

# FEDERATION OF CORRUGATED BOX MFRS. OF INDIA

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To,  
**The Constituent Members of FCBM**

**Sub: Fake Invoice in GST - An Advisory and GST input reconciliation guidelines**

GST input reconciliation guidelines and Fake Invoice advisory is prepared by the experts and senior members, are circulated herewith for the benefit of members.

Please go through the attachments carefully.

With Regards,

**Alok Gupta**  
**Chairman, Taxation Committee**  
**& Taxation Team 2021**

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## **GST FAKE INVOICE - CAN BE THE DEATH KNELL OF YOUR BUSINESS – AN ADVISORY**

In view of the rising incidence of unscrupulous elements involved in the racket of passing ITC by issuing Fake Invoices, the Finance Ministry has laid down stringent Provisions to safeguard revenue. If one is caught even as a link in such a web, it may very well be the death knell of a business!!

**The above issue was discussed frequently among the members, and as the members felt an advisory is needed. Liability, due to denial of input credit on this ground can multiply by 20 times or more considering consequences of interest, penalty under GST & Income tax. We prepare this, just for the guidance, it's not a legal opinion, so act on your own will or consult with your legal advisor before application of advisory.**

### **What is A Fake Invoice?**

- An Invoice issued without the actual movement of goods or supply of services.
- An Invoice issued on Party A but goods delivered to party B.
- Invoices issued by shell companies for circular trading for availing ITC without actual movement of goods or provision of services.
- Invoices issued by an entity found to be non - existent at the premises registered under GST.

### **What are the Purposes of Fake Invoices?**

- To avail fake ITC for offsetting GST output liability.
- To increase purchases with the intent of evading income tax & generating cash.
- To inflate turnover with the purpose of maintaining or increasing bank credit limits.
- To claim false refunds against exports.
- To earn commission on supply of fake invoices.

### **What are the Actions that the Department can take to Safeguard Revenue?**

The department has the power to take coercive action against the issuer and/or availer of Fake ITC, right from the source to the last entity where such ITC has been passed.

For example, if Mill A supplies Paper to Agent B, (the agent B is found to be non-existent, eventually leading to cancellation of their GSTIN), the agent supplies paper to corrugator C, who in turn supplies boxes to their Customer X who packs their product for sale in India as well as to Customer Y who is packing their goods for Export, in this scenario all the entities will be declared as either Availer or Issuer of Fake Invoices by artificial data analysis intelligence by **Directorate General of Analytics and Risk Management (DGARM)**.

In the above scenario recovery proceeding can be initiated from the paper suppliers down to the ultimate B2B customers! The customer X may be asked to reverse the credit & export refund of customer Y may be disallowed. **With the names of the corrugator being flagged off by DGARM, the customers may be wary of continuing business.**

The department can take the following actions -

- Issue Notices for reversal of ITC availed, with Interest & penalty. Penalty amount will be equal to false ITC claimed or passed on.
- Issue summons to collect & record evidence.

- Search & Seizure of premises by anti-evasion department
- Blocking of E- Way Bill Facility
- Blocking of ITC in the E - Credit Ledgers
- Cancellation/Suspension of GST Registration
- Denial of Export IGST Refunds
- Attachment of Property & Bank Accounts to recover taxes.
- Judicial arrest & imprisonment from 6 months up to 5 years, subject to prescribed evasion amount.

**The Income Tax Department Actions are expected to follow suit as the next step to GST recovery proceedings -**

- Disallowance of purchase expense booked against fake invoice & payment of income tax at applicable rates on such amounts with interest.
- Penalty equivalent of such ITC amount!! The assessing officer has the discretion to impose penalty up to 200%.
- Scrutiny of books of accounts for the particular AY & other periods as well.

**What is the legal recourse & safeguards available to the tax payer?**

- To check the credentials of the supplier & GST Returns filing status.
- To give suitable reply to the notices/SCN, justifying the actual receipt of goods along with copies of such purchase invoices, EWB; documents justifying the consumption of such goods in the production of taxable goods & the supply invoices thereof, collaborated with PO of customers as well as bank statements highlighting the payments made to such supplier. It is also advisable to submit statements of annual liability discharged through E - Credit & E - Cash Ledgers up to the year in question to justify payment of tax on value addition in the business.
- On receipt of such notices, one should also write to the source supplier seeking suitable explanation for the same as well as take an account confirmation.
- To attend the summons in person and give hand written evidence as required.
- Once SCN has been served, the tax payer has the option to go for appeal after pre depositing the prescribed percentage of the tax involved.
- One can also reverse & pay the ITC & interest under protest & wait for final adjudication of the departmental investigations. However, this will not lead to a clean chit & deletion of name from the list of fake invoices receiver/availer.
- Writ petition can be filed in the division bench of High Court, against the department, challenging the constitutional validity of reversal of ITC sought by the department. This is a long-drawn battle usually ending in Supreme Court.
- The best option would be that the source from which the trail has started, resolves the issue with the department after clearing their liability & justifies that they are not a "Non-Existent Entity" even though they were not temporarily available at the registered premises. **Continued patronage to such entities, weakens the case in the eyes of the department,**

**appellate authorities & courts of law on one side & also leads to complacency & inaction on the part of the errant source supplier.**

- In case the source of the transactions does not resolve the issue, it is well within the powers of the department to recover the ITC amount, along with interest & penalty from the availer by the various coercive actions as mentioned above.

***Hence, in light of the above, it is advisable to tread with caution & not be a link in Fake Invoice Chain, if unknowingly linked or expected to be caught in the web, before warned to severe ties with such entities NOW or be prepared for the WORSE!!***

## **We should forward this letter to all our suppliers**

**Dear Seller,**

**Budget 2021 has amended Section 16 of the CGST Act, through the Finance Bill. According to the change, a new condition is added as clause (aa) under Section 16(2) for ensuring genuine Input Tax Credit (ITC) claims.**

**Recipients of supplies can now claim ITC only against invoices and debit notes which find a place in their suppliers' GSTR-1 and communicated to them in GSTR-2A or GSTR-2B.**

**Accordingly, the Quarterly Returns with Monthly Payment (QRMP) Scheme is introduced w.e.f 1st January 2021 for eligible taxpayers to file their Form GSTR-1 and Form GSTR-3B returns on a quarterly basis while paying their tax dues on monthly basis.**

**Under the QRMP scheme, Invoice Furnishing Facility (IFF) allows the taxpayer to submit the B2B invoice details of sale transactions (both inter-state and intra-state) along with debit and credit notes of the B2B invoices issued on monthly basis.**

**For ensuring genuine Input Tax Credit (ITC) claims, we are reconciling our purchases with GSTR 2A and taking actions accordingly. All suppliers are requested to file timely on monthly basis.**

**Notification No. 78/2020 – Central Tax, has been issued to make HSN code mandatory on invoices with effect from 01.04.2021.**

**4 digits HSN code by taxpayers whose aggregate turnover in the preceding financial year is up to Rs. 5 crores**

**6 digits HSN code by taxpayers whose aggregate turnover in the preceding financial year is more than Rs. 5 crores**

**w.e.f. 1st April 2021, supplier invoices without HSN code or HSN code less than 4 digits, will not be accepted**