

GST Alert 10/2022-23

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Clarification on Input Tax Credit Mismatch for FY 2017-18 and 2018-19

Since last 3 and more years, taxpayers have been facing demands on account of difference between Input Tax Credit (ITC) as availed in GSTR 3B and that reflecting in GSTR 2A. This issue was more grave in the first 2 years of implementation of GST – 2017-18 and 2018-19 because the mechanism of GSTR 2A was not available for a better part of the said years. Secondly law also allowed avilment of ITC beyond (in prescribed percentile) what was reflected in GSTR 2A.

Due to lack of clarity, during Scrutiny, Audit and Investigations proceedings these differences were resulting in tax demands even though there was no codified prescription for matching of ITC between these 2 forms. Whatever law was there was not complete by itself. Government of Maharashtra recognized this problem and issued a circular in February 2022 to provide out of the box solutions, Government of India through CBIC has now issued a similar sounding circular no 183/15/2022-GST dated 27.12.2022.

Implications of this circular are retroactive in nature with limitations discussed hereinbelow

Following is gist of this circular:

1. Situations covered in this clarification

It covers following ITC mismatch situations only. ITC mismatch occurring for any other reason shall not be covered by this clarification:

- A. Where the supplier has failed to file his GSTR-1 for a period but has filed the return GSTR-3B for that period, due to which the supplies made in the said period do not get reflected in GSTR-2A of the recipients.



- B. Where the supplier has filed GSTR-1 as well as return in GSTR-3B for a tax period, but has failed to report a particular invoice in GSTR-1, due to which the said invoice does not get reflected in GSTR-2A of the recipient.
- C. Where the supplier issues a B2B invoice containing GSTIN of the recipient, but he has wrongly reported the said invoice as B2C in his GSTR-1, due to which the said invoice does not get reflected in GSTR-2A of the recipient.
- D. Where the supplier has filed GSTR-1 as well as return in GSTR-3B for a tax period, but he has declared the invoice with wrong GSTIN of the recipient in GSTR-1.

2. Process to be followed by department in case where ITC availed in GSTR 3B is more than GST reflecting in GSTR 2A

A. Step 1

The proper officer shall first seek the details from the registered person (recipient) regarding all the invoices on which ITC has been availed by him in his GSTR 3B but which are not reflecting in his GSTR 2A.

B. Step 2

Officer shall then ascertain whether following conditions of Section 16 of CGST Act are satisfied by the registered person:

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



C. Step 3

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

D. Step 4

In order to verify the condition that tax on the said mismatched invoices has been paid by the supplier, the following action may be taken by the proper officer:

a. Certificate from a Chartered Accountant or Cost Accountant if mismatch exceeds 5 lacs

In case, where the mismatch in ITC in respect of a supplier for the said financial year exceeds Rs 5 lakh, the officer shall ask the registered person to 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 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 GSTR 3B.

Certificate issued by CA or CMA shall contain UDIN. UDIN of the certificate issued by CAs can be verified from ICAI or ICMAI websites.

b. Certificate from the Supplier if mismatch is below 5 lacs

In cases, where the mismatch in ITC in respect of a supplier for the said financial year is below Rs. 5 lakh, the officer shall ask the claimant to produce a certificate from the concerned supplier (whose invoices are missing) 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 GSTR 3B.

Please note that above action will have to be taken for each individual supplier separately whose invoices do not reflect in GSTR 2A.

3. In which situations this circular will not be applicable

As provided in the Circular, the solutions provided in it will not be applicable in following cases:

- A ITC availed for any period after FY 2017-18 and 2018-19.
- B Where the recipient claims ITC of FY 2017-18 in GSTR-3B of Oct'18 to Mar'19 and the Supplier has not reported the said invoice in its GSTR 1 up to the month of March 2019 and which is filed after the due date of March 2019.
- C These instructions will apply only to the ongoing proceedings in scrutiny, audit, investigation for FY 2017-18 and 2018-19 and not to the proceedings where the taxpayer has paid the taxes and concluded the same. However, these instructions will apply in those cases for FY 2017-18 and 2018-19 where any adjudication or appeal proceedings are still pending. In other words, taxes already paid on account of mismatches will not be eligible for refund.

Conclusion:

Its been more than 5 years, much water has flown under the bridge, many taxpayers have borne pain on this one issue, many representations were made to all and sundry and the board has now chosen to speak. No one can deny the fact that the circular is benevolent in many respects, but one question begs an answer, why is this circular drafted as if it's a relaxation, there was utter vacuum in the GST law till Jan 2022 on this question of ITC mismatch and the mechanism of ITC matching never took off in the way it was envisaged, the recipients still have no way to force the



supplier in filing the missed invoices. Judgements from various high courts have struck down demands based on GSTR 2A based mismatches and still the circular comes as a relaxation.

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