



ITC CLAIMED UNDER GSTR3B, HOWEVER, THE SAME DOES NOT APPEAR IN GSTR2A FOR THE PERIOD 2017-18 AND 2018-19- RECENT CBIC CLARIFICATION

Most of the assesses have faced the query, either during Audit or by way of ASMT10, or investigation, or are likely to face the same- as regards ITC claimed on valid invoices received from suppliers, which do not appear in GSTR2A- for the period 2017-18 and 2018-19.

The recent CBIC Clarification dated. 27th December, 2022 has given guidelines to allow ITC to bonafide assesses, subject to certain conditions / procedures, insofar as the period upto 2017-18 and 2018-19 is concerned.

As a factual background, it may be noted that vide Notification No. 49/2019 – Central Tax New Delhi, the 9th October, 2019, Rule 36(4) of CGST Rules, 2017 was introduced:

“(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.”

Simultaneously, GSTR2A itself was introduced for the first time, which gives an auto filled report on inward supplies where suppliers have filed proper GST returns and shown the supply made to the recipients, under particular Tax invoice. That such utility however was made available only from Oct’19 on the GSTN portal and not prior to the same.

This apart, Rule 36(4) anyway permitted ITC equal to 120% of the ITC appearing in GSTR2A (based on returns filed by suppliers), subject to not exceeding actual eligible ITC.

- ❖ That lot of assesses are facing problems after availing the credit, which is not reflected in GSTR-2A for the year 2017-18 & 2018-19, due to various reasons.



- ❖ The discrepancies between the amount of ITC availed by the registered persons in their returns in FORM GSTR-3B and the amount as available in their FORM GSTR-2A are being noticed by the tax officers during proceedings such as scrutiny/ audit/ investigation etc.
- ❖ Due to such credit not flowing to FORM GSTR-2A of the said registered persons, the ITC is being denied as being ineligible, and such instances are being flagged for seeking explanation from the registered persons for such discrepancies and/or for reversal of such ineligible ITC.
- ❖ During the period 2017-18 and 2018-19, GSTR2A was not even available on GSTN portal, and as such, it is absurd on part of GST authorities to even compare GSTR2A with ITC claimed in GSTR3B, including violating 120% norms.
- ❖ The CBIC however has vide its recent Circular dated. 27th December, 2022 provided for independent verification in certain situations for the period 2017-18 and 2018-19, and based on collateral evidences, such ITC is directed to be allowed inn bonafide cases. Assesses have to gather suitable evidence and have to see whether their case falls under the following situation:-

S. No.	Scenario	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 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 provided in Para 4 of Circular dated. 27 th December, 2022

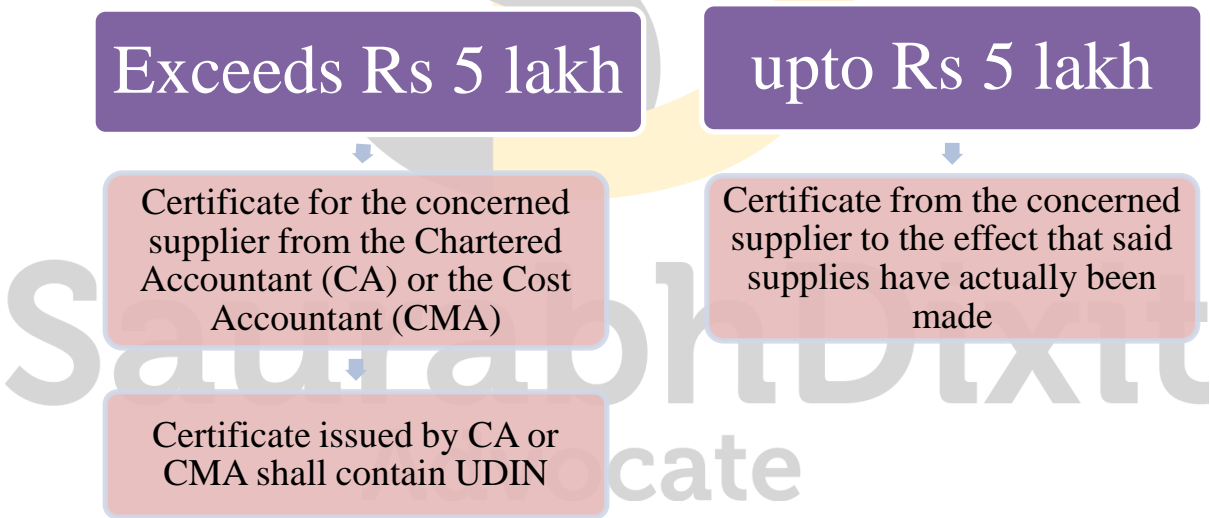


b.	Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but has failed to report a particular supply in FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the recipient.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in Para 4 of Circular dated. 27 th December, 2022
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 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.	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 provided in Para 4 of Circular dated. 27 th December, 2022
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.	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 provided in Para 4 of Circular dated. 27 th December, 2022 In addition, the proper officer of the actual



		<p>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.</p>
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- ❖ The proper officer shall ask the registered person to produce a certificate if



- ❖ In case where there is difference between GSTR2A and GSTR3B ITC availment, 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. He shall check if following conditions are fulfilled:



- i) that he is in possession of a tax invoice or debit note issued by the 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.
- ❖ The proper officer shall also check whether any reversal of input tax credit is required to be made in accordance with section 17 or section 18 of CGST Act and also whether the said input tax credit has been availed within the time period specified under sub-section (4) of section 16 of CGST Act.
- ❖ 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.
- Certificate issued by CA or CMA shall contain UDIN. UDIN of the certificate issued by CAs can be verified from ICAI website <https://udin.icai.org/search-udin> and that issued by CMAs can be verified from ICMAI website <https://eicmai.in/udin/VerifyUDIN.aspx> .

-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.

- ❖ However, it may be noted 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 may also be noted that the clarifications/relaxation given in the CBIC Circular dated. 27th December, 2022, 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.
- These instructions will apply only to the on-going proceedings in scrutiny/audit/ investigation, etc. for **FY 2017-18 and 2018-19** and **not to the completed proceedings**. However, these instructions will apply in those cases for **FY 2017-18 and 2018-19** where any adjudication or appeal proceedings are still pending.
- Coincidentally a somewhat similar methodology was suggested in the **Internal Circular No. 02A of 2022 dt.25.02.22** by the Maharashtra State, Mumbai as well even before the present CBIC Clarification dated. 27th December, 2022.
- Assessors are advised to take note of the above relaxation granted by CBIC and arrange suitable evidences/collateral evidences to show that they are bonafide receiver of supplies and ITC should be allowed to them even in cases where invoice does not reflect in GSTR2A.