



# **ICAI -EIRC**

**08.11.2023**



# GST

## RECENT DEVELOPMENTS & JUDGEMENTS

**(Errors if any are purely un-intentional. The views are shared in the individual capacity of the speaker and not in his professional capacity and the hosts may or may not subscribe to the views of the speaker.)**



# PRADEEP KANTHED V/S UNION OF INDIA & OTHERS [SUPREME COURT PETITION NO. 1006/2023] DTD. 20.10.2023

GST returns are filed under sections 39 of the GST Act, but *there is no provision for revised returns in the Act, Rules, or the GSTN Portal.* This is in stark contrast to *other revenue laws, such as the Income Tax Act, VAT Act, and Customs and Duties Act, which all typically include provisions for revised returns.*

## *Supreme Court Seeks Finance Ministry's Response on Revised GST Returns*

In the petition filed by Pradeep Kanthed, it is stated that *despite seven years having passed since the enactment of the GST Act and Rules, along with more than 3,500 amendments, circulars, and notifications, no significant attention has been given to the availability of revised returns on the GSTIN Portal to date.*

**B2B Supply wrongly shown as B2C -Credit denied to Buyers**



**Case:** M/s. SUN DYE CHEM 2020-TIOL-1858-HC-MAD-GST

**Issue :** B2B Supply wrongly shown as B2C.

**Observations :** Court permits the petitioner to resubmit corrected Form-B2B under GSTR- 1 and to enable the petitioner to do so a direction is issued to Opposite Parties to receive it manually

**B2B Supply wrongly shown as B2C -Credit denied to Buyers**



**Case:** M/s SHIVA JYOTI CONSTRUCTION [2023-TIOL-327-HC-ORISSA-GST]

**Issue :** B2B Supply wrongly shown as B2C.

**Observations** : The High Court permits the Petitioner to resubmit the corrected Form-B2B under GSTR-1. Also, to enable the Petitioner to do so a direction is issued to the Opposite Parties to receive it manually. Once the corrected Forms are received manually, the Department will facilitate the uploading of those details in the web portal.

C A Pradeep Modi

## B2B Supply wrongly shown as B2C -Credit denied to Buyers



**Case:** M/s. Wipro Limited India [Writ Petition No. 16175 of 2022 (T-Res) dated January 6, 2023]

**Issue :** B2B Supply wrongly shown as B2C.

**Observations** : *HC emphasized that though the Circular referred only to the years 2017-18 and 2018-19, since there are identical errors committed not only in respect of the assessment years 2017-18 and 2018-19 but also in relation to the assessment year 2019-20 also, therefore, suggested that by adopting a justice oriented approach, the Assessee would be entitled to the benefit of the Circular for the year 2019-20 also.*

# *Time Limit for Correction of Return*



## **Section 39(9) Time Limit for Correction of Return**

If any registered person after furnishing a return discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in such form and manner as may be prescribed, subject to payment of interest under this Act.

Provided that no such rectification of any omission or incorrect particulars shall be allowed *after the the thirtieth day of November* following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

# ITC Sec 16(4)



**The Section 16(4) of CGST Act 2017** prescribes that the date to claim Input Tax Credit (ITC) for any financial year would be: , whichever is earlier.

1. A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both **after the thirtieth day of November** following the end of financial year to which such invoice or debit note pertains or

2. furnishing of the relevant annual return **whichever is earlier** else such ITC would be lapsed forever.



**Thirumalakonda Plywoods Vs. Assistant Commissioner** –Division Bench judgement dated **18.07.2023**



- Time limit prescribed for claiming ITC under section 16(4) of APGST Act/CGST Act, 2017 **is not violative of Articles 14, 19(1)(g) and 300-A of Constitution of India.**
- Section 16(2) of APGST/CGST Act, 2017 has no overriding effect on section 16(4) as both are not contradictory with each other; they operate independently.
- **Mere acceptance of Form GSTR-3B returns with late fee will not exonerate delay in claiming ITC beyond period specified under section 16(4) of APGST/CGST Act, 2017.**
- **The PATNA HIGH COURT in the case of GOBINDA CONSTRUCTION V/S UOI decided on 08-09-2023 has been delivered same type of judgement**

# ***N.No.47/2019-Central Tax:***

***Dtd. 9th October, 2019***



In respect of ***FY: 2017-2018*** and ***2018-2019***, Registered Persons:  
-whose ***aggregate turnover*** in a financial year ***does not exceed Rs. 2 crores*** &  
-who have not furnished the Annual Return before the due date, will follow a special procedure, such that they ***shall have the option to furnish the Annual Return***.

Provided, that the said annual return ***shall be deemed to be furnished on the due date if it has not been furnished before the due date***.

***GSTR-9 and 9C -Not . No. 32/2023-CT financial year 2022-23***

Exempts filing of GSTR-9 the registered person whose aggregate turnover in the financial year 2022-23 is up to ***two crore rupees***.

# *How Long to Keep the Records Sec 36*



## **Period of Retention of Documents**

72 months from due date of filing of annual return i.e. 31stDec 20xx

6 years and 9 months from end of the year

Party to Appeal / Revision/other proceeding -1 year after the Final disposal or period specified above, which ever is later.

# DETERMINATION OF TAX LIABILITY AND ISSUE OF ORDER



Assessment of tax liability and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates :

(1) Section 62. Assessment of non-filers of returns.

(2) Section 63. Assessment of unregistered persons.

(3) Section 74. Determination of tax by reason of fraud or any wilful misstatement or suppression of facts. (Fraud cases)

Section 73. Assessment of Non Fraud Cases.

Determination of tax and Issue of order by proper officer for any reason other than fraud or any wilful misstatement or suppression of facts relates to or within three years from the date of erroneous refund. Section 73 read with sub section (10).

# GSTR-9/9C DUE DATES & OTHER VIS-À-VIS DATES



| Financial Year | Due Date/<br>Extended Due Date   | Period of retention of accounts (72 Months) | Assessment of Non-Filers of Returns (5 Years) | Assessment Unregistered Person (5 Years) | Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized  |                          |
|----------------|--|---|---|--|--|--------------------------|
|                |  |   |   |  | Section 73(10) Other than fraud  | Section 74(10) By Fraud  |
| 2022-23        | 31.12.2023   | 31.12.2029                                  | 31.12.2028                                    | 31.12.2028                               | 31.12.2026   | 31.12.2028               |
| 2021-22        | 31.12.2022   | 31.12.2028                                  | 31.12.2027                                    | 31.12.2027                               | 31.12.2025   | 31.12.2027               |
| 2020-21        | 28.02.2022 (CT-40/2021)  | 28.02.2028                                  | 28.02.2027                                    | 28.02.2027                               | 28.02.2025   | 28.02.2027               |
| 2019-20        | 31.03.2021 (CT-04/2021)  | 31.03.2027                                  | 31.03.2026                                    | 31.03.2026                               | 31.03.2024<br><b>30.06.2024</b>  | 31.03.2026               |
| 2018-19        | 31.12.2020 (CT-80/2020)  | 31.12.2026                                  | 31.12.2025                                    | 31.12.2025                               | 31.12.2023<br><b>31.03.2024</b>  | 31.12.2025               |
| 2017-18        | 05.02.2020 (CT-06/2020)*<br>07.02.2020 (CT-06/2020)#<br>*(Chandigarh, Delhi, Gujarat, Haryana, Jammu & Kashmir, Ladakh, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, Uttarakhand.)<br>#(Andaman and Nicobar Islands, Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Dadra and Nagar Haveli and Daman and Diu, Goa, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Lakshadweep, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Odisha, Puducherry, Sikkim, Telangana, Tripura, West Bengal, Other Territory) | 05.02.2026<br>07.02.2026                    | 05.02.2025<br>07.02.2025                      | 05.02.2025<br>07.02.2025                 | 05.02.2023<br>07.02.2023<br><b>31.12.2023</b><br><br><b>30<sup>th</sup> September 2023 NN 13/2022 dtd 5<sup>th</sup> July 2022 N. 09/2023 dated 31/03/2023</b> | 05.02.2025<br>07.02.2025 |

# Manual Filing of Appeal Notification 29/2023-CT



## Manual Filing of Appeal

An Appeal to the Appellate Authority shall be made in FORM GST APL-01 electronically.

However, the same appeal may be filed manually in FORM GST APL-01 **only in specified circumstances** along with the relevant documents, only if-

- ✓ The **Commissioner has so notified**, or
- ✓ The same **cannot be filed electronically** due to non-availability of the decision or order to be appealed against on the common portal,
- ✓ In such a case, a **provisional acknowledgement shall be issued to the Appellant immediately**.

For details, please refer to Rule 108 of CGST Rules, 2017 read with Notification No. 38/2023-Central Tax dated 04.08.2023

CA Pradeep Modi

# Measures to reduce litigations arisen due to the non-constitution of the GST Tribunal



**Case:** [Gulf Oil Lubricants India Ltd.](#) [2023-TIOL-253-HC-MUM-GST]

**Issue :** Measures to reduce litigations arisen due to the non-constitution of the GST Tribunal

**Observations** : The [Hon'ble Bombay High Court](#) in **Gulf Oil Lubricants India Ltd.** [2023-TIOL-253- HC-MUM-GST] has directed the Revenue Department to incorporate measures to reduce the inflow of litigations in the Court, which has arisen due to the non-constitution of the GST Tribunal, by incorporating the stipulation contained in ***Circular No. JC (HQ)-1/GST/2020/Appeal/ADM-8 dated May 26, 2020*** (“the **Circular**”), to put the taxpayer into notice, [that the time limit for filing the appeal is extended and if a declaration is filed within the stipulated period](#), the protective measure would automatically come into force.



## Measures to reduce litigations arisen due to the non-constitution of the GST Tribunal



HC granted statutory benefit of stay of recovery due to non-constitution of Tribunal THE Hon'ble PATNA HC in the case of DAYANAND PRASAD V/s STATE OF BIHAR decided on 25-7-2023

❑ **Issue** : Due to non-constitution of GST Tribunal, what sort of remedy to the Assessee ?

❑ **Hon'ble HC Judgement** : First appellate authority specifically rejected appeal on ground that there was absolutely no evidence produced to substantiate contention - Petitioner essentially had a statutory remedy of appeal against impugned order before Tribunal under section 112 of GST Act - However, due to non-constitution of Tribunal, Assessee was deprived of his statutory remedy and availing benefit of stay of recovery hence Assessee was allowed to file appeal on constitution of Tribunal and statutory benefit of stay was granted.



# HC stayed demand recovery in absence of GST Tribunal



The Hon'ble ORISSA HIGH COURT in Pravakar Behera v/s Commissioner of CT & GST W.P (C) NO. 15051 OF 2023 I.A. NO. 6935 OF 2023 MAY 15, 2023

❓ **Issue** : Petitioner wants to avail remedy under provisions of law by approaching second Appellate Tribunal which had not yet been constituted.

❓ **Hon'ble HC Judgement** : HC stayed demand recovery in absence of GST Tribunal during pendency of writ petition.

# Amnesty Scheme for filing Appeals-

Notification No. 53/2023-Central Tax dated November 02, 2023)

**Applicability:** For **orders issued u/s 73 & 74** [Scheme not applicable where appeal does not involve any tax].

## Timelines:

|   |            |
|---|------------|
| Order should have been passed by                    | 31/03/2023 |
| Time limit to file Appeal under this Amnesty Scheme | 31/01/2024 |

## Pre-deposits :

Amount admitted: **100%** of the tax, interest, fine, fee, and penalty.

Amount Disputed: **12.5%** of disputed tax **subject to 25 Cr. (20% of the same to be paid through Electronic Cash Ledger).**

## No Refunds in certain cases:

No refunds through this scheme to be provided of any pre-deposit amount paid in excess of the above, until the appeal is resolved.



# Amnesty Scheme for filing Appeals-

Notification No. 53/2023-Central Tax dated November 02, 2023)



## The scheme will not apply to the following cases :

- i. Where the order has been passed on or after March 31, 2023
- ii. An order where there is no demand of tax involved.
- iii. An order only for a penalty.
- iv. An order only for interest.
- v. An order for rejection of refund.
- vi. Cases of cancellation of registration.

# CLARIFICATION ON CHARGING OF INTEREST



## [CIRCULAR NO. 192/04/2023-GST ]

|                 |  |
|-----------------|--|
| Legal Provision | Interest to be charged u/s 50 of the CGST Act in cases of <b><u>wrong availment</u></b> of IGST credit and reversal thereof  |
| Issue           | Whether the <b>balance of ITC available in electronic credit ledger</b> under the head of IGST only needs to be considered or total ITC under the heads of IGST, CGST and SGST taken together, has to be considered? |
| Clarification   | <b>Interest will be applicable when the balance of IGST, CGST and SGST all put together</b> is less than the wrongly availed IGST credit.  |

# CHARGING OF INTEREST



New GST **Rule 88B notified** for levy of interest on Late Payment of Tax and Wrongly Aailed ITC:

- ❑ Taxpayers who wrongly availed ITC are not liable for Interest until they utilized the same for payment of GST liability
- ❑ A **decision from retrospective date (01.07.2017) has been taken** to provide relief to the taxpayers where interest has to be paid from the day when it has been wrongly utilized
- ❑ **Rate of interest** on wrongly availed and utilized ITC has been reduced to **18%** from 24% w.e.f. 01.07.2017
- ❑ Pay Interest only if wrongly availed ITC is utilized.

# No recovery without complying with Rule 88C of the CGST Rules



**Case:** The Madras High Court in the case of *M/s. Caterpillar India Pvt. Ltd. v. The Assistant Commissioner Chennai* [WP No. 28092 of 2023 dated September 25, 2023]

**Issue :** The procedural safeguards prescribed under Rule 88C under the CGST Rules inserted vide *Notification No. 26/2022 dated December 26, 2022* has not been complied with.

**Observations** : Allowed the writ petition and held that, *no recovery can be effected directly based on the difference in Form GSTR-1 and Form GSTR-3B without complying with the requirements stated in Rule 88C* of the Central Goods and Services Tax Rules, 2017 (“the CGST Rules”).

C A Pradeep Modi

# Recovery of Tax and Interest in case of **GSTR-1 and 3B difference** **-Not. No 38/2023-CT**



- **Rule 88C was inserted** in the CGST Rules **w.e.f. 26.12.2022** for system based intimation to the registered person in cases where the output tax liability in FORM GSTR-1 exceeds the output tax liability disclosed in FORM GSTR-3B by a specified threshold.
- Now insertion of Rule 142B in the CGST Rules and insertion of a **FORM GST DRC-01D** to provide for manner of recovery of the tax and interest in respect of the amount intimated under rule 88C which has not been paid and for which no **satisfactory explanation has been furnished by the registered person.**

# MECHANISM TO DEAL WITH DIFFERENCES IN ITC OF GSTR-2B AND 3B [Not. No.38/2023-CT]



- A mechanism for system-based intimation to the taxpayers in respect of the excess availment of ITC in FORM GSTR-3B vis a vis that made available in FORM GSTR-2B above a certain threshold, along with the procedure of auto-compliance on the part of the taxpayers, to explain the reasons for the said difference or take remedial action in respect of such difference.
- **Rule 88D and FORM DRC-01C** to be inserted in CGST Rules, 2017, along with an amendment in rule 59(6) of CGST Rules, 2017.



# MECHANISM TO DEAL WITH DIFFERENCES IN GSTR-1and3B & ITC OF GSTR-2B AND 3B



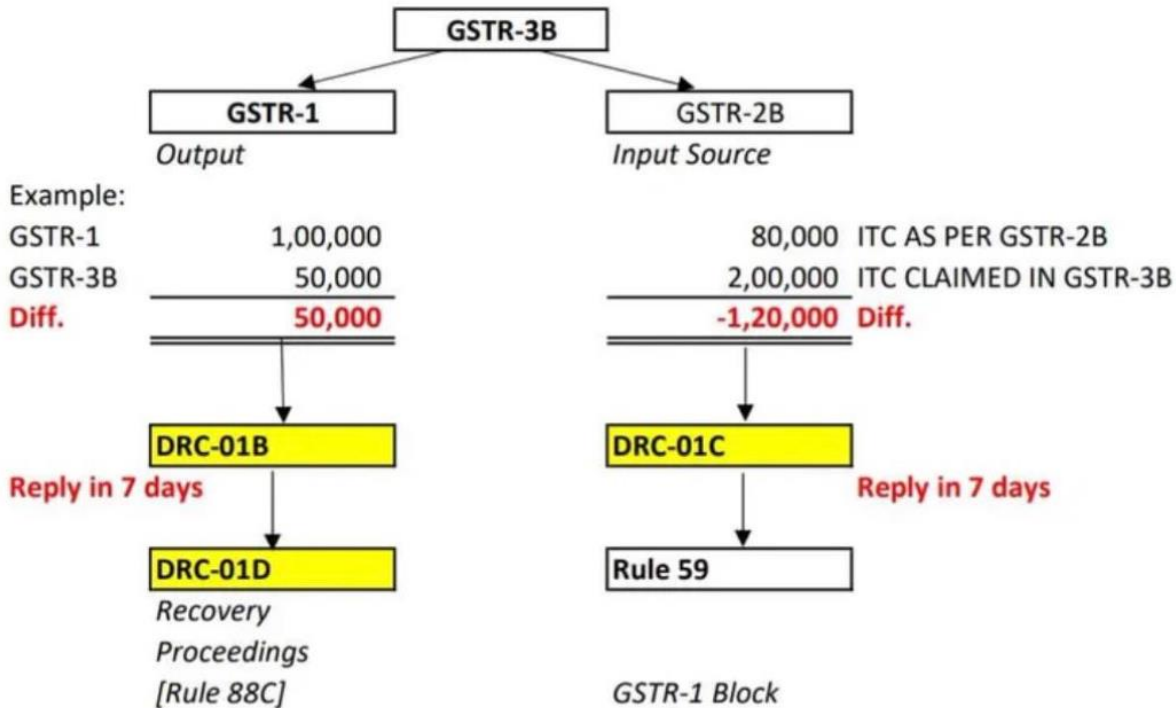
- ✓ Auto generation of notice in **DRC-01C / DRC-01D**, if the amount of input tax credit availed in FORM GSTR-3B exceeds the input tax credit in FORM GSTR-2B.
- ✓ Intimation shall also be sent to by e-mail, highlighting the said difference and directing Pay an amount equal to the excess input tax credit availed in the said FORM GSTR-3B, along with interest payable under section 50, through FORM GST DRC-03, or
- ✓ Explain the reasons for the aforesaid difference in input tax credit on the common portal, within a period of seven days.
- ✓ If any amount specified in the intimation remains to be paid within the period specified or **no explanation or reason is furnished** or the explanation or reason furnished is not found to be acceptable by the proper officer, the said amount is liable to be demanded as per provisions of **section 73 or section 74, as the case may be.**

# Brief Reasons for differences



1. Input tax credit **not availed in earlier tax period(s)** due to **non-receipt of inward supplies of goods or services** in the said tax period (including in case of receipt of goods in installments).
2. Input tax credit **not availed in earlier tax period(s)** inadvertently or **due to mistake or omission**.
3. ITC availed in respect of **import of goods**, which is not reflected in FORM GSTR-2B
4. ITC availed in respect of inward **supplies from SEZ**, which are not reflected in FORM GSTR-2B
5. **Excess reversal of ITC in previous tax periods** which is being reclaimed in the current tax period.
6. **Recredit of ITC on payment made to supplier**, in respect of ITC reversed as per rule 37 in earlier tax period.
7. **Recredit of ITC on filing of return by the supplier**, in respect of ITC reversed as per rule 37A in earlier tax period.
8. **FORM GSTR-3B filed with incorrect details** and will be amended in next tax period (including typographical errors, wrong tax rates, etc.)
9. **Any other reasons** (Please specify)

**Notification No:38/2023 - Central Tax dt. 04.08.2023**



- 1 **DRC-01B** Intimation for mismatch in GSTR-1 & GSTR-3B
- 2 **DRC-01C**
  - Part A Intimation of Difference in input tax credit available in auto generated statement containing the details of input tax credit & that availed in return
  - Part B Reply by Taxpayer in respect of the intimation of difference in input tax credit {2 options either pay tax or give justification for difference}
- 3 **DRC-01D** Intimation for amount recoverable under section 79

# Difference of ITC between GSTR-3B and GSTR2A -ITC allowed to Tax payer



**Case:** HIGH COURT OF KERALA in **Geetha Agencies v. Deputy Commissioner of State Tax** dated OCTOBER 3, 2023

**Issue :** Difference of ITC between GSTR-3B and GSTR-2A.

**Observations** : Where an impugned order was passed against assessee denying ITC due to difference between GSTR-3B and GSTR-2A, since tax for which assessee claimed input tax credit is reflected in Form GSTR 2A, though with some delay, **one more opportunity was granted to assessee to prove before assessing authority that ITC claimed in GSTR-3B is actually reflected in GSTR-2A and accordingly, impugned order was set aside and matter was remanded.**

C A Pradeep Modi

# ITC AVAILED IN GSTR-3B VS GSTR-2A FOR FY 2019 TO FY 2021



| Sl. No. | Period                | ITC Available  |
|---------|-----------------------|--|
| 1       | 1 Apr. – 8 Oct. 2019  | Circular No. 183/15/2022-GST <b>applicable as it is</b>                      |
| 2       | 9 Oct. – 31 Dec. 2019 | ITC not reflected available <b>to the extent 20 % of the eligible credit</b> |
| 3       | 1 Jan. – 31 Dec. 2020 | ITC not reflected available <b>to the extent 10% of the eligible credit</b>  |
| 4       | 1 Jan. – 31 Dec. 2021 | ITC not reflected available <b>to the extent 5% of the eligible credit</b>   |
| 5       | 1 Jan. 2022 onwards   | <b>As per GSTR-2B</b>  |

# Background



- ✓ During the initial period of implementation of GST in many cases, the suppliers have failed to furnish the correct details of outward supplies in their FORM GSTR-1 due to which there are certain deficiencies or discrepancies in FORM GSTR-2A of their recipients. However, the concerned recipients 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 scrutiny/ audit/ investigation etc and such discrepancies are considered as ineligible ITC availed.
- ✓ It is also fact that FORM GSTR-2A could not be made available to the taxpayers on the common portal during the initial stages of implementation of GST and the restrictions regarding availment of ITC by the registered persons *upto certain specified limit beyond ITC available as per FORM GSTR-2A were provided under rule 36(4) of Central Goods and Services Tax Rules, 2017 only with effect from 9th October 2019.*

# Background



- ❖ In view of this, in the **48th GST Council meeting held on 17th December 2022**, it was recommended that procedure for verification of ITC differences between GSTR-3B and GSTR-2A for FY 2017-18 and 2018-19 to be prescribed to reduce the need for litigations and give much-needed clarity to taxpayers and officers.
- ❖ Accordingly, the **CBIC vide Circular No. 183/15/2022-GST dated 27/12/2022** has issued clarification to deal with difference in Input Tax Credit in GSTR-3B and GSTR-2A for **FY 2017-18 and 2018-19**



Clarification to deal with difference in Input Tax Credit – GSTR-3B and GSTR-2A for FY 2017-18 and 2018-19  
 -Circular No. 183/15/2022-GST dated 27-12-2022



|                               |   |
|-------------------------------|---|
| GSTR-1 not filed              | The supplier has failed to file GSTR-1 for a tax period but has filed the return in GSTR-3B for said tax period.  |
| Supply not reported in GSTR-1 | the supplier has filed GSTR-1 as well as return in GSTR-3B for a tax period but has failed to report a particular supply in GSTR-1.   |
| Supply reported as B2C        | 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 GSTR-1 |
| Supply under incorrect GSTN   | Supplier has filed GSTR-1 as well as return in GSTR-3B for a tax period, but he has declared the supply with wrong GSTIN of the recipient in GST  |



# Verification by Proper Officer



- The proper officer first seek the details from the registered person regarding *all the invoices on which ITC has been availed in GSTR 3B but not reflected in GSTR 2A.*
- Ascertain *fulfilment of the following conditions of Section 16 of CGST Act*
  - i) Taxpayer is in *possession of a tax invoice or debit note* issued by the supplier or such other tax paying documents;
  - ii) Taxpayer has *received the goods or services* or both;
  - iii) *Taxpayer has made payment* for the value of supply, along with tax to the Supplier.
- *Verify any reversal of input tax credit is required to be made in accordance with section 17 or section 18 of CGST Act (Credit notes /amendments made subsequent to supply)*

Whether the said input tax credit has been availed within the time period specified under sub-section (4) of section 16 of CGST Act.

## HIGH COURT ON ITC – ASTHA ENTERPRISES [WP NO. 10395/ 2023]



### FACTS BEFORE HC! –

- Supplier did not pay GST to Government (buyer has tax invoices)
- Order was passed by Authorities denying ITC to Buyer
- Buyer did not file Appeal before due date
- Later, Buyer filed the Writ Petition

1. ITC IS A **'CONDITIONAL' RIGHT!**

2. **SEC. 16 (2) (C) PROVIDES THAT TAX SHOULD BE 'ACTUALLY PAID'!**

3. IF TAX IS NOT 'PAID', ITC IS NOT AVAILABLE!

4. RECOVERY MECHANISM MAY NOT HELP BUYER!

5. CONTRACTUALLY, BUYER CAN RECOVER TAX FROM SUPPLIER!

6. BUYER CAN SEEK REFUND FROM GOVERNMENT, IF SUPPLIER PAYS TAX!

7. GOVERNMENT CAN ALSO RECOVER TAX FROM SELLING DEALER!

8. APEX COURT AND HIGH COURT JUDGMENTS DISTINGUISHED!

*(6. M/s D.Y. Beathel Enterprises ... decision ignored the provision under sub-clause (c) of Section 16 (2) of the GST Act... 9. ...Ecom Gill Coffee Trading ... does not absolve the assessee from the rigor provided under sub-clause (c) of Section 16(2) of the BGST)*

**H'ble High Court stated : ✓ ITC not available if tax not paid by supplier!**

**What to do then : ✓ Draft appropriate tax clauses in PO ✓ Check GST registration and GSTR-3B filing status of all suppliers from 1.07.2017 till date ✓ Check ITC claimed from 1.07.2017 till date and devise strategy to handle upcoming audits/ assessments!**

C A Pradeep Modi

## CLARIFICATION TO DEAL WITH ITC AVAILED IN GSTR-3B VS GSTR-2A FOR FY 2019 TO FY 2021 [ CIRCULAR NO. 193/05/2023-GST ]



- Circular No. **183/15/2022-GST** dated 27.12.2022, vide which certificate is allowed for **difference in ITC availed and GSTR-2A** for FY 2017-18 and 2018-19 is applicable for the period 01.04.2019 to 31.12.2021 subject to Rule 36(4) of the CGST Act.
- 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.

# Clarification to deal with difference in Input Tax Credit – GSTR-3B and GSTR-2A for FY 2019-20 to Dec- 2021 -Circular No. 193/05/2023-GST dated 17-07-2023



## Background

- ✓ The Hon'ble Karnataka High Court in M/s. Wipro Limited India v. the Assistant Commissioner of Central Taxes and Ors. [Writ Petition No. 16175 of 2022 (T-Res) dated January 6, 2023] has allowed the assessee to rectify the errors committed at the time of filing of Forms and submitting GST Returns and pronounced that . Circular No. 183/15/2022-GST dated December 27, 2022, is squarely applicable for FY 2019-20 also.
- ✓ The GST Council at its 50 the meeting held on 11/07/203 has recommended for the issuance of a circular to provide for a procedure for verification of ITC in cases involving difference in ITC claimed in the GSTR-3B vis a vis the ITC available in the GSTR-2A during the period from 1<sup>st</sup> April 2019 to 31 December 2021.
- ✓ Under this circumstances the CBIC has issued Circular No: Circular No. 193/05/2023-GST dated 17/07/2023, 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.

C A Pradeep Modi

# ITC as per GSTR-3B and GSTR-2A/2B



## ITC as per GSTR-3B

- The ITC availed as per the Financial records maintained by the Taxpayer.
- The ITC availed as per the provision of Section 16.
- The ITC is not restricted as per the provisions of Section 16(4) and 17(5).

## ITC as per GSTR-2A/2B

- ITC pertains to the GSTN of the Taxpayer. ( Need to delete if it is not your GSTN)
- The ITC available as per the provision of Section 16.
- The ITC is not restricted as per the provisions of Section 16(4) and 17(5).

# 2017-18

As per Circular No: 183/15/2022-GST dated 27th December 2022



| RETURN                      | YEAR    | ITC                    |
|-----------------------------|---------|------------------------|
| GSTR-3B                     | 2017-18 | Rs. 5,00,000.00        |
| GSTR-2A                     | 2017-18 | Rs. 4,00,000.00        |
| NOT REFLECTED IN GSTR-2A    |         | Rs. 1,00,000.00        |
| <b>CERTIFICATE REQUIRED</b> |         | <b>Rs. 1,00,000.00</b> |

# 2018-19

As per Circular No: 183/15/2022-GST dated 27th December 2022



| RETURN                      | YEAR    | ITC                    |
|-----------------------------|---------|------------------------|
| GSTR-3B                     | 2018-19 | Rs. 5,00,000.00        |
| GSTR-2A                     | 2018-19 | Rs. 4,00,000.00        |
| NOT REFLECTED IN GSTR-2A    |         | Rs. 1,00,000.00        |
| <b>CERTIFICATE REQUIRED</b> |         | <b>Rs. 1,00,000.00</b> |

# 2019-20

As per Circular No: 183/15/2022-GST dated 27th December 2022



| RETURN  | YEAR                      | ITC                    |
|---|---------------------------|------------------------|
| GSTR-3B   | 2019-20 (UPTO 08/10/2019) | Rs. 5,00,000.00        |
| GSTR-2A   | 2019-20 (UPTO 08/10/2019) | Rs. 4,00,000.00        |
| NOT REFLECTED IN GSTR-2A                            |                           | Rs. 1,00,000.00        |
| <b>CERTIFICATE REQUIRED UPTO AUGUST 2019 RETURN</b> |                           | <b>Rs. 1,00,000.00</b> |

**Note: Since the notification is effective from 09-10-2019, for Sep-2019 GSTR-3B the restriction is applicable as the due date for GSTR-3B is 20/10/2019.**



# 2019-20

## GSTR-3B FROM SEPTEMBER 2019 (w.e.f. 09/10/2019 TO NOVEMBER 2019



As per Circular No: 193/05/2023-GST dated the 17th July 2023

| RETURN  | YEAR                               | ITC                  |
|---|------------------------------------|----------------------|
| GSTR-3B   | 2019-20 (09/10/2019 to 31/12/2019) | Rs. 1,00,000.00      |
| GSTR-2A   | 2019-20 (09/10/2019 to 31/12/2019) | Rs. 75,000.00        |
| Credit permitted up to                                |                                    | Rs. 15,000.00        |
| <b>CERTIFICATE REQUIRED FROM OCT-2019 TO DEC-2019</b> |                                    | <b>Rs. 15,000.00</b> |
| <b>ITC not allowed even certificate is produced</b>   |                                    | <b>Rs. 10,000.00</b> |

**Note: Since the notification is effective from 09-10-2019, for Sep-2019 GSTR-3B the restriction is applicable as the due date for GSTR-3B is 20/10/2019.**

C A Pradeep Modi

# 2019-20

## GSTR-3B FROM DECEMBER 2019 TO MARCH 2020

As per Circular No: 193/05/2023-GST dated the 17th July 2023



| RETURN  | YEAR                               | ITC                  |
|---|------------------------------------|----------------------|
| GSTR-3B   | 2019-20 (01/01/2020 to 31/03/2020) | Rs. 1,00,000.00      |
| GSTR-2A   | 2019-20 (01/01/2020 to 31/03/2020) | Rs. 75,000.00        |
| Provisional Credit permitted 10%                          |                                    | Rs. 7,500.00         |
| <b>CERTIFICATE REQUIRED FROM DEC. -2019 TO MARCH-2020</b> |                                    | <b>Rs. 7,500.00</b>  |
| <b>ITC not allowed even certificate is produced</b>       |                                    | <b>Rs. 17,500.00</b> |

**Note: Since the notification is effective from 01-01-2020, for Dec-2019 GSTR-3B the restriction is applicable as the due date for GSTR-3B is 20/01/2020.**

C A Pradeep Modi

# 2020-21

## GSTR-3B FROM APRIL 2020 TO NOVEMBER 2020

As per Circular No: 193/05/2023-GST dated the 17th July 2023



| RETURN   | YEAR    | ITC                  |
|--|---------|----------------------|
| GSTR-3B  | 2020-21 | Rs. 1,00,000.00      |
| GSTR-2A  | 2020-21 | Rs. 75,000.00        |
| Provisional Credit permitted 10%                             |         | Rs. 7,500.00         |
| <b>CERTIFICATE REQUIRED FROM<br/>APRIL-2020 TO NOV.-2020</b> |         | <b>Rs. 7,500.00</b>  |
| <b>ITC not allowed even certificate<br/>is produced</b>      |         | <b>Rs. 17,500.00</b> |

# 2020-21

## GSTR-3B FROM DECEMBER 2020 TO MARCH 2021

As per Circular No: 193/05/2023-GST dated the 17th July 2023



| RETURN   | YEAR                                    | ITC                  |
|--|---|----------------------|
| GSTR-3B  | 2020-21 (From 01-01-2020 to 31/12/2021) | Rs. 1,00,000.00      |
| GSTR-2A  | 2020-21 (From 01-01-2020 to 31/12/2021) | Rs. 75,000.00        |
| Provisional Credit permitted<br>5 %                          |   | Rs. 3,750.00         |
| <b>CERTIFICATE REQUIRED FROM<br/>-DEC.-2020 to -MAR-2021</b> |   | <b>Rs. 3,750.00</b>  |
| <b>ITC not allowed even<br/>certificate is produced</b>      |   | <b>Rs. 21,250.00</b> |

**Note: Since the notification is effective from 01-01-2021, for Dec-2020 GSTR-3B the restriction is applicable as the due date for GSTR-3B is 20/01/2021.**

C A Pradeep Modi

# 2021-22

## GSTR-3B FROM APRIL 2021 TO NOV. 2021

As per Circular No: 193/05/2023-GST dated the 17th July 2023



| RETURN  | YEAR    | ITC                  |
|---|---------|----------------------|
| GSTR-3B   | 2021-22 | Rs. 1,00,000.00      |
| GSTR-2A   | 2021-22 | Rs. 75,000.00        |
| Provisional Credit permitted<br>5 %                             |         | Rs. 3,750.00         |
| <b>CERTIFICATE REQUIRED FROM</b><br>– APRIL-2021 to – NOV.-2021 |         | <b>Rs. 3,750.00</b>  |
| <b>ITC not allowed even<br/>certificate is produced</b>         |         | <b>Rs. 21,250.00</b> |

**Note: Since the notification is effective from 01-01-2022, for Dec-2020 GSTR-3B the restriction is applicable as the due date for GSTR-3B is 20/01/2022.**

# Certificate for condition of Section 16(2)(c)

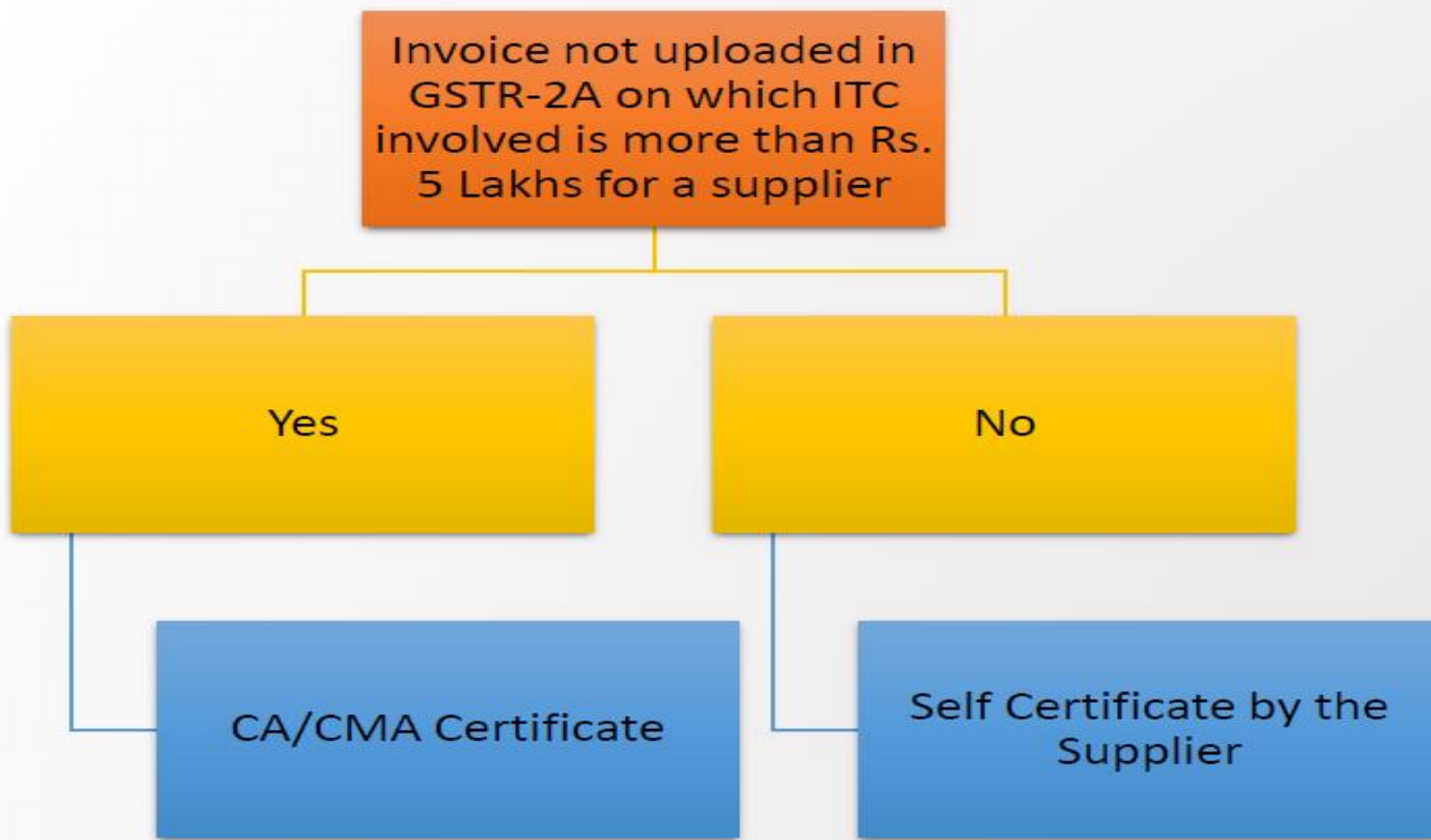


## CA or CMA Certificate

- In case, the difference between the ITC claimed in GSTR-3B and GSTR 2A of the registered person in respect of a supplier exceeds Rs 5 lakh,
- the registered person has 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 GSTR 3B.
- Certificate issued by CA or CMA should contain UDIN

## Self certificate by Supplier

- In cases, the difference between the ITC in GSTR-3B and in GSTR 2A of in respect of a supplier is upto Rs 5 lakh, the claimant has 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 GSTR 3B.



// In the letter head of the Supplier//

Certificate wrt as per Circular No. 183/15/2022-GST dated 27-12-2022 issued  
by Central Board of Indirect Taxes and Customs, New Delhi

**TO WHOM SO EVER IT CONCEN**

We, M/s.....holders of GSTN .....having principal  
place of business at.....and allotted to.....as  
Jurisdictional/Administrative Office for GST purpose, here by certify

- That we have supplied goods/services vide our invoices as detailed in the annexure attached to this certificate to M/s..... holders of GSTN .....having principal place of business at.....
- That in respect of the invoices as mentioned in the Annexure to this certificate, we have not filed FORM GSTR-1 for the tax period. However, we declare that in respect of the invoices, we have made supplies to the said registered person and the tax on such supplies has been paid by us in our return in FORM GSTR 3B for the tax period. (OR)
- That in respect of the invoices as mentioned in the Annexure to this certificate we have filed FORM GSTR-1 as well as return in FORM GSTR-3B for the said tax period but could not report the said supply in FORM GSTR-1. However, we declare that in respect of the invoices we have made supplies to the said registered person and the tax on such supplies has been paid by us in our return in FORM GSTR 3B for the tax period. (OR)
- that in respect of the invoices as mentioned in the Annexure to this certificate, we have issued invoices as per Rule 46 of CGST Rules,2017 containing GSTIN of the recipient, but we have wrongly reported the said supply as B2C supply, instead of B2B supply, in our FORM GSTR-1 for the said tax period. However, we declare that in respect of the invoices we have made supplies to the said registered person and the tax on such supplies has been paid by us in our return in FORM GSTR 3B for the tax period. (OR)







— that in respect of the invoices as mentioned in the Annexure to this certificate, we have filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but we have declared the supply with wrong GSTIN of the recipient in FORM GSTR-1. However, we declare that in respect of the invoices we have made supplies to the said registered person and the tax on such supplies has been paid by us in our return in FORM GSTR 3B for the tax period.

This certificate is issued to the aforesaid registered person only for 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 with reference to our supplies in respect of the detailed in the annexure, as per Circular No. 183/15/2022-GST dated 27-12-2022 issued by Central Board of Indirect Taxes and Customs.

We do hereby declare that what is stated above is true to the best of our information and belief.

Signature of the Authorised Person with seal

Place:

Date:

**(Strike out whichever portion is not required)**

**ANNEXURE**

Invoice details for the supplies made to M/s..... holders of GSTN  
.....having principal place of business  
at.....

| Sl.No | Invoice No and Date | Taxable value | IGST | CGST | SGST | Cess |
|-------|---------------------|---------------|------|------|------|------|
| 1     |                     |               |      |      |      |      |
| 2     |                     |               |      |      |      |      |
| 3     |                     |               |      |      |      |      |
| 4     |                     |               |      |      |      |      |
| 5     |                     |               |      |      |      |      |

Signature of the Authorised Person with seal

Place:

Date:



To

-----  
-----  
-----  
-----

Dear Sir

Sub: GST- M/s.....( GST.NO.....)-  
request for Certificate required as per CBIC Circular No: Circular No. 183/15/2022-  
GST dated 27-12-2022 for non-reflection of your invoices in GSTR-2A during the  
period 2017-18,2018-19 and 2019-20-Reg.

-----  
We have availed input tax credit as per the provisions of GST Act, 2017  
based on your invoices detailed in annexure to this letter.

2. On verification of ITC availed based on your invoices detailed in the  
annexure attached it is noticed that the same were not available in GSTR-2A  
provided by GSTN portal based on the invoices uploaded by you in GSTR-1 for the  
relevant period, though the transactions were genuine and our availment of input  
credit as per the provisions of GST Law the non-availability of your invoices in the  
GSTN System and GSTR-2A is due to following reasons Viz.,

- The Registered persons have filed GSTR-3B but have not filed GSTR-1 for  
the tax period.
- The Registered persons have filed FORM GSTR-1 as well as return in FORM  
GSTR-3B for the said tax period but the transaction was wrongly reported  
the said supply as B2C supply, instead of B2B supply.



3. Now the officers of the Central/Stater GST department the Officers have informed that they require certificate as per the CBIC Circular No. 183/15/2022-GST dated 27-12-2022.

4. In view the above, as the invoice details enclosed in the annexure is not available, we request you to us to provide the certificate in the enclosed format.

5. Please signed copy of the certificate immediately as the same must be submitted to the Central Department. If you need any clarification on this, please email to us through email id.....

Encl:

1. Annexure-I-Draft Certificate format
2. Annexure-II- Details of invoices your sales invoices which are not reflected in GSTR-2A.

Regards

For M/s.....

C A Pradeep Modi

# Whether Cash can be seized?



- Section 67(2) of the Act. Where the *proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:*
- *Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorized by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:*

# Whether Cash can be seized?



Cash can't be seized during inspection under section 67 of CGST Act:  
HC The Hon'ble KERALA High Court in the case of **DHANYA SREEKUMARI V/s STATE TAX OFFICER (IB)** decided on 27-6-2023

❓ **Issue** : During the search an inspection team found cash from manufacturing unit as well as residence of petitioner they seized same under section 67(2) of the CGST Act ,2017. Is it justified?

❓ **Hon'ble High Court Judgement** : In an investigation aimed and detecting tax evasion under CGST Act, no cash can be seized under section 67 of CGST Act, especially when cash did not form part of stock-in-trade of assessee's business.

Therefore, cash seized was to be released to petitioners forthwith –  
Section 67 of the CGST Act, 2017.

# Whether Cash can be seized?



Seizure of currency by GST officers during search is illegal and without any authority The Hon'ble Delhi High Court in **Arvind Goyal CA v. Union of India** [W.P. (C) NO. 12499 OF 2021 JANUARY 19, 2023.

❑ Issue Search operation was conducted at residence of petitioners by GST officers under section 67(2) - During course of search, officers found cash and took possession of said cash.

❑ Hon'ble High Court Judgement Since documents, books or things could only be seized under section 67 if same were useful or relevant to any proceedings under GST Act, therefore, seizure of currency by concerned officers was illegal and without any authority; and seized currency was returned.

# GST Registration Can't be Cancelled Merely Stating a Firm as Bogus.



The *Allahabad High Court held in M/s Apparent Marketing Private Limited.*

❓ **Issue** : The department surveyed the petitioner's business premises and issued a notice proposing the cancellation of registration. The department proposed the cancellation as the petitioner was found bogus during the inspection.

❓ **Hon'ble HC Judgement** : The *department could cancel the registration only if the assessee found one of the five conditions of Section 29(2).* Since the *statute has not used the word 'bogus',* the Court ruled that registration under the Act cannot be cancelled by merely describing the firm as bogus.

❓ **Conclusion:-** The Court ruled that the notice seeking to cancel the petitioner's GST registration remained defective as the reason for cancellation does not fall under Section 29(2) of the GST Act. Hence, the High Court allowed the petition and set aside the order passed by the Assistant Commissioner, State-Tax, cancelling the petitioner's GST registration.



# Section 29. Cancellation or suspension of registration



(2) :The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,-

- (a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or
- (b) a person paying tax under section 10 has not furnished the return for a financial year beyond three months from the due date of furnishing the said return; or
- (c) any registered person, other than a person specified in clause (b), has not furnished returns for a such continuous tax period as may be prescribed; or
- (d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or
- (e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

**Provided** that the proper officer shall not cancel the registration without giving the person an opportunity of being heard:

**Provided** further that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.



# ITC can't be denied merely because registration of supplier was cancelled with retrospective effect



The *Hon'ble Calcutta High Court* in *M/s Gargo Traders* v/s Joint Commissioner, Commercial Taxes (State Tax) W.P.A. 1009 OF 2022 JUNE 12, 2023.

❑ **Issue** : Petitioner claimed credit of input tax against supply made from a supplier - Said claim was rejected by respondent-revenue on ground that supplier from whom petitioner claimed to have purchased goods were all fake and non-existing.

❑ **Hon'ble HC Judgement** : Where *petitioner's claim for input tax credit was rejected due to supplier's fraudulent activity*, since petitioner had paid amount of *purchased articles as well as tax on same through bank and not in cash and without proper verification*, it could not be said that there was any failure on the part of petitioner, order rejecting said claim was to be set aside .

Dept. can't expect from buyer to verify that seller obtained GST registration by producing fake documents or not



THE Hon'ble ANDHRA PRADESH HC in the case of ARHAAN FERROUS AND NON-FERROUS SOLUTIONS PVT. LTD. V/s DEPUTY ASSISTANT COMMISSIONER-1 (ST) decided on 3-8-2023.

❓ **Issue** : What are the responsibility of Purchaser if Seller obtained GST registration by producing fake documents?

❓ **Hon'ble HC Judgement** : Responsibility of purchaser would be limited to the extent of establishing that he bonafidely purchased goods from the seller for valuable consideration by verifying GST registration of the seller available on the official web portal; the purchaser needed not aware of credentials and business activities of the seller or about the fact that the seller obtained GST registration by producing fake documents. .

# AMENDMENTS PURSUANT TO 52ND GST COUNCIL MEETING



- Personal Guarantee by Directors
- Inter-Corporate Guarantee by companies to banks / FIs
- Freight on Export
  - Place of supply for advertising sector
  - Place of supply in case of co-location services
- Clarification on export of services where consideration realized in INR
- Issuance of intimation upon paying the SCN amount before issuance of order
- Conclusion of provisional attachment upon expiry of 1 year from the order

# AMENDMENTS PURSUANT TO 52ND GST COUNCIL MEETING



- One person company introduced as a category in GST Registration
- ITC restriction for persons engaged in transportation of passengers
- Exemption for service provided to Governmental authorities
- Services provided by Indian Railways removed from exemption and reverse charge
- Refund of unutilized ITC restricted only where land is transferred along with construction
- Refund under inverted duty restricted for imitation zari thread
- Transportation by company vide omnibus through electronic commerce operator
- Change in the rate of taxes

# AMENDMENTS PURSUANT TO 52ND GST COUNCIL MEETING



Personal Guarantee by Directors : No Consideration charged by director from company:

As per RBI guidelines, no payment, including commission or brokerage fees, can be given to a director for providing a personal guarantee to a bank on a company's credit limits.

Since no consideration can be provided to the director, the open market value of this transaction is considered zero, and therefore, no tax is applicable on this service provided by the director to the company.

# AMENDMENTS PURSUANT TO 52ND GST COUNCIL MEETING



Personal Guarantee by Directors : Consideration charged by Ex-director for continuing guarantee:

➤ Where the director, who had provided the guarantee, is no longer connected with the management but continuance of his guarantee is considered essential because o the new management's guarantee is either not available or is found inadequate, or there may be other exceptional cases

where the promoters, existing directors, other managerial personnel, and shareholders of borrowing concerns are paid remuneration/ consideration in any manner, directly or indirectly.

➤ In all these cases, the taxable value of such supply of service shall be the remuneration/ consideration provided to such a person/ guarantor by the company, directly or indirectly.

# AMENDMENTS PURSUANT TO 52ND GST COUNCIL MEETING



## Inter-Corporate Guarantee by companies to banks / FIs

≥ The circular clarifies that providing a corporate guarantee between related companies is considered a supply of service, even without any consideration.

The same applies when a holding company offers a corporate guarantee for its subsidiary.

The taxable value for such services is determined under rule 28 of CGST Rules. To ensure consistency, a new sub-rule (2) was added to rule 28 via Notification No. 52/2023 dated 26.10.2023.

A new rule 28(2) has been inserted which provides that the value of such supply of services between related persons by way of providing corporate guarantee *shall be deemed to be one percent of the amount of such guarantee offered, or the actual consideration, whichever is higher.*

This sub-rule will govern the taxable value for services involving corporate guarantees, irrespective of the recipient's ability to claim full Input Tax Credit (ITC). However, it does not apply to personal guarantees provided by directors.

# AMENDMENTS PURSUANT TO 52ND GST COUNCIL MEETING



## Place of supply for advertising sector

➤ Advertising companies procure space on hoardings/billboards for corporate clients.

Two common scenarios exist: (i) sale of space or rights to use space on hoardings/structures, and (ii) advertising services involving specific locations.

In Case (i), the place of supply is determined by the location of the hoarding/structure, as it's considered an immovable property under Section 12(3)(a) of the IGST Act.

In Case (ii), when the vendor provides advertising services without selling space or rights to use space on immovable property, the place of supply follows Section 12(2) of the IGST Act for advertising services.

In both cases, the place of supply is contingent on the nature of the transaction and the immovable property involved.



# AMENDMENTS PURSUANT TO 52ND GST COUNCIL MEETING



## Place of supply for advertising sector

To illustrate, Mr. A is the playground owner is registered in GST in West Bengal,

. The playground is in Kolkata. M/s XYZ Private Limited is an advertising company registered in GST in Mumbai Maharashtra. M/s XYZ Private Limited has taken 50 square Meters space from Mr. A to display a hoarding in the playground. In this case, prior to issuance of the present circular, Mr. A will issue an invoice to M/s XYZ Private Limited and will charge CGST and WBGST as a place of supply of service is the location of the immovable property which is situated in Kolkata. As such, no ITC will be passed on to M/s XYZ Private Limited since it is not registered in West Bengal. However, ***now after the Circular, it is clarified that Mr. A will issue an invoice to M/s XYZ Private Limited and will charge IGST (Place of Supply - Maharashtra) and Hence, ITC will be available to M/s XYZ Private Limited.***

# AMENDMENTS PURSUANT TO 52ND GST COUNCIL MEETING



## Freight on Export

Where either the location of supplier or recipient is outside India and the services were that of transportation of goods (other than mail or courier), the place of supply used to be the destination of goods as per Section 13(9) of the IGST Act 2017

Upon deletion of this sub-section, the place of supply would be driven by Section 13(2) of the IGST Act 2017 i.e. the general provisions. The place of supply would be the location of the recipient if the same is available. If the said location is not available, it would be the location of the recipient.

### Comments:

- Therefore, where the goods are being exported and the transporter is outside India, the exporter would have to pay taxes under reverse charge. Earlier, no taxes had to be discharged as POS was outside India.
- Even where the transporter is within India and goods are being exported, the transporter would be charging taxes based on the POS of the recipient of services under Section 12 of the IGST Act 2017
- There is no change in the provisions for transport under Section 13 where the same is by mail or courier. Therefore, it would also be driven by the aforesaid provisions of Section 13(2) of the IGST Act 2017.

*(Circular No. 203/15/2023-GST dated 27th October 2023)*

# NOTIFICATIONS ISSUED – 50<sup>TH</sup> GST COUNCIL MEETING



1. **GTA** - Notn. No. 6/2023-CT(R)Notn. No. 6/2023-IT(R)Notn. No. 6/2023-UTT(R)27.07.2023
2. **Manual Filing of Appeal**
3. **Strengthen the GST registration process**
4. **E-com operator- Special Procedure**
5. Recovery of Tax and Interest in case of GSTR-1 and 3B difference
6. Mechanism to deal with differences in ITC of GSTR-2B and 3B
7. Changes in GST rates – Goods and Service
8. Other Amendments

# Changes with respect to GTA industry



GTA will **not be required to file declaration** for paying GST under forward charge **every year**

If GTA have exercised this option for a particular financial year, they shall be deemed to have exercised it for the next and future financial years unless they file a declaration that they want to revert to RCM.

Last date of exercising the option by GTAs to pay GST under forward charge shall be **31st March of preceding Financial Year instead of 15th March.** (Starting from 1st January of preceding Financial Year]

# Strengthen the GST registration process, Not. No. 38/2023-CT



## Furnishing of Bank Account Details on common portal after issuance of Registration Certificate

- ✓ Now, the details of Bank Account is to be furnished on common portal within 30 days of grant of registration or before furnishing of R1 or using invoice furnishing facility, whichever is earlier
- ✓ Earlier it was 45 days
- ✓ In case of violation of Rule 10A the Registration Certificate may be suspended

# Strengthen the GST registration process, Not. No. 38/2023-CT



## Physical verification of business premises in certain cases

✓ Where the physical verification of the place of business of a person is required before the grant of registration in the circumstances specified in the proviso to sub rule (1) of rule 9, the proper officer shall get such verification of the place of business done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal at least five working days prior to the completion of the time period specified in the said proviso.”

✓ Where the proper officer is satisfied that the physical verification of the place of business of a person is required after the grant of registration, he may get such verification of the place of business done and the verification report along with the other documents, including Photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification.\_

✓ Presence of the following is no more required at the time of physical verification of the premises... Individual / Karta / Managing Director / Whole Time Director / Partner / Member of MC of Association / Board of Trustee / Authorised Representative / Authorised Signatory etc. AS the case may be...

# E-com operator-Special Procedure Not. No.-36/2023-CT Not. No.-37/2023-CT W.e.f 01.10.2023



Special procedure in respect of supply of goods made through Ecom by the persons paying tax under Composition Scheme

- The ECom operator shall not allow any inter-State supply of goods through it by the said person;
- The ECom operator shall collect tax at source U/S section 52 (1) of the CGST Act.
- The Ecom operator shall furnish the details of supplies of goods made through it by the said person in the statement in FORM GSTR-8 electronically on the common portal.



## CBIC notifies special procedure for E-commerce operators in respect of Supply Of Goods By Unregistered Person



The Notification No. 37/2023 – Central Tax dated August 04, 2023, specifies special procedure for E-commerce operator:

- ✓ The unregistered person shall be allowed to supply goods only after allotment of enrolment number by common portal;
  - ✓ E-commerce operator shall not allow inter-state supply of goods to unregistered person ;
  - ✓ The E-commerce operator shall not collect any Tax at source (TCS) under Section 52 of CGST Act in relation to the supply of goods made through the unregistered person; and
  - ✓ The E-commerce operator shall furnish all the details of supplies made through unregistered person in the statement in FORM GSTR-8 electronically on common portal.
- ☐ Further, it has been notified that where multiple E-commerce operators are involved in a single supply of goods through electronic commerce operator platform, “the electronic commerce operator” shall mean the electronic commerce operator who finally releases the payment to the unregistered Supplier.
- (The Notification is effective from October 01, 2023.)**



## Waive the requirement of mandatory registration– Not. No. 34/2023-CT



### No mandatory registration for person supplying goods through ECOs, subject to

- No inter-State supply of goods
- shall not make supply of goods through ECO in more than one State or Union territory
- Shall be required to have a PAN
- before making any supply of goods through ECO, declare on the common portal their PAN, address of their place of business and the State or Union territory in which such persons seek to make such supply, which shall be subjected to validation on the common portal
- Such persons have been granted an enrolment number on the common portal on successful validation of the PAN
- such persons shall not be granted more than one enrolment number in a State or Union territory;
- Where such persons are subsequently granted registration under section 25 of the said Act, the enrolment number shall cease to be valid from the effective date of registration

# E-way bill for intra-state movement of gold and precious stone (Other Amendments )



The Government of India, through notification No. 38/2023 dated 4th August 2023, has introduced \*New Rule 138F, by allowing State governments to mandate e-way bills for intra-state movement of gold and precious stone.

Key points:

- ✓ Minimum threshold: Rs 2lakhs
- ✓ Part A is only required; Part B not required
- ✓ Where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency
- ✓ Where an e-way bill has been generated but goods are either not transported or are not transported as per the details furnished in the E-waybill, the e-way bill may be cancelled within twenty-four hours of generation of the e-way bill.
- ✓ E-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B.



**Disclaimer: Above is for the education purposes only, and is not intended to be treated or used as legal advice or opinion.**

**Follow this link to join my WhatsApp group OR  
Copy & Paste the below link:**

**<https://chat.whatsapp.com/EsezrvFY1cxBhXMwhPyY7Y>**

**THANKS**



**CA. PRADEEP MODI**

**(FCA, LLB, DISA, IDT)**

**9433033882**

**CA PRADEEP MODI**  
F.C.A, D.I.S.A, C.I.D.T (ICAI)  
9433033882



PARTNER  
**MODI GADIA & CO.**  
CHARTERED ACCOUNTANTS

18, N. S. ROAD, (BACK SIDE) 1ST FLOOR  
SUITE NO.- 5 & 6, KOLKATA - 700 001  
OFF.: (033) 4003 7171  
RESI : (033) 2428 6896  
E-MAIL : [modigadiaco@gmail.com](mailto:modigadiaco@gmail.com)  
[capradeepmodi@gmail.com](mailto:capradeepmodi@gmail.com)



C A Pradeep Modi