

Mismatches between GSTR – 2A Vice a Vice GSTR – 3B

The Ever – Growing Restrictions and Denial of Input Tax Credit

Background:

Time limit for issuance of order u/s 73 (10) for the financial year 2018 – 19 and 2019 – 20 is extended till 30/04/2024 and 31/08/2024 respectively vide notification dated 56/2023 – Central Tax dated 28th December 2023. While large number of notices were already issued by GST Authorities intimating discrepancies towards mismatches between GSTR - 2A vice a vice Input Tax Credit availed by the taxpayers in GSTR - 3B filed by them for the financial year 2018 – 19, there will be notices for such discrepancies for the financial year 2019 – 20 also in the ensuing month. In Moreover, department is in a hurry to pass orders demanding the tax, interest and penalty thereof to meet the deadline of 30/04/2024 for the financial year 2018 – 19 in particular, wherein the assessment proceedings were initiated under section 73 of the CGST Act, 2017. If the taxpayer is failed to address the issues raised in the notices issued under section 73 in their response, order of demand shall be issued by the department before the above deadline and taxpayer may not get opportunity to establish their concerns before the assessing authority but to go to appellate authority for remedies.

Introduction and relevance of GSTR 2A:

Form GSTR - 2A was not introduced in the draft GST legislation. Consequently, Taxpayers followed the practice of availing Input Tax Credit in compliance of the provisions of section 16 and section 17 of the CGST Act, 2017. Form GSTR – 2A was made available to the taxpayers subsequently for practical and technical convenience in filing summary return in Form GSTR – 3B. CBIC therefore issued press release dated 18th October 2018 the abstract of which is reproduced below:

"It is clarified that the furnishing of outward details in FORM GSTR-1 by the corresponding supplier(s) and the facility to view the same in FORM GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis in consonance with the

provisions of section 16 of the Act. The apprehension that ITC can be availed only on the basis of reconciliation between FORM GSTR-2A and FORM GSTR-3B conducted before the due date for filing of return in FORM GSTR-3B for the month of September, 2018 is unfounded as the same exercise can be done thereafter also".

Provision in respect of limit of ITC on the basis of GSTR-2A was introduced only on 09/10/2019, vide notification no. 49/2019 – Central Tax dated 9th October 2019 in the form of Rule 36 (4) of CGST Rule, 2017 to provide that a registered person shall be eligible to take ITC up to a maximum of 120 % (upto December 2019) / 110% (From January to December 2020) / 105% (From January to December 2021) of the ITC as reflecting in its Form GSTR-2A.

It may therefore be inferred that insistence of matching of ITC available in GSTR-2A vice a vice ITC availed by recipient in Form GSTR – 3B was not legitimized from July 2017 to September 2019. Moreover, the said mismatches between GSTR - 2A vice a vice GSTR – 3B was entertained even for the financial years 2019 – 20, 2020 – 21 & 2021 – 22 within the threshold limits set by rule 36(4).

In light of various challenges pending before the jurisdictional High Courts, Section 16(2)(aa) was inserted w.e.f. 01/01/2022 to give statutory sanction to Rule 36(4). The said Section provides that ITC shall be taken by the recipient subject to the condition that the supplier has furnished the details of the invoices / debit notes in GSTR – 1 and the same are reflected in GSTR – 2B / GSTR – 2A.

Circular no. 183/15/2022 – GST dated 27th December 2022:

Since the provisions of section section 16(2)(aa) was effective from 01/01/2022, CBIC has issued the above circular to fill the gap for the financial year 2017 – 18 and 2018 – 19. in establishing the availment of ITC in the insistence of inconsistency between GSTR – 2A and GSTR – 3B. Further Circular No. 193/05/2023-GST dated 17/07/2023

has clarified that the procedure as prescribed in CBIC Circular No. 183/15/2022-GST dated 27/12/2022 shall be followed during 01/04/2019 to 31/12/2021, subject to restrictions as applicable during the respective period. This circular facilitates to resolve the issues only related to bona-fide errors of suppliers because of which invoices aren't reflected in GSTR 2A. The question remain unaddressed in this circular was mala-fide errors committed by the suppliers, and role of department in this context though.

Burden of proof under section 155:

Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person - section 155 of CGST Act.

The operational definition of "the burden of proof" is used for department's convenience very often as they expect recipient to ensure their supplier remits the taxes collected to government.

The genuineness of purchases should only be proved with invoices issued by suppliers, evidence of having received the goods or services and payment to suppliers not beyond the time limit.

The same was reiterated, In M/s Galaxy Traders case by the Hon'ble Kerala High Court, in the case of LGW Industries Limited by the Hon'ble Calcutta High Court & in the case of Suncraft Energy (P) Ltd. Vs. Assistant Commissioner, State Tax by the Hon'ble High Court of Calcutta.

Role of Department:

Section 41 used to allow provisional ITC amended effective 1-1-2022 in line with sec 16(2)(aa). Matching, reversal and reclaim of input tax credit i.e. provisions of Section 42,43 and 43A never came in to operations and omitted effective 1-1-2022.

Recovery efforts from suppliers under sec 73 and 74 for mala-fide errors not covered by Circular No. 183/15/2022-GST dated 27-12-2022 are largely missing from department. Neither recovery efforts are undertaken nor its reached finality, the recipient becomes a easy target.

Conclusion:

Taxpayers may therefore take note of the aspects discussed above which is relevant to their case to include in their reply to fight for the ever-growing restrictions and denial of ITC. Taxpayers may also comply with the instructions issued in Circular No. 183/15/2022-GST dated 27/12/2022 to establish the legitimacy of bona-fide ITC availed in through form GSTR – 3B.