

# SKKA IDT ALERT

35/2022 dt 31<sup>st</sup> December, 2022

## WEEKLY UPDATES

### KEY HIGHLIGHTS:

1. Circular 183/15/2022: Clarification regarding manner of dealing with the difference in Input Tax Credit (ITC) availed in Form GSTR-3B vs. Form GSTR-2A for the financial year 2017-18 and 2018-19

### INTRODUCTION

The GST entrance throughout the course of recent months has seen a few changes and updates. All the new updates are rolled out on a regular basis to help and assist the taxpayers in smooth and effective documentation of their GST returns.

Our Team at SKKA brings forth you weekly updates to ensure your business remains tax compliant.

### A. GUIDELINES TO DEAL WITH DIFFERENCE IN ITC AVAILED IN FORM GSTR-3B AS COMPARED TO FORM GSTR-2A FOR FY 2017-18 & 2018-19 [CIRCULAR No. 183/15/2022-GST dated 27.12.2022]

Regardless of GST finishing a span of 5 years of its presence, its execution is yet tormented by many issues counting debates with respect to ITC and related reconciliations. As of late, one such issue is disallowance of ITC availed in respective GSTR-3B due to mismatch with GSTR-2A. Form GSTR-3B is a summary return for discharging output tax liabilities and Form GSTR-2A is an auto-populated GST return that shows outward invoices entered by the suppliers. However, the Form GSTR-2A was made available to the taxpayers on the common portal in September, 2018. During the financial years 2017-18 and 2018-19 which was the initial stage of implementation of GST, many suppliers had failed to furnish the correct details of outward supplies in their GSTR-1, that had led to certain discrepancies in GSTR-2A of their recipients. However, such assesses have been receiving notices from the department seeking an explanation pertaining to the such mismatch in ITC availed in GSTR-2A and GSTR-3B and thereby reversing the ITC along with interest and penalty in absence of a satisfactory response. **In this regard, CBIC has issued a clarificatory circular to deal with the mismatch in the ITC availed in GSTR-2A and GSTR-2B for the FY 2017-18 and 2018-19.** The Board has led down certain scenarios of mismatch between GSTR-2A and GSTR-3B and the manner and procedure of dealing such cases which is as follows:

- Where the supplier has failed to file FORM GSTR-1 for a tax period but has filed the return in FORM GSTR-3B for said tax period, due to which the supplies made in the said tax period do not get reflected in FORM GSTR-2A of the recipients.
- Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but has failed to report a particular supply in FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the recipient.
- Where supplies were made to a registered person and invoice is issued as per Rule 46 of CGST Rules containing GSTIN if the recipient, but supplier has wrongly reported the said supply as B2C supply,

instead of B2B supply, in his FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the said registered person.

- **Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has declared the supply with wrong GSTIN of the recipient in FORM GSTR-1.**

In such cases, the Board has clarified that the proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A. He shall then ascertain fulfilment of the following conditions of Section 16 of CGST Act, 2017 in respect of the input tax credit availed on such invoices by the said registered person:

- i. That he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;
- ii. That he has received the goods or services or both;
- iii. That he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier.

**Also, the proper officer shall check whether any reversal of input tax credit is required to be made in accordance with section 17 or section 18 of CGST Act and also whether the said input tax credit has been availed within the time period specified under sub-section (4) of section 16 of CGST Act.**

Section 16(2)(c) of the CGST Act, 2017 provides that the recipient is entitled to claim input tax credit when the tax paid on purchases made by him is actually paid to the Government by the Supplier.

**Indirectly the burden is on the recipient to prove that tax has been actually paid to the Government by the supplier. Therefore, it is one of main reasons wherein the Revenue authorities issue notices to the taxpayers regarding the mismatch between GSTR-2A and GSTR-3B.**

Further, CBIC also clarifies that for verification of one of the conditions for eligibility of availing ITC in clause (c) of sub-section (2) of section 16 of CGST which provides that tax on the said supply has been paid by the supplier, the proper officer may take following action:

Sl. No	Issue	Clarification	Remarks
1.	Where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs 5 lakh	The registered person shall produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have	<b>It is to be noted in both the situations that the quantification of Rs. 5 Lakh is with respect to a particular supplier, which means that the claimant shall produce a certificate from the CA or CMA only when ITC pertaining to a particular supplier is more than Rs. 5 Lakhs. In</b>

		actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B.	<b>all other cases when the ITC is less than Rs. 5 Lakhs the claimant shall produce a certificate from the supplier.</b>  <b>However, it is important to note that the CA/CMA has to certify that the tax on such invoices has actually been remitted by the said supplier. The circular is silent as to how to verify the payment of tax by the supplier. The CA/CMA can certify the payment of tax by the recipient to the supplier but certifying that the supplier has paid the tax to the govt. is in our view a difficult proposition. The said proposition is already a subject matter of challenge before various High Courts on the principle of doctrine of impossibility. Thus, it would be interesting to see how things turn up regarding the certificate issuance to proof payment of tax by supplier.</b>
2.	Where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is upto Rs 5 lakh	The claimant shall produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.	

#### Conclusion-

The Circular in our view is a welcome step by CBIC to end a dispute to huge demands of ITC being raised by the department on account of mismatch. However, the earlier jurisprudence laid by Hon'ble Apex Court in judgments such as Commissioner of Trade & Taxes, Delhi and others Vs. Arise India Limited and others [TS-2-SC-2018- VAT] wherein it was held that ITC cannot be denied to be a bonafide purchaser in absence of connivance should also hold good in GST law. We would also wait for the outcome of challenge to vires of section 16(2)(c) of the CGST Act, 2017 in times to come.

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