

**Analysis on clarification
provided by CBIC vide
various circulars pursuant to
48th GST Council Meeting**

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Clarification to deal with ITC mismatch between GSTR- 3B vs. GSTR-2A for F.Y. 2017-18 and 2018-19

Notices are being issued by the tax officers regarding mismatch between ITC available in GSTR-2A and that availed in GSTR-3B. Now, clarification has been issued clarifying the procedure for verification of said ITC for the FY 2017-18 and 2018-19.

Scenarios		Procedure
GSTR-1	GSTR-3B	
Not filed	Filed	<ul style="list-style-type: none"> • The Proper Officer shall ask the details regarding all the invoices against which ITC has been availed by the registered person (beneficiary) in his GSTR-3B but not reflecting in GSTR-2A. • Further, the Proper Officer shall also check: <ul style="list-style-type: none"> ✓ Whether the following conditions of Section 16 of the CGST Act have been fulfilled by the said registered person: <ul style="list-style-type: none"> ○ Possession of a tax invoice/ debit note/ such other tax paying document- Section 16(2)(a) ○ Received goods or services or both- Section 16(2)(b) ○ Payment has been made along with GST to the supplier ○ Said tax has been actually paid to the Government- Section 16(2)(c)** ✓ Whether any ITC reversal is required in accordance with Section 17 or 18 of the CGST Act. ✓ Whether said ITC has been availed within the time period specified under Section 16(4).
Filed but not reported certain supply	Filed	
Filed but wrongly reported B2B supply as B2C	Filed	
Filed but reported wrong GSTIN*	Filed	

* The Proper Officer of the actual recipient to intimate the concerned jurisdictional officer of the registered person, whose GSTIN has been mentioned wrongly by the supplier, to disallow ITC on those, if any claimed in their GSTR-3B. **Allowance of ITC to the actual recipient shall not depend upon the aforesaid action by the Proper Officer** and such action will be pursued independently.

** Actions to be taken by the proper officer to ensure compliance of Section 16(2)(c) of the CGST Act:

S. No.	Scenario	Procedure
1.	Where ITC mismatch between GSTR-3B and GSTR-2A > Rs. 5 lakh	CA or CMA Certificate: The proper officer shall ask the actual recipient to produce a CA or CMA Certificate for the concerned supplier certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to them and the tax on such supplies has been paid by the said supplier in his return in GSTR-3B. Further, such certificate issued by CA or CMA shall contain UDIN.
2.	Where ITC mismatch between GSTR-3B and GSTR-2A ≤ Rs. 5 lakh	Declaration by the supplier: The proper officer shall ask the actual recipient to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the actual recipient and the tax on said supplies has been paid by the said supplier in his return in GSTR-3B.

Key Points:

- Time limit to avail ITC as per Section 16(4) of the CGST Act:
 - **FY 2017-18**- Till the due date of furnishing GSTR-3B for the month of March 2019 [as extended vide proviso to Section 16(4)] by the actual recipient.
 - **FY 2018-19**- Till the due date of furnishing GSTR-3B for the month of September 2019 by the actual recipient.
- Further, the relaxation for claiming ITC benefit upto extended period for the period **FY 2017-18, shall not be available for the taxpayers who have filed their GSTR-3B** after the due date of furnishing GSTR-3B for September, 2018 till the due date of furnishing of GSTR-3B for March, 2019, **if their supplier had not furnished details of the relevant supply in his GSTR-1 upto the due date of filing of GSTR-1 of March, 2019.**
- **Applicability**- Aforesaid clarification will apply only to the **ongoing proceedings in scrutiny/audit/ investigation, etc. and where any adjudication or appeal proceedings are still pending** and **not** where the **proceedings have been completed.**

Tattvam Comments:

- The clarifications provided vide the subject circular should be appreciated as it provides a big relief to the registered persons who are regularly receiving notices on account of ITC mismatch between GSTR-2A and GSTR-3B for the FY 2017-18 and 2018-19 as GSTR-2A was not made available to the taxpayers on the common portal during the initial stages of implementation of GST.
- No clarification has been provided regarding cases where the mismatch between GSTR-3B and GSTR-2A is on account of non-filing of GSTR-3B by the supplier or where the supplier has short paid tax in their GSTR-3B. Therefore, such cases would have to be handled on the basis of judicial precedents.

POS in case of transportation of goods outside India

- Section 12 of IGST Act, 2017 deals with place of supply provisions where both supplier and recipient of service is located in India
- Place of supply in relation to services provided by way of transportation of goods is governed by Section 12(8) of the Act.
- As per Proviso to Section 12(8) where transportation of goods is to a place outside India, POS will be place of destination of such goods
- To illustrate
 - Mr. X (Recipient of services) – located in Delhi
 - Mr. Y (Supplier of transportation service) – located in West Bengal
 - Goods transported to Singapore
 - POS = Singapore
- In above scenario, since POS is not in the same state as that of recipient, doubts were being raised with respect to eligibility of ITC of such services.
- However, now the CBIC *vide* Circular 184/16/2022 – GST has clarified that Section 16 and Section 17 does not contain any provision which restrict ITC availment by recipient located in India with respect to services, place of supply of which falls outside India. Therefore, in such case, ITC shall be available.
- Further, it is also clarified that in such case, the state code to be mentioned by supplier of transportation service i.e. Mr. Y in its GSTR 1 shall be **“96 – Foreign Country”**.

Tattvam Comments:

- The above clarification is in line with object of GST i.e. to ensure seamless flow of credit through the supply chain.
- However, clarity with respect to eligibility of credit of CGST/IGST where POS falls in a state different from state of the recipient is still awaited .

Manner of re-determination of demand u/s 75(2) of CGST Act

- CBIC vide circular No.185, has issued clarification in respect of SCN held unsustainable u/s 74(1) for reason that charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established and in pursuance of same matter is remanded back to re-compute the amount of tax liability under Section 73(1).

Time Limit for re-determination of tax, interest and penalty

- Vide the above circular, it has been clarified that, in the instant case, the time limit to pass the revised order shall be two years from the date of communication of above order/direction in accordance with Section 75(3) of the CGST Act.

Manner of re-determination of demand u/s 75(2) of CGST Act

Re-Computation of demand

- Further, for the purpose of re-computing the amount of tax to be paid, it is clarified that where the SCN has been issued under Section 74(1) within a period of 2 years and 9 months from the due date of furnishing of annual return/date of erroneous refund, then proceedings shall be deemed to be continued under Section 73(1) of the CGST Act, otherwise the proceedings shall be liable to be dropped.
- Where the SCN under section 74(1) has been issued for multiple F.Y., and SCN has been issued before the expiry of the time period as per section 73(2) for one F.Y but after the expiry of the said due date for the other F.Y.s, then the amount payable in terms of section 73 shall be re-determined only in respect of that F.Y. for which SCN was issued before the expiry of the time period as specified in section 73(2).

For Example

In case SCN has been issued under Section 74 of CGST Act for tax not paid or short paid or where ITC has been wrongly availed or utilized

Disputed Period	Due Date of Notice under section 73	Due Date of Notice under section 74	Due date of Notice in case of redetermination	Status of Proceedings
2021-2022	30.09.2025	30.06.2027	Upto 30.09.2025	Proceedings to be Continued u/s 73(1)
			After 30.09.2025	Proceedings have to be dropped being hit by limitation of time as specified in section 73

In case SCN has been issued under Section 74 of CGST Act for erroneous refund claimed

Disputed Period	Date on which refund claimed	Due Date of Notice under section 73	Due Date of Notice under section 74	Due date of Notice in case of redetermination	Status of Proceedings
2021-2022	31.03.2023	31.12.2025	30.09.2027	Upto 31.12.2025	Proceedings to be Continued u/s 73(1)
				After 31.12.2025	Proceedings have to be dropped being hit by limitation of time as specified in section 73

Clarification on GST implications on No Claim Bonus and generation of E-invoice

Particulars	Clarification
GST implications on the deduction of 'No Claim Bonus' amount deducted from the future insurance premium.	<p>a) 'No Claim Bonus' amount deducted in the next premium amount shall not be liable to GST under agreeing to the act. This is for the reason that there is no underlying supply from the insurance company to the insurer.</p> <p>b) 'No Claim Bonus' amount mentioned on the invoice and insurance policy shall be allowed as discount in terms of Section 15(3)(a) of the CGST Act. Thus, GST shall be payable after deduction of 'No Claim Bonus' amount from the Total Premium amount.</p>
Generation of E-invoice is mandatory for the entity as a whole or specific to supply of goods or services {Notification No. 13/2020 - CT dated 21 March 2020}	<p>The Notification provides exemption from issuance of e-invoice.</p> <p>It is clarified that the exemption is applicable to the entity as a whole and not by the nature of supply like banking company.</p>

Clarification for treatment of the statutory dues for tax payers for whom the proceedings under the Insolvency and Bankruptcy Code, 2016 have been concluded/finalized.

- Circular No.134/04/2020-GST dated 23rd March, 2020, clarified that no coercive action can be taken against the corporate debtor with respect to the dues for period prior to insolvency commencement date.
- Further, the dues of the period prior to the commencement of Corporate Insolvency Resolution Process (CIRP) will be treated as 'operational debt' and claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC.
- Now, CBIC vide Circular No. 187/19/2022-GST dated 27th December, 2022 clarified the modalities for implementation of the order of the adjudicating authority under IBC, 2016 and stated that the proceeding conducted under IBC shall be covered under the term 'other proceedings' in Section 84 of CGST Act.
- Accordingly, if the government dues are reduced as a result of any proceedings under IBC, then intimation of such reduction of the government dues shall be given to corporate debtor along with the appropriate authority by the Commissioner vide FORM GST DRC-25 and the recovery proceedings can be continued pertaining to such reduced amount.

Manner of filing refund claim by the unregistered person

- In the cases of premature cancellation of long term service contract where the supplier is not in a position to issue credit note in terms of the provisions of Section 34(2) of the CGST Act, the recipient (i.e., unregistered person refund) shall be entitled to claim refund in FORM GST RFD-01 under the category 'Refund for unregistered person'.
- Before filing the above refund application, the unregistered person would be required to **obtain temporary registration** through the GSTN portal.
- The refund amount claimed should not exceed the total amount of tax declared by the supplier on the invoices (against which refund is being claimed) issued by him.
- **Separate refund applications** will be filed in respect of invoices issued by different suppliers.
- As per sub-section (1) of section 54 of the CGST Act, time period of two years from the relevant date has been specified for filing an application of refund. Accordingly, in the cases, where the refund claim is being made by the unregistered person (i.e., the recipient), the **relevant date will be the date of issuance of letter of cancellation of the contract/ agreement** for subject supply by the supplier as the said date will be considered as the date of receipt of the services by the unregistered person (i.e., the recipient) in terms of clause (g) of Explanation (2) under section 54 of the CGST Act.
- No refund shall be claimed by unregistered person if the amount is less than one thousand rupees.

- Manner of scrutiny and processing of refund claim filed by the proper officer will be similar to other RFD-01 claims.
- In the cases, where the amount paid back by the supplier to the unregistered person on cancellation of contract for supply of services is less than the amount paid by such registered person to the supplier, only the proportionate amount of tax pertaining to such amount paid back by the supplier shall be refunded to the unregistered person. This proposition/clarification can be understood with the help of following example:
- A contract for construction service is executed between the supplier and the recipient (unregistered person) on 01.07.2017 wherein, the supplier has charged a total amount of Rs. 4,48,0000/- (including GST of Rs. 48,000/-) from the supplier in the following manner:

Date of Invoice	Taxable Amount	Tax (CGST+SGST)	Total Amount
05.07.2018	1,00,000	12,000	1,12,000
05.07.2019	1,00,000	12,000	1,12,000
05.07.2020	1,00,000	12,000	1,12,000
05.07.2021	1,00,000	12,000	1,12,000
Total	4,00,000	48,000	4,48,000

- Further, if say last installment is refunded by the supplier due to certain reason, then only base amount is refunded by the supplier excluding GST portion i.e., Rs. 1,00,000/- however, now with the help of the clarification provided by this circular, the recipient can file refund application with the Department for claiming refund of GST pertaining to said installment i.e., Rs. 12,000/-.

Tattvam Comments:

- The unregistered persons were facing practical difficulty in case of early termination/cancellation of long term service contracts. The above clarifications brings in a sigh of relief to such unregistered persons who were not able to get the refund of taxes paid in case of premature cancellation of long term service contracts.
- By virtue of above clarification, the unregistered persons will be entitled to claim the refund of taxes paid/born by them in case of premature cancellation of long term service contracts.

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Thank You

