



# INPUT TAX CREDIT – LITIGATIONS IN GST

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## DEFINITION

- Input Tax in relation to 'registered person' means
  - CGST, SGST, IGST, UTGST
  - Charged on any supply of goods/ services
  - Made to the registered person
  - Includes tax paid under RCM on Import and local supplies
  - Does not include tax paid under composition levy
- Input Tax credit means the credit of input tax

# BASIC CONDITIONS FOR AVAILMENT OF CREDIT

- Section 16(1) – Used or intended to be used in “course or furtherance of business”
- Section 16(2) – prior to 1.1.2022
  - Possession of Tax Invoice or Debit Note issued by a registered supplier
  - Goods/ Services have been received
  - Tax charged on the supply has been paid to the Government
  - GST Returns have been duly filed

## NEW CONDITIONS W.E.F. 1.1.2022

- Details of the Invoices have been furnished in GSTR 1 by the supplier
- Communicated to the Recipient in GSTR 2B
- Detail of the ITC so communicated should not be restricted

## RULE 36(4)

- 9.10.2019 – 1.1.2020 - 20%
- 1.1.2020 – 1.1.2021 – 10%
- 1.1.2021 – 1.1.2022 – 5%

# CASES OF DISALLOWANCE

- ITC not shown in 2A
  - GSTR 1 not filed by Supplier
  - Wrong GSTIN by Supplier
  - B2C by Supplier instead of B2B
- Supplier has shown as RCM in GSTR 1
- GSTR 3B not filed by Supplier
- GSTIN Cancelled with Retrospective Effect
- POS Wrongly mentioned by Supplier
- Wrong head of tax – IGST instead of CGST and SGST/ vice versa
- Credit Notes issued by supplier
- Ineligible Credit
- Exempt Supplies – Proportionate ITC Reversal

# ITC NOT SHOWN IN GSTR 2A - CIRCULAR 183

CIRCULAR 183/15/2022 Dated 27<sup>th</sup> December ,2022

Relevant for FY 2017-18 and 2018-19

## Different Scenarios

- i. GSTR-3B filed but failed to file GSTR-1
- ii. Filed both GSTR-3B and GSTR-1 but failed to report a particular supply in GSTR 1
- iii. Supplies made to a registered person but wrongly reported as B2C
- iv. Both GSTR-3B and GSTR-1 filed but has declared the supply with wrong GSTIN of the recipient

## PARA 4 PROCEDURE

- Ascertain the fulfillment of conditions mentioned in Section 16 of the CGST Act
  - ✓ RTP is in possession of tax invoices
  - ✓ Has received goods or services or both
  - ✓ Has made payment towards value of supply
- Where difference between GSTR-3B and GSTR-2A exceeds Rs 5 Lakhs then RTP to produce a certificate for the concerned supplier from CA or CMA certifying that supplies in respect of such invoices are actually made.
- Where the difference in GSTR-3B and GSTR-2A is upto 5 Lakhs , RTP to produce a certificate from the concerned supplier to the effect that such supplies have been actually made by him to the said RTP



# ITC NOT SHOWN IN GSTR 2A - CIRCULAR 193

CIRCULAR 193/05/2023 Dated 17<sup>th</sup> July, 2023

Relevant for Period 1.04.2019 to 31.12.2021

The circular provides for various thresholds for availment of ITC by a RTP in respect of invoices or debit notes, the details of which have not been furnished by the suppliers but shown in GSTR-1. In such cases as per circular the RTP can avail excess of ITC reflected in GSTR-3B subject to the limits

Eg: GSTR-2A ITC – Rs 3 lacs

GSTR- 3B ITC – Rs 5 lacs

Here RTP cannot avail in excess of  $3\text{lacs} * 1.2 = \text{Rs } 3,60,000$

Remaining Rs 1,40,000 ITC not allowed.

## CASE LAWS:

- 1) **DIYA AGENCIES** – 2023(9) TMI 955- KERALA HIGH COURT DATED 12-09-2023
- 2) **MINA BAZAR**- 2023(10) TMI 926- KERALA HIGH COURT DATED 19-09-2023
- 3) **HEENA MEDICALS**- 2023(10)TMI 98- KERALA HIGH COURT DATED 19-09-2023
- 4) **UNITY OOH MEDIA**- 2024(1) TMI 377-KERALA HIGH COURT DATED 21-12-23

All the above cases have clearly held that the input tax credit of the assessee under the GST regime cannot be denied merely on the difference of GSTR 2A and 3B. The matter is remitted back to the file of the Assessing Authority/1st respondent to examine the evidence of the petitioner irrespective of the Form GSTR 2A for the petitioner's claim for the input tax credit.

**SUPPLIER HAS SHOWN AS RCM IN GSTR-1**



**GSTR - 3B NOT FILED BY THE SUPPLIER**

## SUNCRAFT ENERGY- 2023(8) TMI 174-CALUTTA HIGH COURT DATED 25-12-23-

The High Court held that buyers who adhere to the conditions specified in Section 16(2) of the Central Goods and Services Tax (CGST) Act and State Goods and Services Tax (SGST) Act of 2017 are entitled to claim Input Tax Credit (ITC) and are not responsible for discrepancies in the GST Return GSTR 2A and GSTR 3B due to the seller's default.



# **CANCELLATION OF GST REGISTRATION OF SUPPLIER WITH RETROSPECTIVE EFFECT**

## CASE LAWS:

1. **M/S ENGINEERING TOOLS CORP-** 2024(2) TMI 855- MADRAS HIGH COURT DATED 15-2-24
2. **TVL. CLEON** -2024(1) TMI 1049- MADRAS HIGH COURT DATED 19-1-2024
3. **GARGO TRADERS** -2023(6) TMI 533- CALCUTTA HIGH COURT ORDER DATED 12-06-23
4. **SANCHITA KUNDU-** 2022(5) TMI 786- CALCUTTA HIGH COURT DATED 05-05-2022
5. **LGW INDUSTRIES-** 2021(12) TMI 834- CALCUTTA HIGH COURT DATED 13-12-21

As per the above Judgements it was held that the ITC claim cannot be rejected solely on the ground that the supplier's GST Registration was cancelled with retrospective effect. The assessing officer is directed to consider whether the transaction was genuine by examining all relevant documents in that regard and also after providing a reasonable opportunity to the petitioner.



**POS WRONGLY MENTIONED BY SUPPLIER**





**WRONG HEAD OF TAX – IGST INSTEAD OF CGST  
AND SGST / VICE VERSA**



# **CREDIT NOTES ISSUED BY SUPPLIER**

The background is a teal-to-blue gradient. In the four corners, there are white line-art graphics resembling circuit traces or fiber optic paths, with small circles at the end of the lines.

**INELIGIBLE CREDIT- Section 17(5)**  
**(Blocked Credit)**

- Motor vehicles for passenger transportation having **less than or equal to 13 seats**
- Food or beverages, health services , beauty treatment , life insurance and health insurance , rent a cab ,club membership , home travel concession or travel benefit for employees on vacation
- Building Construction
- Composition Taxpayer/ Non- Resident
- Personal Use
- Free Sample & Lost
- Fraudulent ITC claims



# **EXEMPT SUPPLIES – PROPORTIONATE ITC REVERSAL**

# BONAFIDE ERROR IN RETURN FILING AND NO LOSS TO REVENUE

**NRB BEARINGS-** 2024(2) TMI 853- BOMBAY HIGH COURT DATED 14-02-2024

The court considering the provisions of the CGST Act had observed that in cases where there was a bonafide error in filing of the return and when there was no loss of revenue caused to the Government/exchequer, the technicalities on any legitimate rectification ought not to come in the way of the assessee, so as to suffer an inadvertent error, which would have a cascading effect

# RECTIFICATION OF RETURNS

**ANVITA ASSOCIATES-** 2024(1)TMI 1104-BOMBAY HIGH COURT DATED 15-01-2024

Incase there appears to be an inadvertent error on the part of the petitioner in filing return in FORM-GSTR-01 and due to such defective return being filed, the Petitioner contends that it is not in a position to recover the amount as it is not reflecting in GSTR 2A then the appropriate course of action for the Petitioner is to file an Application for rectification of the returns which were filed in FORM GSTR- 01 and the same is required to be recognized by the department and in cases where there is no loss of revenue to the Government, rectification of such errors need to be permitted by the department.

# AMENDMENT OF FORM GSTR-1 FOR APR-18 TO MAR-19

**RAILROAD LOGISTICS - 2024(2) TMI 57- BOMBAY HIGH COURT DATED 15-1-2024**

The notices were issued purely on the mistakes which had happened at the petitioner's end in submitting the returns in form GSTR-01 in which the mismatch had occurred in the GST in numbers. However there was no loss of the revenue to the department as tax was already paid. In such case rectification is permitted to the petitioner and amendment of form GSTR-1 for the period from April 2018 to March 2019 which involves Input Tax Credit is permitted.



# ITC NOT CLAIMED IN GSTR-3B RETURNS

**SHANMUGA HARDWARES-2024(2) TMI 1126- MADRAS HIGH COURT -20-02-2024**

When the registered person asserts that he is eligible for ITC by referring to GSTR-2A and GSTR-9 returns, the assessing officer should examine whether the ITC claim is valid by examining all relevant documents, including by calling upon the registered person to provide such documents. In this case, it appears that the claim was rejected entirely on the ground that the GSTR-3B returns did not reflect the ITC claim. Therefore, interference is warranted with the orders impugned herein.

# ITC NOT A VESTED RIGHT

**JAIN BROTHERS – 2023(12) TMI 829- CHHATTISGARH HIGH COURT DATED 20-12-2023**

It was held that input tax credit is not a vested right but merely a benefit conferred upon the assessee by the act, which does not violate [Article 14](#), [19\(1\)\(g\)](#) and [300A](#) of the [Constitution Of India](#), and [Section 16\(4\)](#) of the [CGST Act](#) not being covered by the doctrine of impossibility as it does not expect an assessee to do what is impossible for him to do

## TIME PERIOD TO CLAIM ITC – SECTION 16(4)

### **M Trade links – 2024(6) TMI – Kerala High Court Dated 4.06.2024**

It was held that where for the period from 01.07.2017 till 30.11.2022, if a dealer has filed the return after 30th September and the claim for ITC was made before 30th November, the claim for ITC of such dealer should also be processed if he is otherwise entitled to claim the ITC. This amendment being procedural has to be given **retrospective effect** and, therefore, it is provided that it should be treated that the time limit for furnishing the return for the month of September is 30th November in each Financial Year with effect from 01.07.2017, considering the peculiar nature of difficulties in the initial period of implementation of the GST regime

- **ARS STEELS & ALLOY- 2021 (6)TMI 957- MADRAS HIGH COURT DATED 24.06.2021**

Reversal of ITC u/s 17(5)(h) by the Revenue , in cases of loss by consumption of input which is inherent to manufacturing loss , is misconceived

**SAFARI RETREATS – 2019(12) TMI 1676 SC ORDER DATED 2-12-2019**

GST paid on construction of shopping mall intended to be let out eligible for ITC

THANK YOU!

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