



Government of Kerala



Office of the Commissioner of the State Goods and Services Tax
Department, Tax Towers, Karamana, Thiruvananthapuram – 695 002.

Ph: 04712785230, e-mail: csectioncct.ctd@kerala.gov.in

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Sub: 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 FY 2017-18 and 2018-19

Ref: Circular No. 183/15/2022-GST, dated 27th December, 2022 of the Central Board of Indirect Tax and Customs

Circular No. : .08 /2023

Section 16 of the Kerala State Goods and Services Tax Act, 2017 (hereinafter referred to as “KSGST Act”) provides for eligibility and conditions for availing Input Tax Credit (ITC). During the initial period of implementation of Goods and Services Tax, during the financial years **2017-18 and 2018-19**, in many cases, the suppliers have failed to furnish the correct details of outward supplies in their FORM GSTR-1, which has led to certain deficiencies or discrepancies in FORM GSTR-2A of their recipients. However, the concerned recipients may have availed input tax credit on the said supplies in their returns in FORM GSTR-3B. 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. Such discrepancies are considered by the tax officers as representing ineligible ITC availed by the registered persons, and are being flagged seeking explanation from the registered persons for such discrepancies and/or for reversal of such ineligible ITC.

2. It is mentioned that FORM GSTR-2A could not be made available to the taxpayers on the common portal during the initial stages of implementation of GST. Further, restrictions regarding availment of ITC by the registered persons upto certain specified limit beyond the ITC available as per FORM GSTR-2A were provided under rule 36(4) of Kerala Goods and Services Tax

Rules, 2017 (hereinafter referred to as “Kerala GST Rules”) only with effect from 9th October 2019. However, the availability of ITC was subjected to restrictions and conditions specified in section 16 of KSGST Act from 1st July, 2017 itself. In view of this, various representations have been received from the trade as well as the tax authorities, 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 financial years **2017-18 and 2018-19**.

3. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Commissioner of State Tax, in exercise of its powers conferred under sub-section (1) section 168 of the KSGST Act, hereby clarifies as follows:

Sl. 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 below.
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 below.
c.	Where supplies were made to a registered person and invoice is issued as per Rule 46 of Kerala GST Rules containing GSTIN of the	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in

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	<p>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.</p>	<p>FORM GSTR-2A may be handled by following the procedure provided in para 4 below.</p>
<p>d.</p>	<p>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.</p>	<p>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 below.</p> <p>In addition, the proper officer of the actual 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>

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 then ascertain fulfillment of the following conditions of Section 16 of

KSGST Act in respect of the input tax credit availed on such invoices by the said registered person:

- (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.

Besides, 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 KSGST 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 KSGST Act.

4.1 In order to verify the condition of clause (c) of sub-section (2) of Section 16 of KSGST Act that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer:

4.1.1 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.icaai.org/search-udin> and that issued by CMAs can be verified from ICMAI website https://eicmai.in/udin/VerifyUDIN.aspx_

4.1.2 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.

4.2 However, it may be noted that for the financial year **2017-18**, as per proviso to section 16 (4) of KSGST 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.

5. It may also be noted that the clarifications given hereunder are case specific and are applicable to the *bonafide* errors committed in reporting during the financial year **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.

6. These instructions will apply only to the ongoing proceedings in scrutiny/audit/ investigation, etc. for the financial year **2017-18 and 2018-19** and not to the completed proceedings. However, these instructions will apply in those cases for the financial year **2017-18 and 2018-19** where any adjudication or appeal proceedings are still pending.

7. This circular shall be deemed to have come into force with effect from the 27th day of the December, 2022.

Sd/-

COMMISSIONER

– This document is electronically approved in e-Office on 17-04-2023. Hence it does not require an ink signature –