

Frequently Asked Questions (FAQ) on

Rule 36 (4)

Notification No. 49/2019 – Central Tax
dated 9th Oct 2019

By

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Q1. What is the original source of this Rule 36(4) ?

Section 43A (4) of CGST (Amendment) Act, 2018

which states that :

The procedure for availing input tax credit in respect of outward supplies not furnished under sub-section (3) shall be such as may be prescribed and

- ❖ *such procedure may include the maximum amount of the input tax credit which can be so availed, not exceeding*
- ❖ **twenty percent** *of the input tax credit available, on the basis of details furnished by the suppliers under the said sub-section.*

Note : This section i.e. Section 43A is not effective as on date

Q2. Example of 20% restriction ?

Circular No. 123/42/2019 – GST dated 11th Nov 2019 states that :

- ❖ **Total Eligible ITC : 10 Lacs**
- ❖ **Total ITC as per GSTR-2A : 6 Lacs**
- ❖ **ITC to be claimed as per Rule 36 (4) : 7.2 Lacs only {6 Lacs + 1.2 Lacs (20% of 6 Lacs)}**

Q3. Is it still mandatory to check conditions of Section 16 of CGST Act, 2017 for claiming ITC ?

YES.

Circular No. 123/42/2019 – GST dated 11th Nov 2019 states that :

“The conditions and eligibility for the ITC that may be availed by the recipient ***shall continue*** to be governed as per the provisions of ***Chapter V of the CGST Act*** and the rules made thereunder.”

Q4. Whether govt. portal / common portal will calculate the 20% amount and inform about the restriction ?

NO.

Circular No. 123/42/2019 – GST dated 11th Nov 2019 states that :

“This being a new provision, the restriction is ***not imposed through the common portal*** and it is the ***responsibility of the taxpayer*** that credit is availed in terms of the said rule and therefore, the availment of restricted credit in terms of sub-rule (4) of rule 36 of CGST Rules shall be done ***on self-assessment basis by the tax payers.***”

Q5. Whether the 20% restriction applies on Imports, RCM, ISD also ?

NO.

Circular No. 123/42/2019 – GST dated 11th Nov 2019 states that :

“The taxpayers may avail **full ITC in respect of IGST paid on import, documents issued under RCM, credit received from ISD** etc. which are outside the ambit of sub-section (1) of section 37, provided that eligibility conditions for availment of ITC are met in respect of the same.”

Q6. Date of applicability of this Rule 36(4) ?

9th Oct 2019.

Circular No. 123/42/2019 – GST dated 11th Nov 2019 states that :

“The restriction of 36(4) will be applicable only on the invoices / debit notes on which credit is availed after 09.10.2019”

Q7. Whether we need to check this 20% restriction for the invoices dated prior to 9th Oct 2019 ?

YES, but only if you are claiming / availing the ITC of those invoices AFTER 9th Oct 2019.

Circular No. 123/42/2019 – GST dated 11th Nov 2019 states that :

*“The restriction of 36(4) will be applicable only on the invoices / debit notes on which **credit is availed after 09.10.2019**”*

Q8. Whether we need to check the 20% restriction supplier wise ?

NO.

Circular No. 123/42/2019 – GST dated 11th Nov 2019 states that :

“The restriction imposed is ***not supplier wise***. The credit available under sub-rule (4) of rule 36 is linked to total eligible credit ***from all suppliers*** against all supplies whose details have been uploaded by the suppliers”

Q9. Whether we need to check the 20% on whole ITC or only the eligible ITC ?

ONLY ELIGIBLE ITC.

Circular No. 123/42/2019 – GST dated 11th Nov 2019 states that :

“The calculation would be based on ***only those invoices which are otherwise eligible for ITC.***

Accordingly, those ***invoices on which ITC is not available*** under any of the provision (say under sub-section (5) of section 17) would ***not be considered for calculating 20 percent*** of the eligible credit available.”

Q10. Which day's GSTR-2A we need to check for 20% ITC restriction ?

11th day of the month succeeding the relevant month (Notification No. 46/2019)

Circular No. 123/42/2019 – GST dated 11th Nov 2019 states that :

“The taxpayer may have to ascertain the same from his auto populated FORM GSTR 2A as available on the due date of filing of FORM GSTR-1 under sub-section (1) of section 37”

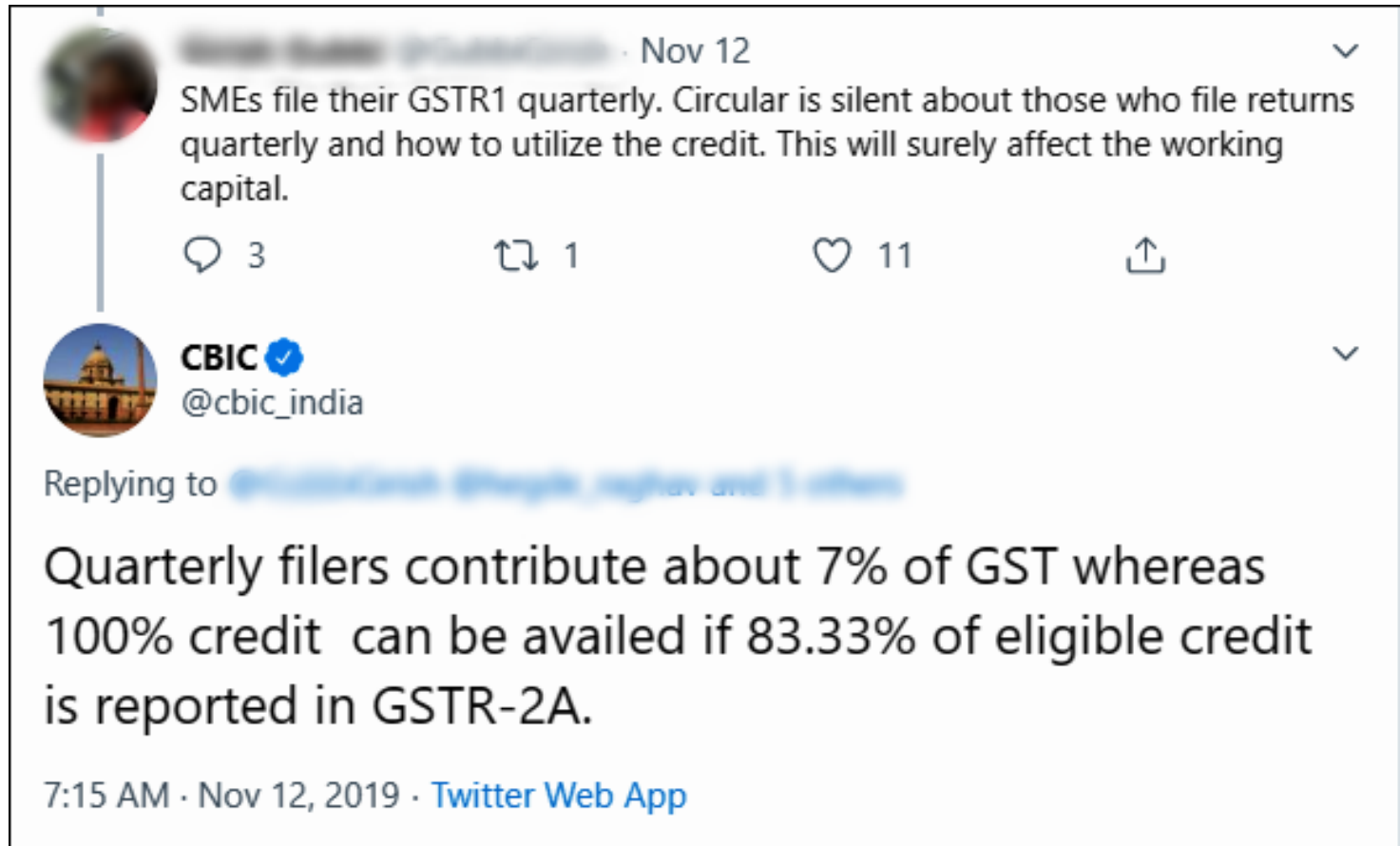
Q11. When can I claim the full eligible ITC ?


When invoices accumulating to 83.33 % of your total eligible ITC are uploaded by your suppliers in their GSTR-1.

Circular No. 123/42/2019 – GST dated 11th Nov 2019 states that :

“The taxpayer may avail *full ITC* in respect of a tax period, as and when the invoices are uploaded by the suppliers to the extent Eligible ITC / 1.2.”


Q12. Whether the 20% restriction applies on assessee's filing Quarterly GSTR-1?



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SMEs file their GSTR1 quarterly. Circular is silent about those who file returns quarterly and how to utilize the credit. This will surely affect the working capital.

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Quarterly filers contribute about 7% of GST whereas 100% credit can be availed if 83.33% of eligible credit is reported in GSTR-2A.

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Further clarification awaited from the government.

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