LKS UPDATE

An e-update to clients from Lakshmikumaran & Sridharan

30 DECEMBER 2022

INDIRECT TAX

ITC mis-match in Form GSTR-3B and GSTR-2A

UPDATE NO. 53 OF 2022

Lakshmikumaran & Sridharan attorneys

exceeding expectations
SINCE 1985

CLARIFICATION TO DEAL WITH DIFFERENCE IN INPUT TAX CREDIT AVAILED IN FORM GSTR-3B AS COMPARED TO THAT DETAILED IN FORM GSTR-2A FOR FY 2017-18 AND 2018-19

Circular No. 183/15/2022-GST, dated 27th December 2022

- During the Financial Years (FY) 2017-18 and 2018-19, there may have been certain discrepancies between the amount of Input Tax Credit ("ITC") availed by the registered persons in their returns in FORM GSTR-3B and the amount as available in their FORM GSTR-2A as in many cases suppliers have failed to furnish the correct details of outward supplies in their FORM GSTR-1.
- Now, CBIC has laid down certain procedure for verification of ITC in cases involving differences between the amount of ITC availed by registered persons in their FORM GSTR-3B as compared to the amount reflected in their FORM GSTR-2A during FY 2017-18 and 2018-19.

S. No.	Scenarios	Clarification
a.	Where the supplier has failed to file FORM GSTR-1 for a tax period but has filed the return in FORM GSTR-3B for the 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.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure: 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. The proper officer shall then ascertain fulfillment of the following conditions of Section 16 of CGST Act in respect of the ITC 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
b.	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.	
c.	Where supplies were made to a registered person and invoice is issued as per Rule 46 of CGST Rules containing GSTIN of the recipient, but supplier has	

S. No.	Scenarios	Clarification
	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.	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. Besides, the proper officer shall also check whether any reversal of ITC is required to be made in accordance with Section 17 or Section 18 of CGST Act and also whether the said ITC has been availed within the time period specified under sub-section (4) of Section 16 of CGST Act.
d.	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.	Where the supplier has furnished FORM GSTR-1 with wrong GSTIN of the recipient, the proper officer of the actual recipient shall intimate the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly, that ITC on those transactions is required to be disallowed, if claimed by such recipients in their FORM GSTR-3B. However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person, whose GSTIN has been mentioned wrongly, and such action will be pursued as an independent action.

- The Circular clarified that in order to verify the condition of clause (c) of sub-section (2) of Section 16 of CGST Act that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer:
  - In case, 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 proper 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 FORM GSTR 3B. Further, certificate issued by CA or CMA shall contain verifiable UDIN.

  - In cases, 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 proper officer shall ask the claimant to 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.

- It has been further clarified that for the period FY 2017-18, as per proviso to section 16(4) of CGST Act, the aforesaid relaxations shall not be applicable to the claim of ITC made in the FORM GSTR-3B return filed after the due date of furnishing return for the month of September, 2018 till the due date of furnishing return for March, 2019, if supplier had not furnished details of the said supply in his FORM GSTR-1 till the due date of furnishing FORM GSTR-1 for the month of March, 2019.
- It is be noted that the aforesaid clarifications are case specific and are applicable to the bonafide errors committed in reporting during FY 2017-18 and 2018-19. Further, these guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.
- Further, these instructions will apply only to the ongoing proceedings in scrutiny/audit/ investigation, etc. and to the adjudication and appeal proceedings which are pending for FY 2017-18 and 2018-19. These instructions will not apply to the completed proceedings.

LKS COMMENTS

- This Circular is in line with Maharashtra Internal Circular No. 02A of 2022 dated 25 Feb 2022 which deals with guidelines with respect to legal issues pertaining to return scrutiny for tax periods 2017-18 and 2018-19.
- These clarifications are a welcome step to reduce ongoing litigation on the issue of mismatch between ITC availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19.
- The Circular suggests that recipient may produce a certificate from the Chartered Accountant (CA) or the Cost Accountant (CMA) in case

differences exceeds Rs.5 lakh or produce a certificate from the concerned supplier in case differences are up to Rs.5 lakhs in order to certify that supplies have actually been made by the supplier to the said recipient and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B.

- However, it has to be seen if such a certificate can actually be obtained by a bonafide recipient from a non-compliant supplier.
- These clarifications are case specific which are applicable to bonafide errors committed in reporting during FY 2017-18 and 2018-19. These guidelines cannot be used for the interpretation of provision of GST law.
- These clarifications are only applicable to ongoing proceedings and are not applicable to the completed proceedings.

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