THAT HAVE COME OUT WITH IPOs SINCE JULY 2017

Taxman Asks Cos to Reverse Credit Claimed on IPO Expenses

Interprets listing of shares as stock trading which is an exempt service under GST provisions; experts argue proceeds are for 'furtherance of business'

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New Delhi: More than 150 companies that have raised funds through initial public offering (IPO) since July 2017 are now staring at additional goods and services tax (GST) liability.

Tax authorities have started issuing notices to these companies, asking them to reverse credit claimed on expenses for listing of the shares, people aware of the matter said.

The authorities argue that listing of shares is equivalent to trading of securities, which is an exempted service as per the GST provisions, hence tax credit claimed by the companies should be reversed.

Tax experts, however, said the treatment of IPO as security trading may not be the correct interpretation as the proceeds are used for "furtherance of business", which is not exempted under GST provisions.

As per Section 17(2) and 17(3) of the Central GST Act, 2017, the quantum of input tax credit allowed for taxable supply cannot be claimed on exempted supply of goods or services. Such credits, if claimed, need to be reversed.

"...companies need to reverse the credit that they claimed," a senior tax official said. "We have already sent notices to a few companies and more will be sent soon."

Another official said around 24 notices seeking reversal of credit have been sent out to companies since November.

No Offerings

GST authorities send notices to cos that came out with IPOs

EXPECTED TO SEND OUT MORE NOTICES; 168 IPOS POST JULY 2017

About 24 cos have received notices since Nov

What tax authorities say...

Listing of securities is also a security transaction

GST law exempts security transactions

Cos need to reverse credit claimed on exempt supplies

What tax experts say...

Tax law is ambiguous

Tax authorities taking narrow interpretation

It would lead to increased litigation

Tax authorities had taken a similar view under the erstwhile service tax regime. They believe that the public offer was also a transaction in securities and thus companies needed to reverse the credit claimed in lieu of that.

Tax experts said reversing tax credit would amount to significant tax liability, considering the total fund raising through this route.

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As per Prime Database, about 168 companies raised over ₹3.10 lakh crore through IPOs between July 1, 2017 – the day GST regime came into effect – and December 2022.

Experts said there is ambiguity in the CGST Act provision and the tax department's interpretation of IPO as security trading could lead to litigations. "An IPO, a process of offering shares to the public, allows a company to raise equity capital and is different from sale of securities," said Abhishek A Rastogi, founder of law firm Rastogi Chambers. "Accordingly, there should not be any reversal of credit in case of an IPO as securities are not even generated till the process is complete."

MS Mani, partner at consultancy major Deloitte India, said, "The term 'furtherance of business' used in Section 16 of the CGST Act is wide enough to include certain expenses, which may not have a straight-line relationship with the taxpayer's business. It is essential to explain the same to the GST authorities and convince them on the linkages of such expenses with the business in order to avoid litigation."

Tax authorities had taken a similar view under the erstwhile service tax regime, and asked many companies to reverse the credit claimed in lieu of that.

Experts said this interpretation could lead to tax claims not only from the companies that listed their shares but also those entities that initially invested in unlisted companies. "In some cases, this value of 'exempted supply' is becoming even more than value of 'taxable supply', leading to reversal of a significant amount of common input tax credit for the industry," Saurabh Agarwal, tax partner at EY, said.

"The appropriate procedures being set by the industry in this regard can help in reducing the cost arising on this account," he added.