

भारत सरकार
GOVERNMENT OF INDIA
आयुक्त का कार्यालय, केन्द्रीय माल सेवा कर एवं उत्पाद शुल्क, जमशेदपुर
OFFICE OF THE COMMISSIONER OF CGST & CENTRAL EXCISE,
JAMSHEDPUR
आउटर सर्किल रोड, बिष्टुपुर, जमशेदपुर
OUTER CIRCLE ROAD, BISTUPUR, JAMSHEDPUR
दूरभाष सं **0657-2321598** – ई-मेल **commr-cexjmsdpr@nic.in** :

TRADE NOTICE No. 02/2023-24

DATED: 01-08-2023

[Authority Circular No. 193/05/2023-GST the 17th July, 2023 issued
vide F. No. CBIC-20001/5/2023-GST]

Subject: Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period 01.04.2019 to 31.12.2021.

Attention of the Trade, Industry and Public are invited towards the Circular No. 192/04/2023-GST the 17th July, 2023 issued vide F. No. CBIC-20001/5/2023-GST by Principal Commissioner (GST), Central Board of Indirect Taxes and Customs, GST Policy Wing, New Delhi (hereinafter referred to as 'Board').

2. Attention is also invited to Circular No. 183/15/2022-GST dated 27th December, 2022, vide which clarification was issued for dealing with the difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19, subject to certain terms and conditions.

3. Even though the availability of ITC was subjected to restrictions and conditions specified in Section 16 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") from 1st July, 2017 itself, restrictions regarding availment of ITC by the registered persons up to certain specified limit beyond the ITC available as per FORM GSTR-2A were provided under rule 36(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") only with effect from 9th October 2019. W.e.f. 09.10.2019, the said rule allowed availment of Input tax credit by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using the invoice furnishing facility (IFF), to the extent not exceeding 20 percent of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 of CGST Act in FORM GSTR-1 or using the IFF. The said limit was brought down to 10% w.e.f. 01.01.2020 and further reduced to 5% w.e.f. 01.01.2021. The said rule was intended to allow availment of due credit in cases where the suppliers may have delayed in furnishing the details of outward supplies. Further, w.e.f. 01.01.2022, consequent to insertion of clause (aa) to sub-section (2) of section 16 of the CGST Act, ITC can be availed only up to the extent communicated in

FORM GSTR-2B.

4.1 As discussed above, rule 36(4) of CGST Rules allowed additional credit to the tune of 20%, 10% and 5%, as the case may be, during the period from 09.10.2019 to 31.12.2019, 1.01.2020 to 31.12.2020 and 01.01.2021 to 31.12.2021 respectively, subject to certain terms and conditions, in respect of invoices/supplies that were not reported by the concerned suppliers in their FORM GSTR-1 or IFF, leading to 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. It may, however, be noted that such availment of input tax credit was subject to the provisions of clause (c) of sub-section (2) of section 16 of the CGST Act which provides that ITC cannot be availed unless tax on the said supply has been paid by the supplier. In this context, it is mentioned that rule 36(4) of CGST Rules was a facilitative measure and availment of ITC in accordance with rule 36(4) was subject to fulfilment of conditions of section 16 of CGST Act including those of clause (c) of sub-section (2) thereof regarding payment of tax by the supplier on the said supply.

4.2. Though the matter of dealing with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A has been clarified for FY 2017-18 and 2018-19 vide Circular No. 183/15/2022-GST dated 27th December, 2022, various representations have been received seeking clarification regarding the manner of dealing with such discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A during the period from 01.04.2019 to 31.12.2021.

5. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, has clarified as follows:

(i) Since rule 36(4) came into effect from 09.10.2019 only, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable, *in toto*, for the period from 01.04.2019 to 08.10.2019.

(ii) In respect of period from 09.10.2019 to 31.12.2019, rule 36(4) of CGST Rules permitted availment of Input tax credit by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using IFF to the extent not exceeding 20 percent of the eligible credit available in respect of invoices or debit notes, the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using IFF. Accordingly, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable for verification of the condition of clause (c) of sub-section (2) of Section 16 of CGST Act for the said period, subject to the condition that availment of Input tax credit by the registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using IFF shall not exceed 20 per cent. of the eligible credit available in

respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using IFF. This is clarified through an illustration below:

Illustration:

Consider a case where the total amount of ITC available as per FORM GSTR-2A of the registered person was Rs. 3,00,000, whereas, the amount of ITC availed in FORM GSTR-3B by the said registered person during the corresponding tax period was Rs. 5,00,000. However, as per rule 36(4) of CGST Rules as applicable during the said period, the said registered person was not allowed to avail ITC in excess of an amount of Rs $3,00,000 \times 1.2 = \text{Rs.} 3,60,000$.

In the above case, the ITC of Rs 1,40,000 which has been availed in excess of Rs. 3,60,000 shall not be admissible as per rule 36(4) of CGST Rules as applicable during the said period even if the requisite certificate as prescribed in Circular No. 183/15/2022-GST dated 27.12.2022 is submitted by the registered person. Therefore, ITC availed in FORM GSTR-3B in excess of that available in FORM GSTR-2A up to an amount of Rs 60,000 only (i.e. 3,60,000-3,00,000) can be allowed subject to production of the requisite certificates as per Circular No. 183/15/2022-GST dated 27.12.2022.

(iii) Similarly, for the period from 01.01.2020 to 31.12.2020, when rule 36(4) of CGST Rules allowed additional credit to the tune of 10% in excess of the that reported by the suppliers in their FORM GSTR-1 or IFF, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable, for verification of the condition of clause (c) of sub-section (2) of Section 16 of CGST Act for the said period, subject to the condition that availment of Input tax credit by the registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using the IFF shall not exceed 10 percent of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the IFF.

(iv) Further, for the period from 01.01.2021 to 31.12.2021, when rule 36(4) of CGST Rules allowed additional credit to the tune of 5% in excess of that reported by the suppliers in their FORM GSTR-1 or IFF, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable, for verification of the condition of clause (c) of sub-section (2) of Section 16 of CGST Act for the said period, subject to the condition that availment of Input tax credit by the registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using the IFF shall not exceed 5 percent of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the IFF.

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6. It is further clarified that consequent to insertion of clause (aa) to sub-section (2) of section 16 of the CGST Act and amendment of rule 36(4) of CGST Rules w.e.f. 01.01.2022, no ITC shall be allowed for the period 01.01.2022 onwards in respect of a supply unless the same is reported by his suppliers in their FORM GSTR-1 or using IFF and is communicated to the said registered person in FORM GSTR-2B.

7. Further, it may be noted that proviso to rule 36(4) of CGST Rules was inserted vide Notification No. 30/2020-CT dated 03.04.2020 to provide that the condition of rule 36(4) shall be applicable cumulatively for the period February to August, 2020 and ITC shall be adjusted on cumulative basis for the said months in the return for the tax period of September 2020. Similarly, second proviso to rule 36(4) of CGST Rules was substituted vide Notification No. 27/2021-CT dated 01.06.2021 to provide that the condition of rule 36(4) shall be applicable cumulatively for the period April to June, 2021 and ITC shall be adjusted on cumulative basis for the said months in the return for the tax period of June 2021. The same may be taken into consideration while determining the amount of ITC eligibility for the said tax periods.

8. It may also be noted that 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.

9. These instructions will apply only to the ongoing proceedings in scrutiny/ audit/ investigation, etc. for the period 01.04.2019 to 31.12.2021 and not to the completed proceedings. However, these instructions will apply in those cases during the period 01.04.2019 to 31.12.2021 where any adjudication or appeal proceedings are still pending.

10. Trade, Industry and field formation are suitably informed.

11. Difficulty, if any, in the implementation of this Trade Notice may be brought to the notice of the undersigned.

(B K Gupta)
Commissioner

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