission is to develop, facilitate and propagate practices and processes that will grow the Indian retail industry, leading to increased consumption and growth of the economy. RAI has more than 1400 members which operate around 5, 00,000 stores in the nation.

We are writing this letter to express serious concern of retail trade arising out of the introduction of Section 49A vide Central Goods and Services Tax ('CGST') (Amendment) Act, 2018.

The Central Government vide Notification No. 2/2019- Central Tax dated January 29, 2018 appointed February 1, 2018 as the date on which the newly inserted Section 49A would come into effect amongst various other provisions.

The text of the newly inserted Section 49A of CGST Act, 2017 has been reproduced hereunder:

"Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment."

The mandate of the newly inserted Section 49A is that the taxpayers are not allowed to utilize their CGST and SGST credits until IGST credits are fully exhausted towards making the payment of IGST, CGST and SGST.

We understand that the amendment carried out by way of insertion of Section 49A is to impose restriction on cross utilizing CGST / SGST credits against IGST liability when IGST credits are still available.

We do appreciate that this amendment is intended to minimize the fund settlement on account of IGST to the States. **But we would like to submit you that by virtue of this amendment, there will be credit accumulation in the category of CGST for any business that procures goods from outside the state by paying IGST and**

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Titan Industries Ltd

Deepak Aswani,
My Kingdom

J Suresh,
Arvind Lifestyle Brands Ltd.

Jamshed Daboo,
Trent Hypermarket Ltd

Kishore Biyani, Future
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Krish Iyer, Walmart India

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V-Mart Retail Ltd.

Neville Noronha, Avenue
Supermarts Ltd (D-Mart)

Noel Tata, Trent Ltd.

Pranab Barua,
Aditya Birla Retail Ltd.

Rafique Malik,
Metro Shoes Ltd

Rahul Mehta, CMAI

Rakesh Biyani,
Future Retail Ltd.

Shashwat Goenka,
Spencer's Retail Ltd

Suhail Sattar,
Hasbro Clothing (P) Ltd

Vasanth Kumar,
Lifestyle International
Pvt. Ltd.

Vinay Nadkarni,
Globus Stores Pvt. Ltd.

sells locally on payment of CGST and SGST. Such Accumulation would further lead to cash flow issues.

The said problem has been explained through the following illustration:

Impact of Section 49A			
Particulars		Amount	
Goods purchased from Outside state		1,000,000.00	
Input IGST @ 18%		180,000.00	
Goods purchased from inside state		1,000,000.00	
Input CGST @ 9%		90,000.00	
Input SGST @ 9%		90,000.00	
Sold @10% Profit within State		2,200,000.00	
Output CGST @ 9%		198,000.00	
Output SGST @ 9%		198,000.00	
CGST Liability Calculation			
Till 31st January		From 01st Feb	
Particulars	Amount	Particulars	Amount
Total Output	198,000.00	Total Output	198,000.00
Less : CGST Input	90,000.00	Less : IGST Input	180,000.00
Balance	108,000.00	Balance	18,000.00
Less : IGST Input	108,000.00	Less : CGST Input	18,000.00
Paid by Cash Ledger	NIL	Paid by Cash Ledger	NIL
(CGST Input is NIL)		(IGST Input is NIL)	
IGST Balance Remaining (180000-108000)	72,000.00	CGST Balance Remaining (90000-18000)	72,000.00
SGST Liability Calculation			
Till 31st January		From 01st Feb	
Particulars	Amount	Particulars	Amount
Total Output	198,000.00	Total Output	198,000.00
Less : SGST Input	90,000.00	Less : SGST Input	90,000.00
Balance	108,000.00	Balance	108,000.00
Less : IGST Input Remaining	72,000.00	To be Paid by Cash Ledger	108,000.00
To be Paid by Cash Ledger	36,000.00	(IGST Input is NIL)	
(SGST Input is NIL)		(SGST Input is NIL)	
(IGST Input is NIL)		(CGST Input Remaining)	72,000.00

From the above, it may be observed that the taxpayer is required to make higher cash payment despite carrying the input tax credit in the credit ledger. In the above example, it may be observed that prior to the amendment, the taxpayer was able to completely utilise the input tax credits and make cash payment of Rs. 36,000 towards balance liability. Whereas, post the introduction of Section 49A, the same scenario could result in higher cash outflow of Rs 108000 due to the inability to set off the available input tax credit of CGST completely.

We believe that these amendments create unnecessary and avoidable confusion in the market without solving the issue. Inter-alia for the reasons stated below, we believe that the Amendment needs to be reconsidered:

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1. The GST regime was introduced as a One Nation – One Tax regime and the law was never enacted to create such artificial divide either amongst States / Union Territories or between business entities operating in Multiple States / Union Territories. However, the current provision i.e. Section 49A allows CGST and SGST credits to be used only after exhausting IGST credits. This will lead to disproportionate CGST and SGST credits eventually leading to cash payments.

Due to this, the retailers selling to the end customers would prefer buying the merchandise locally, which eventually creates trade barrier between the States. In effect one of the main purpose of enacting GST would lose its relevance.

2. Typically, margins in the retail sector would not be sufficient to exhaust the entire credit pool and thereby, this would lead to credit accumulation perpetually. This would mean that the CGST credit accumulated (as highlighted in the above example) would not be of any use to the taxpayer if he/ she continues to do the retail business in the State.
3. **We wish to highlight that the provisions of Section 49A run counter to the Government's vision of bringing about reforms in the trade and industry enabling the ease of doing business.**

RECOMMENDATION:

Request the Government to issue clarification on the scope and restrictions placed under the newly inserted Section 49A by clarifying that the said amendment is applicable only in case of cross utilization; or Make suitable amendment to Section 49A by reinstating the language employed in the draft of proposed amendment.

We strongly believe that this representation on behalf of the entire retail industry would be considered. We would be glad if you could grant us an appointment to enable us to appear before you and place the facts in proper perspective.

We believe that this representation would be considered favorably.

Warm Regards,
For and on behalf of Retailers Association of India



Gautam Jain
Director – Finance & Advocacy

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