



Office of the Commissioner of State Goods and Services Tax Department,
Government of Kerala, Thiruvananthapuram

No. CT/7533/2021-C1

Dated 07/11/2021

Circular No 7/2021

Sub: Instructions/Guidelines regarding procedure to be followed in scrutiny of returns and thenceforth actions.

In accordance with Section 61 of the KSGST Act, 2017 the proper officer may scrutinize the returns and related particulars furnished by a registered person to verify the correctness of the returns filed. Specific instances have come to the notice wherein proper procedures have apparently not been followed during the scrutiny of returns and thenceforth actions. Hence in order to ensure uniformity in the scrutiny of returns across the field formations and also to prioritise and dispose the cases initiated at the assessment vertical the following instructions/guidelines shall be adhered to.

I. The risk parameters flagged in the back-office system for the return scrutiny are as follows;

- ASMT13 - Return within 30 days
- ITC utilisation greater than 5 times cash
- Turnover above 1crore cash nil
- Turnover above 60 percent
- 2A-3B ITC Comparison
- GSTR9-8D Difference
- ITC availed after due date

- Capital goods ITC vs Exempted turnover
- GSTR-1 Vs GSTR 3B mismatch
- GSTR 3B Vs E-way bill
- Turnover less than TDS and TCS

II. Among the risk parameters flagged, the following parameters have been identified as defect that cannot be determined without detailed enquiry or investigation.

- ASMT13 - Return within 30 days
- ITC utilisation greater than 5 times cash
- Turnover above 1crore cash nil
- Turnover above 60 percent

In the above parameters the following instructions shall be followed.

1. If discrepancy notice in Form GST ASMT-10 is not issued yet, then “Archive” such cases, provided no other parameters involved other than those specified above.

2. If discrepancy notice in Form GST ASMT-10 was issued and pending for further proceedings then contact the noticee and request him to furnish a reply in Form GST ASMT-11 through the common portal. If there is any technical issue to file reply through common portal, then request the tax payer to file the same through the registered e-mail id. On receipt of such reply, issue order of acceptance in Form GST ASMT-12 stating that the discrepancy intimated requires detailed enquiry or investigation. Before the issuance of order of acceptance ensure that no other parameters were involved in the notice in Form GST ASMT-10 other than those specified above.

3. After the discrepancy notice in Form GST ASMT-10, if an intimation in Part A of Form GST DRC-01 A u/s. 73(5) or 74(5) of the Kerala State Goods and Services Tax Act, 2017, as the case may be issued and pending for further proceedings, then contact the noticee and request him to furnish a reply in Part B of Form GST DRC-01 A through the registered e-mail Id. On receipt of such reply record the case as the defect mentioned in the intimation requires detailed enquiry or investigation. Before recording the case ensure that no other parameters were involved in the intimation in Part A of Form GST DRC01 A other than those specified above.

4. If Show Cause Notice u/s. 73(1) or 74(1) of the Kerala State Goods and Services Tax Act, 2017, as the case may be was issued along with Summary of Show Cause Notice in Form GST DRC-01, then after considering the representation in Form GST DRC-06, and if the demand amount is not quantified in the SCN, (which should be the case as the parameters above alone do not enable quantification of a demand), a “nil” demand order may be issued along with the Summary of the order in Form GST DRC-07 stating that the subject matter mentioned in the SCN requires detailed enquiry or investigation. Before the issue of such orders, ensure that no other parameters were involved in the SCN other than those specified above.

III. Instructions/guidelines on ITC related risk parameters

1. 2A-3B ITC Comparison

(1) (a) For 2017-18, if the ITC was availed on or before 25.10.2018 on the strength of invoices/debit notes and ITC availed through the return in Form GSTR 3B is in excess of invoices/debit notes particulars reflected in Form GSTR 2A, then notice for non-compliance of Section 16(2)(c) of the KSGST Act, 2017 shall be issued. The recipient has to prove the eligibility of ITC as per section 155 of the Kerala State Goods and Services Tax Act, 2017.

(b) For 2018-19, this parameter is not flagged in the back-office system. If any case was proceeded with this parameter, then follow the instructions issued below; if the ITC was availed on or before 20.10.2019 on the strength of invoices/debit notes and ITC availed through the return in Form GSTR 3B is in excess of invoices/debit notes particulars reflected in Form GSTR 2A, then notice for non-compliance of Section 16(2)(c) of the KSGST Act, 2017 shall be issued. The recipient has to prove the eligibility of ITC as per section 155 of the KSGST Act, 2017.

(c) In the aforementioned cases, if the missing invoices/debit notes were later on added to Form GSTR 2A, then the recipient is eligible for ITC.

(2) (a) For 2017-18, if the ITC was availed during the extended time ie; 26.10.2018 to 23.04.2019 on the strength of invoices/debit notes, then the ITC shall be eligible only to the extent of invoices/debit notes reflected in Form GSTR 2A on or before 30.04.2019.

(b) For 2019-20, if the ITC was availed on or before 20.10.2020 on the strength of invoices/debit notes, then ITC shall be eligible only to the extent of invoices/debit notes reflected in Form GSTR 2A on or before 30.10.2020.

(3) In all the above cases ensure that all the suppliers had filed their respective Form GSTR 1 and Form GSTR 3B. If not filed, issue notice for non-compliance of Section 16(2)(c) of the KSGST Act, 2017.

(4) (a) For 2017-18, if the ITC was availed after 23.04.2019 on the strength of invoices/debit notes, notice shall be issued to the extent of ITC availed after 23.04.2019 even if the invoices/debit notes reflected in Form GSTR 2A since the last date for availment of ITC as per section 16(4) of the KSGST Act, 2017 for the relevant financial year was already expired.

(b) For 2018-19, this parameter is not flagged in the back-office system. If anyone proceeded with this parameter, then follow the instructions issued below;

If the ITC was availed after 20.10.2019 on the strength of invoices/debit notes, notice shall be issued to the extent of ITC availed after 20.10.2019 even if the invoices/debit notes reflected in Form GSTR 2A since the last date for availment of ITC as per section 16(4) of the KSGST Act, 2017 for the relevant financial year was already expired.

(c) For 2019-20, if the ITC was availed after 20.10.2020 on the strength of invoices/debit notes, notice shall be issued to the extent of ITC availed after 20.10.2020 even if the invoices/debit notes reflected in Form GSTR 2A since the last date for availment of ITC as per section 16(4) of the KSGST Act, 2017 for the relevant financial year was already expired.

2. GSTR9-8D ITC Difference

This parameter is flagged in the back-office system only for the F.Y 2017-18.

(1) In the annual return filed cases for 2017-18, if Table 8D of the annual return in Form GSTR 9 of the tax payer is negative and discrepancy notice in Form GST ASMT 10 was already issued for this parameter, then only notice shall be issued for this parameter. In such cases, the proper officer shall not issue notice with parameter 2A - 3B ITC comparison as it will lead to the repetition of same ITC defects.

(2) Table 8A of the Form GSTR 9 capture the figures only from the FILED Form GSTR 1 of the corresponding suppliers and that table will be updated and locked in accordance with Section 37(3) of the KSGST Act, 2017.

(For 2017-18, TABLE 8A was updated and locked on 01.05.2019)

However, Form GSTR 2A captures the figures from the invoices saved in Form GSTR 1, from the submitted status of Form GSTR 1 and also from the filed Form GSTR 1.

As such, there may be a chance for difference in the figures auto populated in Form GSTR 2A when compared with figures reflected in Table 8A of the Form GSTR 9.

(3) The negative figure reflected in Table 8D of the Form GSTR 9 means the respective suppliers had neither declared the invoices nor filed Form GSTR 1 within due time as specified in Section 37(3) of the KSGST Act, 2017 to the extent of negative figure reflected. That means the suppliers did not declare the said transactions and had not actually paid the output tax to the Government within the due date. As per section 16(2)(c) of the KSGST Act, 2017, the recipient is eligible to take credit if the supplier paid the tax to the Government within the due time. Hence notice shall be issued in such cases for non-compliance of Section 16(2)(c) of the KSGST Act, 2017 read with Section 155 of the KSGST Act, 2017.

(4) However, in this parameter, before the issuance of notice, the followingsituations shall be considered;

- a. If the ITC for 2017-18 was availed on or before 25.10.2018 on the strength of invoices/debit notes which were not reflected in Table 8A of Form GSTR 9 and the same is now reflected in Form GSTR 2A, then such ITC can be allowed after ensuring that respective suppliers had filed Form GSTR 1 and Form GSTR 3B.
- b. If the ITC for 2017-18 was availed during the extended time ie; 26.10.2018 to 23.04.2019 on the strength of invoices/debit notes, then the ITC shall be eligible only to the extent of invoices/debit notes reflected in Form GSTR 2A on or before 30.04.2019.

- c. If the ITC for 2017-18 was availed after 23.04.2019 on the strength of invoices/debit notes, notice shall be issued to the extent of ITC availed after 23.04.2019 even if the invoices/debit notes reflected in Form GSTR 2A since the last date for availment of ITC as per section 16(4) of the KSGST Act, 2017 for the relevant financial year was already expired.

3. ITC availed after due date

(1) As per Section 16(4) of the KSGST Act, 2017, a registered person shall not be entitled to take ITC in relation to any invoice or debit notes (ie; B2B (Regular) including supply of service received from SEZ) by filing Form GSTR 3B after the due date of furnishing the said return for the month of September of the succeeding financial year or Annual Return for the relevant F.Y whichever is earlier.

(For 2017- 18, as per ROD 02/2018-Central Tax, the last date to avail ITC was 23.04.2019, the last date for 2018-19 was 20.10.2019 and the last date for 2019-20 was 20.10.2020)

(2) If any tax payer availed ITC on B2B (Regular) invoices or debit notes including supply of service received from SEZ beyond the aforesaid due dates, then the same shall be disallowed and notice can be issued. The date of availment of ITC shall be the date of filing of that particular Form GSTR 3B. This can be verified through back-office system under Registration>GSTIN Dashboard>Return details.

4. Capital goods ITC vs Exempted turnover

(1) The ITC on Capital goods can be credited to the Electronic Credit Ledger in full in the month of inward supply made and the proportionate ITC, of the said capital goods, not related to the taxable supply/non business purpose has to be reversed under Rule 43 of KSGST Rules, 2017. Such taxable persons are required to reverse the proportionate ITC of 1/60 of the tax involved on the said capital goods in the ratio of taxable / exempt and business /non-business supply for the succeeding 60 months. This parameter was flagged in the backoffice only for 2017-18 on the basis of Form GSTR 9 filed by the tax payers.

(2) Notice can be issued in such cases where discrepancy notice in Form GSTASMT-10 or intimation in Part A of Form GST DRC-01A was issued and pending for further proceedings. For verification and accurate calculation under

this parameter, the proper officer can call for the related documents from the tax payer by issuing a letter. The proper officer can issue summons u/s. 70 of the KSGST Act, 2017 to call for such related documents, if the dealer failed to respond.

IV. Instructions/guidelines on outward supply related risk parameters

1. GSTR-1 Vs GSTR 3B mismatch

- Notice can be issued in such cases where output tax due as per the Form GSTR 1 is greater than that reported in Form GSTR 3B. Before the issuance of notice the following situations shall be considered;

(1) Credit/Debit note aspects in accordance with Section 34 and Section 37(3) of the KSGST Act, 2017 shall be verified.

(2) The interplay of Invoice Amendments (+ or -) in accordance with Section 37(3) of the KSGST Act, 2017 shall be verified.

(3) As per Section 39(3) of the KSGST Act, 2017, the omitted or short paid taxliabilities of a particular F.Y can be paid along with the returns in Form GSTR 3B up to the due date for September in the next F.Y. Hence this aspect may also be verified.

2. GSTR 3B Vs E-way bill

(1) E-way bill was introduced w.e.f 01.04.2018. Hence this parameter has beenflagged for scrutiny of returns w.e.f 2018-19 onwards.

(2) The output tax payable as per Form GSTR 3B shall be compared with the Eway bill data available in the back-office system. For this verification use the back-office option E-waybills> Outward> Active> Item Level report, then filter the report into document type as Invoice and exclude 0% items. If the output tax due as per the said E-way bill report is higher than the output tax due declared in Form GSTR 3B, then notice shall be issued in such cases.

3. Turnover less than TDS and TCS

(1) TDS u/s 51 and TCS u/s 52 of the KSGST Act, 2017 was introduced w.e.f.01.10.2018. Hence this parameter has flagged for scrutiny of returns w.e.f 201819 onwards.

(2) The detailed reports are available in the MIS Reports of the back-officesystem under "Returns" on the rolls of the jurisdictional proper officer. This turnover has to be compared with the turnover reported in Form GSTR 3B. If the turnover reported in Form GSTR 3B during the period is less than the turnover available under TDS or TCS as the case may be, the explanation shall be asked.

However, in this parameter, before the issuance of notice, it shall be considered that TDS is effected only at the time of payment credited to the recipient and not as per the time of supply. Hence there is a chance of payment of tax at a date earlier than the period of TDS deduction.

(4) The proper officer can call for the related documents such as invoice, work completion certificate etc. from the tax payer by issuing a letter to verify the time of supply and remittance of tax through Form GSTR 3B. The proper officer can issue summons u/s. 70 of the KSGST Act, 2017 to call for such related documents, if the dealer failed to respond.

Difficulty, if any, in implementation of the above instructions/guidelines may please be brought to the notice of C Section, O/o the Commissioner of State Tax, Thiruvananthapuram.

Sd/-
COMMISSIONER

To
All District Joint Commissioners