



GST Newsletter

18th January 2023

Goods & Services Tax (‘GST’)



**Central Board of Indirect Taxes & Customs (CBIC) Issues clarifications to deal with discrepancies between Input Tax Credit (ITC) availed in Form GSTR-3B (summary return) viz-a-viz ITC reflected in Form GSTR-2A (auto populated ITC statement) for Financial Years (FYs) 2017-18 & 2018-19.
(As per Circular No. 183/15/2022 dated 27/12/2022).**

If there is difference between ITC claimed in GSTR-3B and ITC available in GSTR-2A for FY 2017-18 & 2018-19 due to following reasons:

- Seller failed to file GSTR-1 for a particular tax period but tax paid through filing of GSTR-3B
- Seller filed both GSTR-1 and GSTR-3B for a particular tax period but forget to report a particular tax invoice in form GSTR-1 due to which said invoice does not reflect in form GSTR-2A of Recipient.
- Seller has reported B2B supply as B2C supply.
- Seller filed both GSTR-1 & GSTR-3B but mentioned wrong GSTIN.

In such a case, Proper Officer (PO) shall require to follow below procedure:

- PO will ask the recipient all the invoices which are not reflecting in GSTR-2A.
- PO will ascertain whether Section 16(2) of CGST Act is complied with.
- For ensuring tax paid on the invoices not appearing in GSTR-2A, a PO shall seek:
- A certificate from Chartered Accountant (CA) or Cost Accountant (CMA) regarding the GST on the invoices not appearing in GSTR-2A was paid by the Seller, if the ITC exceeds Rs 5 lakhs.
- A certificate from Seller itself regarding the ITC on the invoices not appearing in GSTR-2A was paid by the Seller, if the ITC is up to Rs 5 lakhs.
- The above provisions are applicable only on pending cases whether at Scrutiny/Department Audit/Investigation/Appeal Level and not on the completed proceeding.

CBIC clarifies regarding entitlement of ITC in respect of services by way of transportation of goods (As per Circular No. 184/16/2022 dated 27/12/2022)

- As per section 12 of Integrated Goods & Services Tax (IGST) Act, 2017, the place of supply of services by way of transportation of goods to a registered taxpayer shall be the location of the taxpayer.
- An amendment was made from 1 February 2019 onwards, as per which the place of supply in case of transportation of goods to a place outside India, shall be the place of destination of such goods. In such cases, as the place of supply will be the concerned foreign destination and not the state where the recipient is registered under GST, doubts have been raised regarding the availability of ITC to the recipient.
- Accordingly in circular CBIC has clarified the below in respect of supply of services by way of transportation of goods outside India (including by mail or courier).

In case of supply of services by way of transportation of goods, including by mail or courier, where destination of goods is outside India but supplier and recipient of service are in India, place of supply in such a case would be the foreign destination.

Aforesaid supply of services would be considered as Inter-State supply and IGST would be chargeable on the said supply of services. In that case, recipient of service of transportation of goods is eligible to claim ITC subject to fulfillment of other conditions in GST Legislation.

Supplier of Service will report POS by selecting state code '96- Foreign Country.

**CBIC issues clarification regarding time limit for recomputation of GST liability by tax authorities, if charges of fraud, Wilful-misstatement or suppression of facts is not established against a taxpayer
(As per Circular No. 185/17/2022 dated 27/12/2022).**

- As per section 75, in case the appellate authority / court decides that notice u/s 74 is not sustainable for the reason that the charges of fraud, wilful-misstatement or suppression of facts has not been established, the GST officer shall compute the GST payable as per section 73.
- Through this circular, CBIC clarified time limit for re-determination of tax, interest and penalty payable by the notice and how the amount payable by notice will be recomputed by PO in case situation under section 75 arises.
- Time limit would be 2 years from the date of communication of direction of appellate authority or appellate tribunal or court.
- Amount is re-determined as per provisions of section 73(2) of CGST Act, at least 3 months prior to the time limit read with section 73(10) of CGST Act.

1. **Amendment in Rule-8 of CGST Rules:** Mobile No and E-Mail ID is not required to fill in PART-A of GST Registration application, a person need to submit only PAN and system generated OTP will be sent to Mobile No and E-Mail ID linked with PAN.
2. **Amendment in Rule-12 of CGST Rules:** From now onwards, Tax Deductor or Tax collector under GST can cancel their TDS or TCS registration by making request in writing. It seems that no form is required to be filed in this regard.
3. **Amendment in Rule-37 of CGST Rules:** From now onwards, registered person shall reverse the proportionate ITC in respect of the payment not made to supplier within 180 days from the date of invoice.
4. **Amendment in Rule-37A of CGST Rules:** If the registered person claims ITC on the basis of Invoice or debit note and the same has been reported in GSTR-1 by the seller but GST not paid by the seller in the GSTR-3B till 30th September of next financial year in such a case, purchaser shall reverse the ITC in their GSTR-3B on or before 30th November of next financial year. If the ITC is not reversed in the GSTR-3B then the same is paid in cash along with the interest as applicable. Purchaser can Re-avail such ITC, if seller pay GST.
5. **Amendment in Rule-46 of CGST Rules:** From now onwards, when taxable service provided by Electronic Commerce Operator (ECO) or through ECO or by supplier of OIDAR services to unregistered person, then in such a case, irrespective of value of invoice, a tax invoice shall contain the name and address of recipient along with its PIN Code.
6. **Amendment in Rule-59 of CGST Rules:** where a registered person intimated by GST Department about difference in tax liability in GSTR-1 and GSTR-3B of particular tax period, in such a case registered person will not be allowed to file GSTR-1 or Invoice Furnishing Facility (IFF) of subsequent months unless the difference amount is deposited or the reply has been submitted in that regard
7. **Amendment in Rule-88C of CGST Rules:** Where tax payable in GSTR-1/IFF exceeds the tax liability in GSTR-3B and department has issued intimation in Form GST DRC-01B either on GST portal or by sending e-mail to the supplier for payment of such differential amount and the amount remains unpaid or reply is not submitted within 7 days then in such a case recovery of differential amount can be made by modes specified under section 79 of CGST Act.
8. **Amendment in Rule-46A of CGST Rules:** From now onwards, if registered person issues “invoice cum bill of supply” for supplying taxable as well as exempted goods to an unregistered person, such invoice cum bill of supply shall contain all details which a regular tax invoice contains.

Amendment in Form GSTR-1: As per notification no. 26/2022 and 27/2022 dated 26/12/2022, Certain Tables added in Form GSTR-1:

- Supplies made through e-commerce operators on which e-commerce operators are liable to collect tax u/s 52 or liable to pay tax u/s 9(5) of CGST Act.
- Amendment to Supplies made through e-commerce operators on which e-commerce operators are liable to collect tax u/s 52 or liable to pay tax u/s 9(5) of CGST Act.
- Supplies made through e-commerce operators on which e-commerce operators are liable to pay tax u/s 9(5) of CGST Act.
- Amendments to Supplies made through e-commerce operators on which e-commerce operators are liable to pay tax u/s 9(5) of CGST Act for registered recipients.
- Amendments to Supplies made through e-commerce operators on which e-commerce operators are liable to pay tax u/s 9(5) of CGST Act for unregistered recipients.




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