



**The Institute of Chartered Accountants of India
Eastern India Regional Council**

3 CPE Hrs

Seminar

**How to Handle Burning Issues in
GST Scrutiny & other Recent
Developments in GST**



Speaker

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Ishan Tulsian is a practicing Fellow Chartered Accountant and is an expert in the area of GST and heads the GST division of R Tulsian and Co LLP, a multinational Chartered Accountant Practice headquartered in Kolkata in India and having several Group companies in Bahrain, Oman, Saudi Arabia, UAE, UK and USA.

He is a qualified and authorized Enrolled Agent (EA), a Federally Authorized Tax Practitioner, who is empowered by the U.S.A. Department of Treasury. He represents his clients on any matters including audits, tax refund matters and appeals before the Internal Revenue Service (IRS), USA.

He is also a Registered Valuer in the category of Securities or Financial Assets (SFA) under Insolvency and Bankruptcy Board of India (IBBI).

He holds a Masters of Science in Applied Finance from Singapore Management University (SMU). He is a qualified Company Secretary and a Post-graduate in LL.B. in First Class from Vidyasagar University. He is an All-India 2nd Rank holder (AIR-2) in Diploma in Information Systems Audit (DISA) from ICAI and holds a Diploma in International Taxation (DIIT) from ICAI and is a graduate in B.Com (Honours) in First Class from the prestigious St. Xaviers' College, Kolkata.

He has more than 15 years of experience in GST consultancy, litigation and compliances, USA Tax planning and structuring, International Taxation and Valuation of businesses.

He is an active member of several study circles of ICAI and several Industry and Trade Bodies and frequently delegates in discussions and knowledge sharing sessions on several topics on GST, USA taxation and valuation.

Disclaimers



- All views stated are personal to me.
- They are not binding on the organizers of the event or any related association.
- My personal views may be correct or incorrect as they are expressed based solely on my understanding of the GST Legislature.
- All participants/members/listeners are kindly requested to go through all the related tax law provisions (Law, Rules, Notifications, Circulars, CBIC Tweets, CBIC Educational Documents, NACIN Documents, Advance Rulings, Court Judgements, Departmental SOPs etc.) on their own and advise their respective clients accordingly.
- The facts and situations of every case are unique and different in themselves.
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How to Handle Burning Issues in GST Scrutiny & Other Recent Developments in GST?

Amendments- DRC-01B, DRC-01C, DRC-01D, Rule 37A, ECRRS

Scrutiny Of returns- Provisions and in light of latest SOP(s)

Burning issues raised in Scrutiny of Returns

Solutions to common issues raised in light of latest judicial pronouncements

How to reply to Scrutiny Notices?

Walkthrough Analysis of Real-life Scrutiny Notices

Questions & Answers

Self-Assessment of tax



- Section 59 of the CGST Act defines “**Self-Assessment**” which is as under:
*“Every registered person shall **self-assess** the taxes payable under this Act **and furnish a return** for each tax period as **specified under section 39.**”*
- It is the responsibility of the taxpayer to carry out self-assessment and **determine and pay GST correctly.**
- Self-Assessment Tax **shall include the tax payable in respect of outward supplies furnished in GSTR-1** but not included in GSTR-3B for the purposes of Section 75(12) with respect to recovery with Sec 79.
- Section 75 (12) of CGST Act, 2017:

*“Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, **the same shall be recovered under the provisions of section 79.**”*

*[Explanation: For the purposes of this sub-section, the expression “self-assessed tax” shall include the **tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.]**” - (Inserted vide THE FINANCE ACT, 2021 dated 28-03-2021 w.e.f. 01-01-2022)*

- Where liability reported in **GSTR-1 > GSTR-3B**, communication stating **DIN** to be issued to explain the differences or to pay the short or non-payment of self-assessed tax within a prescribed time.
(Para 3.3 of Instruction No.01/2022-GST dated 7.01.2022)
- However, there may be genuine differences due to (1) **Typographical Error**, (2) **Undeclared Supply pertaining to previous tax period** declared in GSTR-1 now and tax paid correctly earlier in GSTR-3B.
- **Rule 88C**-Manner of dealing with difference in liability in GSTR-1 and GSTR-3B, states when tax payable in GSTR-1 **exceeds by a recommended amount/percentage** in GSTR-3B as stated in PART-A of GST DRC-01B, then within 7 days pay or explain the difference in DRC-03 and reply in Part-B. *(Para 11 of Notification No. 26/2022-Central Tax dated 26.12.2022)*

Rule 142: Notice and order for demand of amounts payable under the CGST Act, 2017

(1A) The proper officer may, **before service of notice** to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, **communicate the details of any tax, interest and penalty** as ascertained by the said officer, in **Part A of FORM GST DRC-01A**.

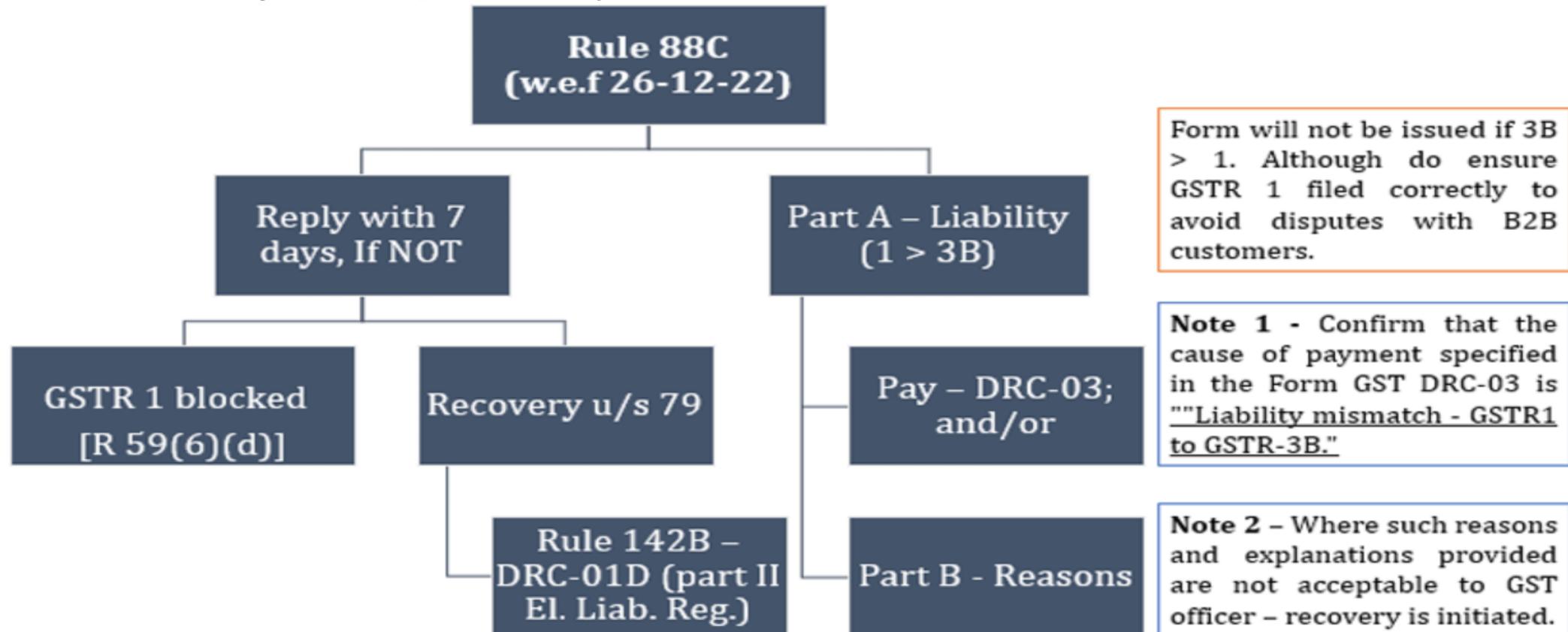
(2) Where, **before the service of notice** or statement, the person chargeable with tax **makes payment of the tax and interest** in accordance with the provisions of sub-section **(5) of section 73** or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section **(5) of section 74**, or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act, **whether on his own ascertainment or, as communicated by the proper officer under sub-rule (1A)**, he shall inform the proper officer of such payment in **FORM GST DRC-03** and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in **FORM GST DRC-04**.

[[2A) Where the person referred to in sub-rule (1A) has **made partial payment** of the amount communicated to him **or desires to file any submissions** against the proposed liability, he may make **such submission in Part B of FORM GST DRC-01A.**]

Recent Amendment- Mismatch in liability between GSTR-1 and GSTR-3B: DRC-01B vide Rule 88C- Notification No. 26/2022- Central Tax, issued on 26th of December, 2022



- Where the **tax payable in GSTR-1/IFF** in respect of a tax period, **exceeds** the amount in **FORM GSTR-3B**, by such **recommended amount/percentage**, an automated intimation shall be issued of such difference in **Part A of FORM GST DRC- 01B** electronically on the common portal and on the registered email address. *(Introduced by Notification No. 26/2022- Central Tax dated 26th December, 2022 and live on GST Portal from 29th June, 2023.)*



- **Procedure by Taxpayer:** (a) **Pay the amount** of the differential tax liability, as specified in Part A of FORM GST DRC- 01B, **fully or partially, along with interest** under section 50, through FORM **GST DRC-03** and furnish the details thereof in **Part B of FORM GST DRC-01B** electronically on the common portal; or

(b) **Furnish a reply** electronically on the common portal, **incorporating reasons** in respect of that part of the differential tax liability that has remained unpaid, if any, **in Part B** of FORM GST DRC-01B

Consequence of non-compliance to Rule 88C by the taxpayer:

- Where any amount **remains unpaid** and where **no explanation or reason is furnished** or where the explanation or reason furnished is **not found to be acceptable** by the PO, the said amount **shall be recoverable u/s 79**.
- If a taxpayer doesn't file response to Form GST DRC-01B for previous tax period, then for the **subsequent tax period**, they will **not be able to file their Form GSTR-1/IFF**.
- The Rule **doesn't require initiation of adjudication proceedings u/s 73 or 74** of CGST Act, 2017.

Recent Amendment- Mismatch in liability between GSTR-1 and GSTR-3B: DRC-01B vide Rule 88C



Dashboard > Returns > Return Compliance > Liability Mismatch (DRC-01B) English

Liability Mismatch (DRC-01B) Help

GSTIN [REDACTED] Legal Name - [REDACTED] Trade Name - GSTN [REDACTED]

REF No. - AA3210220001478 Financial Year - 2022-23 Return Period - October Status - Pending

PART-A Intimation of Difference in Liability Reported in Statement of Outward Supplies and that Reported in Return

1. It is noticed that the tax payable by you, in accordance with the statement of outward supplies furnished by you in FORM GSTR-1 or using the invoice furnishing facility, exceeds the amount of tax paid by you in accordance with the return furnished in FORM GSTR-3B for the period **Oct 2022** by an amount of ₹30,00,000.00. The details thereof are as follows:

Form Type	Liability declared/ Paid (in ₹)				
	IGST	CGST	SGST/UTGST	CESS	Total
Form GSTR-1/IFF	50,00,000.00	0.00	0.00	10,00,000.00	60,00,000.00
Form GSTR-3B	25,00,000.00	0.00	0.00	5,00,000.00	30,00,000.00
Difference in liability	25,00,000.00	0.00	0.00	5,00,000.00	30,00,000.00

2. In accordance with sub-rule (1) of rule 88C, you are hereby requested to either pay the said differential tax liability, along with interest under section 50, through FORM GST DRC-03 and furnish the details thereof in Part-B of FORM GST DRC-01B, and/or furnish the reply in Part-B of FORM GST DRC-01B incorporating reasons in respect of that part of the differential tax liability that has remained unpaid, within a period of seven days.

3. It may be noted that where any amount remains unpaid within a period of seven days and where no explanation or reason is furnished by you or where the explanation or reason furnished by you is not found to be acceptable by the proper officer, the said amount shall be recoverable in accordance with the provisions of section 79 of the Act.

4. This is a system generated notice and does not require signature.

[DOWNLOAD DRC-01B PART A](#)

PART-B Reply by Taxpayer in Respect of the Intimation of Difference in Liability

1. Paid the difference amount through DRC-03 [VALIDATE](#) [CLICK HERE FOR DRC-03](#)

ARN of Form GST DRC-03	Tax Period	Paid Under Head	IGST (₹)	CGST (₹)	SGST/UTGST (₹)	CESS (₹)
AD3205230000308	Oct - 22	Interest	100.00	0.00	0.00	0.00
AD3205230000308	Oct - 22	Tax	100.00	0.00	0.00	0.00
AD3205230000308	Oct - 22	Penalty	100.00	0.00	0.00	0.00

AND/OR

2. Select and explain the reason for difference

Excess Liability paid in earlier tax periods in FORM GSTR-3B

FORM GSTR-1/IFF filed with incorrect details and will be amended in next tax period (including typographical errors, wrong tax rates, etc.)

Some transactions of earlier tax period which could not... ([Read more](#))

Mistake in reporting of advances received and adjusted against invoices

Any other reasons

I/ We, hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

[BACK](#) [SAVE](#) [DOWNLOAD DRC-01B](#) [FILE GST DRC-01B](#)

FORM GST DRC-01B

[See rule 88C]

PART-A (System Generated)

Intimation of Difference in Liability Reported in Statement of Outward Supplies and that Reported in Return

Ref No: AA3210220001478

Date: 16/05/2023

GSTIN: ██████████

Legal Name: ██████████

1. It is noticed that the tax payable by you, in accordance with the statement of outward supplies furnished by you in FORM GSTR-1 or using the invoice furnishing facility, exceeds the amount of tax paid by you in accordance with the return furnished in FORM GSTR-3B for the period Oct 2022 by an amount of ₹30,00,000.00. The details thereof are as follows:

Form Type	Liability declared/ Paid (in ₹)				
	IGST	CGST	SGST/UTGST	CESS	Total
Form GSTR-1/ IFF	50,00,000.00	0.00	0.00	10,00,000.00	60,00,000.00
Form GSTR-3B	25,00,000.00	0.00	0.00	5,00,000.00	30,00,000.00
Difference in liability	25,00,000.00	0.00	0.00	5,00,000.00	30,00,000.00

2. In accordance with sub-rule (1) of rule 88C, you are hereby requested to either pay the said differential tax liability, along with interest under section 50, through FORM GST DRC-03 and furnish the details thereof in Part-B of FORM GST DRC-01B, and/or furnish the reply in Part-B of FORM GST DRC-01B incorporating reasons in respect of that part of the differential tax liability that has remained unpaid, within a period of seven days.

3. It may be noted that where any amount remains unpaid within a period of seven days and where no explanation or reason is furnished by you or where the explanation or reason furnished by you is not found to be acceptable by the proper officer, the said amount shall be recoverable in accordance with the provisions of section 79 of the Act.

4. This is a system generated notice and does not require signature.

PART-B

Reply by Taxpayer in Respect of the Intimation of Difference in Liability

Reference No. of Intimation: AA3210220001478

Date: 16/05/2023

A. I have paid the amount of the differential tax liability, as specified in Part A of FORM GST DRC-01B, fully or partially, along with interest under section 50, through FORM GST DRC-03, and the details thereof are as below:

ARN of Form GST DRC-03	Tax Period	Paid Under Head	IGST (₹)	CGST (₹)	SGST/UTGST (₹)	CESS (₹)

AND/OR

B. The reasons in respect of that part of the differential tax liability that has remained unpaid, are as under:

S.No.	Brief Reason for Difference	Details (mandatory)
1	Excess Liability paid in earlier tax periods in FORM GSTR-3B	Already paid
2	FORM GSTR-1/ IFF filed with incorrect details and will be amended in next tax period (including typographical errors, wrong tax rates, etc.)	Already corrected
3	Some transactions of earlier tax period which could not be declared in the FORM GSTR-1/IFF of the said tax period but in respect of which tax has already been paid in FORM GSTR-3B of the said tax period and which have now been declared in FORM GSTR-1/IFF of the tax period under consideration	
4	Mistake in reporting of advances received and adjusted against invoices	
5	Any other reasons	

Verification

I/ We, hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Date: 16/05/2023

Name of Authorized signatory

Designation /Status
CA

Recent Amendment- Intimation of certain amounts liable to be recovered u/s 79: DRC-01D vide Rule 142B vide Notification No.38/2023-Central Tax, dated 4th August,2023

- Introduced for recovery of tax & interest where **tax liability in GSTR-1 > GSTR-3B** and where the **tax has not been paid and/or for which no satisfactory explanation** has been furnished in DRC-01B.
- An intimation in **Form GST DRC-01D** will be issued in respect of tax or interest which becomes recoverable u/s 75(12) read with **Rule 88C** of the CGST Rules (or otherwise) u/s 79 of CGST Act.
- Any amount which **remains unpaid** after a period **of seven days** from the date of intimation shall be recovered in accordance with the provisions of CGST Rules.

FORM GST DRC -01D

[See rule 142B]

Intimation for amount recoverable under section 79

Reference No. -

Date-

1. Details of intimation:

(a) Financial year:

(b) Tax period: From --- To -----

2. Section(s) of the Act or rule (s) under which intimation is issued: < Drop down or check box for section 75 (12) r/w 79 may be provided>

3. Details of tax, interest or any amount payable:

(Amount in Rs.)

Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Fee	Others	Total
From	To								
1	2	3	4	5	6	7	8	9	10
Total									

You are hereby directed to make the payment within seven days failing which proceedings shall be initiated against you to recover the outstanding dues as per the provisions of section 79 of the Act.

Signature:

Name:

Designation:

• **Section 75(12):** Notwithstanding anything contained in section 73 or section 74, where **any amount of self-assessed tax** in accordance with a **return furnished under section 39 remains unpaid**, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be **recovered under the provisions of section 79**.

[Explanation (w.e.f. 1.1.2022)–For the purposes of this sub-section, the expression “self-assessed tax” shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.]

- The amount shall be posted in **Part-II of Electronic Liability Register** in FORM GST PMT-01.
- The intimation referred to in sub-rule (1) of Rule 142B shall be treated as the **notice for recovery**.
- Where any amount of tax or interest specified in the aforementioned intimation **remains unpaid on the expiry of the specified period**, the unpaid amount shall be recovered in accordance with the provisions of rule 143 (**Recovery by deduction from any money owed**) or rule 144 (**Recovery by sale of goods under the control of proper officer**) or rule 145 (**Recovery from a third person**) or rule 146 (**Recovery through execution of a decree, etc.**) or rule 147 (**Recovery by sale of movable or immovable property**) or rule 155 (**Recovery through land revenue authority**) or rule 156 (**Recovery through court**) or rule 157 (**Recovery from surety**) or rule 160 (**Recovery from company in liquidation**).”

Section 73 of CGST Act, 2017: Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts.

(5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

(9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a **penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher**, due from such person and issue an order.

(11) **Notwithstanding anything contained in sub-section (6) or sub-section (8)**, penalty under sub-section (9) shall be payable where any **amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.**

The judgement of *Hon'ble Kerala High Court* in the case of *Global Plasto Wares, WP(C) No. 33787 of 2023*, has held that the assessee is liable to pay a penalty when the amount of GST collected has not been credited to the government even when GST along with interest has been paid within 30 days of Notice issued for

Facts

- The assessee discharged all the taxes along with interest before 30 days from the date of issuance of a Show Cause Notice ('SCN').
- The Department levied a penalty under Section 73(11) of the CGST Act.
- However, the penalty was challenged by the assessee by taking shelter under Section 73(8). The said provision provides that if a person has been issued an SCN and he pays all the taxes along with interest payable within 30 days of issuance of SCN, penalty would not be payable.

HC Decision

- Section 73(8) comes into **play when an assessee has not paid the tax on the transactions**. However, where the assessee **has collected from others and not credited** it to the Government within **30 days from the due date of payment of tax**, Section 73(11) is applicable.
- If a person chargeable to tax fails to deposit the tax collected by him within 30 days from the due date of tax payment, **Section 73(8) will not have any effect and such a person is liable to pay penalty**.

Our Comments and grounds to contest:

Cases that may attract penalty u/s 73(11) of CGST Act, 2017:

(1) Tax collected from customer and paid by filing GSTR-3B on or after the 31st day from the due date of filing GSTR-3B Return i.e. however payment made before issue of SCN i.e. Sec 73(5)/(6) of CGST Act,

(2) Tax collected from customer not paid earlier but paid within 30 days from the issue of SCN i.e. Sec 73(8) of CGST Act

The decision would create problems in genuine cases as well. For example, even if a taxpayer has deposited the tax collected from customer on **31st day along with full interest**, penalty of 10 percent still becomes applicable.

· Similarly, few High Courts have also ruled that where **only GST is deposited without payment of interest**, 10 percent penalty will still be applicable on the amount of GST.

· In our view, Section 73(11), inter alia, **violates Article 14 of the Constitution since it fails to distinguish genuine taxpayers from defaulters.**

Furthermore, as per answer provided in **Serial No. 2 of Circular No. 76/50/2018-GST dated 31.12.2018**, it is clarified:

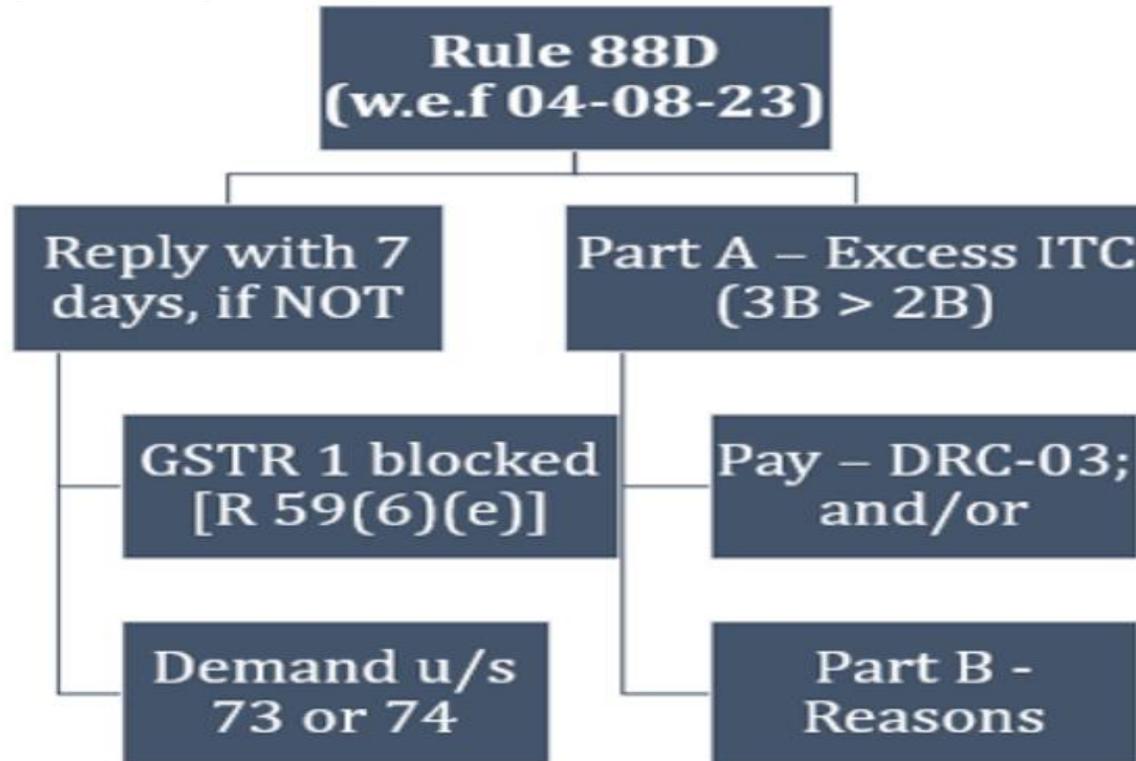
Q) “Whether penalty in accordance with section 73(11) of the CGST Act should be levied in cases where the return in FORM GSTR-3B has been **filed after the due date of filing such return?**”

Ans) The provisions of section 73 of the CGST Act **are generally not invoked** in case of delayed filing of the return in FORM GSTR-3B **because tax along with applicable interest has already been paid** but after the due date for payment of such tax. It is accordingly clarified that penalty under the provisions of section 73(11) of the CGST Act **is not payable in such cases**. It is further clarified that since the tax has been paid late in contravention of the provisions of the CGST Act, **a general penalty under section 125 of the CGST Act may be imposed** after following the due process of law.”

•May contest that Penalty u/s 73(11) may not be attracted in case entire amount of tax along with interest u/s 50 is paid voluntarily on self-ascertainment in DRC-03 before the issue of SCN u/s 73(1) and that the provisions of section 73 of the CGST Act **are generally not invoked** in case of **delayed filing of the return in FORM GSTR-3B** because tax along with applicable interest has already been paid but after the due date for payment of such tax. (**Serial No. 2 of Circular No. 76/50/2018-GST dated 31.12.2018**)

2.	<p>Whether penalty in accordance with section 73 (11) of the CGST Act should be levied in cases where the return in FORM GSTR-3B has been filed after the due date of filing such return?</p>	<ol style="list-style-type: none">1. As per the provisions of section 73(11) of the CGST Act, penalty is payable in case self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.2. It may be noted that a show cause notice (SCN for short) is required to be issued to a person where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised for any reason under the provisions of section 73(1) of the CGST Act. The provisions of section 73(11) of the CGST Act can be invoked only when the provisions of section 73 are invoked.3. The provisions of section 73 of the CGST Act are generally not invoked in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has already been paid but after the due date for payment of such tax. It is accordingly clarified that penalty under the provisions of section 73(11) of the CGST Act is not payable in such cases. It is further clarified that since the tax has been paid late in contravention of the provisions of the CGST Act, a general penalty under section 125 of the CGST
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- A new **Rule 88D** has been inserted vide **Notification No.38/2023-Central Tax, dated 4th August,2023** which pertains to manner of dealing with **difference in input tax credit** available in auto-generated statement in **Form GSTR 2B** vis-à-vis that availed by a registered person through return in **Form GSTR 3B**.
- The Law Committee recommended difference of **>20% as well as more than Rs. 25L** (50th GST Council; item 3(viii) para 4.35 agreed)
- If a taxpayer **does not furnish an explanation or address the differences by payment** indicated in **FORM GST DRC-01C** within the stipulated **7-days**, they will be **prevented from submitting their sales details i.e. Form GSTR-1 or using IFF** for the subsequent tax period. (Note: DRC-01C made active on GST Portal on 14.11.2023)



Form will not be issued if 2B > 3B. Although do ensure reconciliation is performed to avoid missed out claims.

Note - Confirm that the cause of payment specified in the Form GST DRC-03 is "ITC Mismatch- Form GSTR 2A/2B to Form GSTR-3B."

Note 2 - Where such reasons and explanations provided are not acceptable to GST officer – demand raised

- **Procedure by Taxpayer:** (a) **Pay the amount** of the excess ITC, as specified in Part A of FORM GST DRC- 01C, **fully or partially, along with interest** under section 50, through FORM **GST DRC-03** and furnish the details thereof in **Part B of FORM GST DRC-01C** electronically on the common portal; or

(b) **Furnish a reply** electronically on the common portal, **incorporating reasons** in respect of that part of the excess ITC that has remained unpaid, if any, **in Part B** of FORM GST DRC-01C.

Consequence of non-compliance to Rule 88D by the taxpayer:

- Where any amount **remains unpaid** and where **no explanation or reason is furnished** or where the explanation or reason furnished is **not found to be acceptable** by the PO, the said amount **shall be demanded by adjudication proceedings u/s 73 or 74.**
- If a taxpayer doesn't file response to Form GST DRC-01B for previous tax period, then for the **subsequent tax period**, they will **not be able to file their Form GSTR-1/IFF.**

System computation of value variance in Form DRC-01C:

The **GSTR 3B value** arrived by **summing up all the tax amounts** (IGST, CGST, SGST & CESS) entered in the following tables:

- Table 4(A)(1) - **Import of goods**
- Table 4(A)(3) - **Inward supplies liable to reverse charge.**
- Table 4(A)(4) - Inward supplies from Input Service Distributor
- Table 4(A)(5) – All other ITC.
- **(Less) Table 4(D)(1) - ITC reclaimed which was reversed under Table 4B (2) in earlier tax period. (Important)**

The **GSTR 2B value** arrived by **summing up all the tax amounts** (IGST, CGST, SGST & CESS) auto populated in GSTR 2B (Refer “ITC Available” sheet from the GSTR 2B downloaded from the portal):

- Invoices & debit notes along with amendments in **table 4(A)(5)**: All other ITC - Supplies from registered persons other than reverse charge.
- Invoices along with amendments in **table 4(A)(4)**: Inward Supplies from ISD.
- Invoices & debit notes along with amendments in **table 4(A)(3)**: Inward Supplies liable for reverse charge.
- Bill of entries along with amendments in **table 4(A)(1)**: Import of Goods from overseas & SEZ.

& **reduce the effect of credit notes** auto populated in GSTR 2B from the total calculated above (Refer “ITC Available” sheet from the GSTR 2B downloaded from the portal):

- Credit notes along with amendments in table 4(A)(5). **(B2B credit notes)**
- Credit notes along with amendments in table 4(A)(3). **(B2B Reverse Charge credit notes)**
- Credit notes along with amendments in table 4(A)(4). **(ISD credit notes)**

Recent Amendment- ITC Difference in GSTR-2B vs GSTR-3B Introducing DRC-01C vide Rule 88D



PART-A (System Generated)

Intimation of difference in input tax credit available in auto-generated statement containing the details of input tax credit and that availed in return

Ref No: _____ Date: _____

GSTIN: _____

Legal Name: _____

1. It is noticed that the input tax credit availed by you in the return furnished in **FORM GSTR-3B** exceeds the amount of input tax credit available to you in accordance with the auto-generated statement containing the details of input tax credit made available to you in **FORM GSTR-2B** for the period <from><to> by an amount of Rs. The details thereof are as follows:

Form Type	Input tax credit available / availed (in Rs.)				
	IGST	CGST	SGST/UTGST	Cess	Total
FORM GSTR-2B					
FORM GSTR-3B					
Excess input tax credit availed					

2. In accordance with sub-rule (1) of rule 88D, you are hereby requested to either pay an amount equal to the said excess input tax credit, along with interest payable under section 50, through **FORM GST DRC-03** and furnish the details thereof in **Part-B** of **FORM GST DRC-01C**, and/or furnish the reply in **Part-B** of **FORM GST DRC-01C** incorporating reasons in respect of that part of the excess input tax credit that has remained to be paid, within a period of seven days.

3. It may be noted that where any amount of the excess input tax credit remains to be paid after completion of a period of seven days and where no explanation or reason for the same is furnished by you or where the explanation or reason furnished by you is not found to be acceptable by the proper officer, the said amount shall be liable to be demanded in accordance with the provisions of section 73 or section 74, as the case may be, of the Act.

4. This is a system generated notice and does not require signature.

PART-B

Reply by Taxpayer in respect of the intimation of difference in input tax credit

Reference No. of Intimation: _____

Date: _____

A. I have paid the amount equal to the excess input tax credit, as specified in Part A of **FORM GST DRC-01C**, fully or partially, along with interest payable under section 50, through **FORM GST DRC-03**, and the details thereof are as below:

ARN of FORM GST DRC-03	Paid Under Head	Tax Period	IGST	CGST	SGST/UTGST	CESS	Interest
1	2	3	4	5	6	7	8

AND/OR

B. The reasons in respect of that part of the excess input tax credit that has remained to be paid are as under:

S. No	Brief Reasons for Difference	Details (Mandatory)
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 instalments).	
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)	

Sample Intimation in DRC-01C with reply submitted in PART-B

ITC Mismatch (DRC-01C) Help ?

GSTIN - 23KABBC1234N1ZQ	Legal Name - TCS	Trade Name - GSTN
REF No. - AA2306230002711	Financial Year - 2023-24	Return Period - Apr-Jun
		Status - Pending

PART-A Intimation of difference in input tax credit available in auto-generated statement containing the details of input tax credit and that availed in return

1. It is noticed that the input tax credit availed by you in the return furnished in FORM GSTR-3B exceeds the amount of input tax credit available to you in accordance with the auto-generated statement containing the details of input tax credit made available to you in FORM GSTR-2B for the period **Apr-Jun 2023** by an amount of Rs. 30,87,487.75. The details thereof are as follows:

Form Type	Input tax credit available / availed (in Rs.)				
	IGST	CGST	SGST/UTGST	CESS	Total
FORM GSTR-2BQ	1,12,15,117.25	0.00	0.00	9,12,512.00	1,21,27,629.25
FORM GSTR-3BQ	1,12,15,117.00	0.00	0.00	40,00,000.00	1,52,15,117.00
Excess input tax credit availed	-0.25	0.00	0.00	30,87,488.00	30,87,487.75

2. In accordance with sub-rule (1) of rule 88D, you are hereby requested to either pay an amount equal to the said excess input tax credit, along with interest payable under section 50, through FORM GST DRC-03 and furnish the details thereof in Part-B of FORM GST DRC-01C, and/or furnish the reply in Part-B of FORM GST DRC-01C incorporating reasons in respect of that part of the excess input tax credit that has remained to be paid, within a period of seven days.

3. It may be noted that where any amount of the excess input tax credit remains to be paid after completion of a period of seven days and where no explanation or reason for the same is furnished by you or where the explanation or reason furnished by you is not found to be acceptable by the proper officer, the said amount shall be liable to be demanded in accordance with the provisions of section 73 or section 74 of the CGST Act, 2017, as the case may be.

4. This is a system generated notice and does not require signature.

[DOWNLOAD DRC-01C PART A](#)

PART-B Reply by Taxpayer in respect of the intimation of difference in input tax credit

To add DRC-03, enter its ARN and press VALIDATE button.
 1. Paid the difference amount through DRC-03

S.No. 1	ARN of Form GST DRC-03	Tax Period	Paid Under Head	IGST (₹)	CGST (₹)	SGST/UTGST (₹)	CESS (₹)	
	AD231023000001H	Apr-Jun 23	Tax/Cess	15,000.00	0.00	0.00	0.00	
	AD231023000001H	Apr-Jun 23	Interest	300.00	0.00	0.00	0.00	
	AD231023000001H	Apr-Jun 23	Penalty	500.00	0.00	0.00	0.00	

AND/OR

2. Select and explain the reason for difference
- Input tax credit not availed in earlier tax period(s)...(Read more)
 - Input tax credit not availed in earlier tax period(s) inadvertently or due to mistake or omission.
 - ITC available on account of import of goods is not reflected in FORM GSTR-2B.
 - ITC available on account of inward supplies from SEZ is not reflected in FORM GSTR-2B.
 - Excess reversal of ITC in previous tax periods; the same being reclaimed in the current tax period.
 - Recredit of ITC on payment made to supplier, in respect of ITC reversed as per rule 37 in earlier tax period.
 - Recredit of ITC on filing of return by the supplier, in respect of ITC reversed as per rule 37A in earlier tax period.
 - FORM GSTR-3B filed with incorrect details and will be amended in next tax period (including typographical errors, wrong tax rates, etc.)
 - Any other reasons (Please specify)

1) **Import of Goods** - It is interesting to note that ITC on import of goods although appearing in GSTR 2B need not be considered for the purpose of reconciliation as specified under Section 16(2)(aa) of CGST Act, since the provision uses the words **'Invoice and Debit Note' only and does not include 'Bill of Entry'**. To this extent where the difference arose out of Import of goods, it is disputable and Form DRC-01C must not be issued. Although, the present calculation methodology includes 4(A)(1). **(Serial No. 1 of Circular No. 123/42/2019-GST dated 11.11.2019)**

Possible Solution – In part B of DRC-01C, Claim ITC correctly, in Part B DRC-01C **give same reason in “Others” column.**

2) **RCM** - As per section 9(3) & 9(4) of CGST Act,2017, taxes need to be discharged under reverse charge on inward supplies **obtained from both registered & unregistered parties**. Since, ITC on tax paid under RCM on inward supplies **received from an unregistered supplier shall not appear in GSTR-2B, ITC claimed in GSTR-3B shall not match.**

Possible Solution – In part B of DRC-01C, Claim ITC correctly, in Part B DRC-01C give same reason in “Others” column.

3) **Credit Notes**- Vendor Credit Notes (CN) reflected in GSTR 2B but not acceptable to taxpayer, would be added back to auto-populated figures in table 4(A) of GSTR 1.

Possible Solution- Claim ITC correctly, in case of notice, in Part B DRC-01C give 'Others' reasons as **“CN not acceptable”**. Also use **GST portal to communicate with taxpayer for corrections.**

4) **Credit Notes**- Vendor Credit Notes (CN) not reflected in GSTR-2B but CN received and ITC is reversed voluntarily in Table 4B (2) and in subsequent month's GSTR-3B, such CN appears in GSTR-2B and auto-populates and reduces ITC as per Table 4A (5). Here, in this month's GSTR-3B, ITC is added back to Table 4A (5) and reported in Table 4D (1). However, in case such ITC added back is not reported in Table 4D (1), then ITC appearing in GSTR-2B for this month shall be lesser than ITC claimed in GSTR-3B.

Possible Solution- Provide reply in part B - DRC-01C give 'Others' reasons.

Reasons for differences/Mismatches in ITC between GSTR-3B vs. GSTR-2B



- 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 instalments). – *ITC reflected in GSTR 2B of past period, but, section 16(2) conditions not satisfied, therefore ITC claimed delayed in GSTR 3B filing.*
- Input tax credit not availed in earlier tax period(s) inadvertently or due to mistake or omission. – *ITC availed now, related to invoices whose details were furnished in previous period GSTR 2B, however the same **isn't disclosed in 4(D)(1) in GSTR 3B of the current period.***
- ITC availed in respect of import of goods, which is not reflected in FORM GSTR-2B. - *ITC availed on import of goods **based on bill of entry** but however such bill of entry is not reflected in GSTR 2B.*
- ITC availed in respect of inward supplies from SEZ, which are not reflected in FORM GSTR-2B. - *ITC availed on import of goods based on ex-bond bill of entry but however such bill of entry is not reflected in GSTR 2B.*
- Excess reversal of ITC in previous tax periods which is being reclaimed in the current tax period. - *ITC reversed in 4(B)(1) earlier but later **if such ITC is found out to be eligible & claimed in the current tax period.***
- Recredit of ITC **on payment made to supplier**, in respect of ITC reversed as per rule 37 in earlier tax period. – *If such ITC was not reversed in table 4(B)(2) in earlier tax period & not shown in table 4(D)(1) of current tax period.*
- Recredit of ITC on **filing of return by the supplier**, in respect of ITC reversed as per rule 37A in earlier tax period. – *If such ITC was not reversed in table 4(B)(2) in earlier tax period & not shown in table 4(D)(1) of current tax period.*
- FORM GSTR-3B filed with incorrect details and will be amended in the next tax period (including typographical errors, wrong tax rates, etc.) – *Excess ITC claimed inadvertently. **Ensure not utilized to avoid interest costs, corrections could be made subsequently.***
- Any other reasons (Please specify)

The CBIC has inserted Rule 37A in the CGST Rules, 2017 w.e.f. 26th December, 2022 vide Notification 26/2022 Central Tax

“37A. Reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment thereof:-
*Where input tax credit has been availed by a registered person in the return in FORM GSTR-3B for a tax period in respect of such invoice or debit note, the details of which have been furnished by the supplier in the statement of outward supplies in **FORM GSTR-1** or using the invoice furnishing facility, but the return in **FORM GSTR-3B** for the tax period corresponding to the said statement of outward supplies **has not been furnished by such supplier till the 30th day of September** following the end of financial year in which the input tax credit in respect of such invoice or debit note has been availed, the said amount of input tax credit **shall be reversed** by the said registered person, while furnishing a return in **FORM GSTR-3B on or before the 30th day of November** following the end of such financial year:*

*Provided that where the said amount of input tax credit **is not reversed** by the registered person in a return in FORM GSTR-3B **on or before the 30th day of November** following the end of such financial year during which such input tax credit has been availed, such amount shall be payable by the said person **along with interest thereon under section 50.***

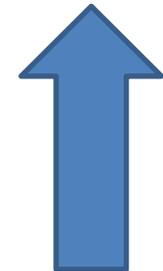
*Provided further that where the said **supplier subsequently furnishes the return in FORM GSTR-3B** for the said tax period, the said registered person **may re-avail** the amount of such credit in the return in FORM GSTR-3B for a tax period thereafter.”*



Goods and Services Tax - GSTR 2A

Taxable inward supplies received from registered persons

Trade/Legal name of t	Invoice numb	Invoice Date	Invoice Value	Taxable Value	Integrated Tax (₹)	Central Tax (₹)	State/UT tax (₹)	GSTR-1/IFF/GSTR-5 Filing Statu	GSTR-3B Filing Statu	Effective date of cancellation
sujata saha	003	01-04-2022	27,061.00	22,933.00	-	2,063.97	2,063.97	Y	N	18-Mar-20
sujata saha	008	01-06-2022	26,589.00	22,533.00	-	2,027.97	2,027.97	Y	N	
sujata saha	20	01-07-2022	27,140.00	23,000.00	-	2,070.00	2,070.00	Y	N	18-Mar-20
sujata saha	29	01-08-2022	26,341.00	22,323.00	-	2,009.07	2,009.07	Y	N	18-Mar-20
sujata saha	36	01-09-2022	24,072.00	20,400.00	-	1,836.00	1,836.00	Y	N	18-Mar-20



- The substituted section 41(2) of CGST Act, 2017 provides that recipient shall **reverse the ITC along with interest** in respect of supplies **whose tax is not paid by the corresponding supplier** and shall **re-avail** the equivalent when the taxes are paid by said supplier in such manner as may be prescribed.
- **Sec. 16(2)(c) of the CGST Act, 2017 r/w Sec. 41(2) of the CGST Act, 2017** as substituted vide the Finance Act, 2022 and made effective from **01.10.2022** bestows upon the recipients to reverse self-assessed ITC where the tax has not been paid by the supplier. Presently **Rule 37A** has been introduced in CGST Rules, 2017 **as a mechanism for such reversal and reavailment**.
- It should be noted that first instance of ITC availment shall depend on filing of GSTR-1 by the supplier and the **subsequent availment of ITC on filing of GSTR-3B by the supplier**.
- Since the recipient is expected to reverse the ITC by **30th November of the succeeding year in case of non-filing of GSTR-3B by the supplier till 30th September of the succeeding year**, therefore, **immediate reversal of ITC is not required and is a relief**.
- **Interest u/s 50**, in this case, is to be **paid only when the recipient has not reversed the ITC till 30th November** of the succeeding year. Furthermore, Interest u/s 50(3) to be paid only when such ITC has been **wrongly AVAILED AND UTILISED**.
- In our opinion, such interest u/s 50 is to be calculated **for the period post 30th November** of the succeeding year rather than from the date of ITC availment. However, suitable clarification is pending from Department. (Subject to Litigation)

New Rule 37A- Reversal of ITC in case of non-filing of GSTR-3B by supplier



- Furthermore, in case the defaulting supplier eventually files his GSTR-3B, then the recipient as per Rule 37(4) of CGST Rules is **eligible to reclaim such earlier reversed ITC** without being barred or **without any time limits specified in Section 16(4)** of CGST Act, 2017.
- Rule 37(4): *“The time limit specified in sub-section (4) of section 16 **shall not apply to a claim for re-availing of any credit**, in accordance with the provisions of the Act or the provisions of this Chapter, **that had been reversed earlier.**”*
- **For example**, the vendor issues invoice in the month of January 2023 and furnishes the same in the GSTR-1 of January 2023. However, GSTR-3B has not been furnished by the vendor until 30th September 2023. Therefore, ITC Reversal is to be done by the recipient of invoice **without interest** on or before 30th November 2023. Let us assume pending GSTR-3B is filed by supplier in the month of February 2024. So, recipient is now permitted to avail pending ITC so reversed in the GSTR-3B in the month of February 2024, **even though reclaiming of ITC is made after 30th November, 2023.**
- **Action Point:** As on today our clients should be advised to check **Column No. 18 of their GSTR-2A of F.Y. 2022-23** to ensure that the **“GSTR-3B filing status”** of all their suppliers are **“Y”**. In case the status is **“N”**, **to ensure ITC reversal in GSTR-3B/3BQ of October, 2023** and **to be filed within 30th November, 2023** to **avoid any interest charge.**
- However, this mechanism **does not cover** within its scope the eligibility of recipient’s ITC where the supplier furnishes his GSTR-3B **but neglects to release the tax liability in full as previously communicated in GSTR-1.**
- However, in case the supplier makes a short payment in GSTR-3B vis a vis its GSTR-1 by **more than a prescribed limit**, then the corresponding ITC may be **considered ineligible** for the recipient as per **Section 38(2)(b)(iii)** (w.e.f. 1.10.2022)

New Rule 37A- Reversal of ITC in case of non-filing of GSTR-3B by supplier



- Also, the newly introduced Rule 88C shall ensure that any difference in liability in GSTR-1 and GSTR-3B **exceeding by a recommended amount/percentage** shall invoke an intimation in PART-A of GST **DRC-01B for the supplier**, requiring him to pay or explain the difference in **DRC-03 and reply in Part-B within 7 days.** *(Para 11 of Notification No. 26/2022-Central Tax dated 26.12.2022)*
- In our opinion, the recipient may avail the benefit of this Rule even in case the **supplier's GSTIN is suspended in the interim period** provided GSTR-1 is filed by the supplier.
- Rule 37A provides that ITC is required to be reversed if return in Form GSTR-3B is not filed by the corresponding supplier till the 30th of September following the end of financial year in which the input tax credit in respect of such invoice or debit note **"has been availed."**
- It may be argued that if ITC pertaining to F.Y. 2022-23 **is availed in F.Y. 2023-24**, whether Rule 37A will be triggered on 30th September 2023 or **30th September 2024?**
- Similar principle may be applied in **respect of reversal** to be done on or before 30th of November accordingly.
- Therefore, it may be interpreted that Rule 37A proposes that the ITC reversal on non-filing of GSTR 3B by the vendor for F.Y. 2022-23 ITC Invoice **(availment done in F.Y. 2023-24)** shall be attracted only if the said GSTR 3B **is not filed by 30th September 2024** and not 30th September 2023.
- Thus, this apparently seems like **drafting error** in the abovementioned rule that requires further clarification or rectification by the lawmakers in this regard.

Changes in Form GSTR-3B (ITC)



4A. ITC available (whether in part or full)			GSTR-2B
4A(1)	Import of goods	Import of goods	Auto populated
4A(2)	Import of services	Import of services	
4A(3)	Inward supplies liable to reverse charge (other than 1 & 2 above)	Inward supplies liable to reverse charge (other than 1 & 2 above)	Auto populated
4A(4)	Inward supplies from ISD	Inward supplies from ISD	Auto populated
4A(5)	All other ITC	All other ITC	Auto populated
4B. ITC Reversed			
4B(1)	As per rules 42 & 43 of CGST Rules	As per rules 38, 42 and 43 of CGST Rules and sub-section (5) of section 17	
4B(2)	Others	Others	
4C. Net ITC (Same as before)			
4D. Ineligible ITC Other Details			
4D(1)	Ineligible ITC: As per section 17(5)	Other Details : ITC reclaimed which was reversed under Table 4(B)(2) in earlier tax period	
4D(2)	Ineligible ITC: Others	Other Details : Ineligible ITC under section 16(4) and ITC restricted due to PoS provisions	Auto populated

Note: Changes in Form GSTR-3B have been introduced **w.e.f. 5th July 2022 vide Notification No. 14/2022-Central Tax** along with clarity provided through **Circular No. 170/02/2022-GST dated 6th July, 2022 for the period of August 2022 and onwards.**

- Table 4B(2)- Temporary Reversal:** ITC appearing in GSTR-2B of current period **but cannot be claimed in current month/needs to be reversed.** These can be claimed in later month(s), subject to fulfilment of conditions:
 - **Goods/Services not received** i.e. non-compliance of Section 16(2)(b)
 - **Supplier has not filed their GSTR-3B Return**/not paid the tax i.e. non-compliance of Sec 16(2)(c)
 - **Invoice or Debit Note not received** i.e. non-compliance to Sec 16(2)(a)
 - **Reversal of ITC due to non-payment to supplier within 180 days** from date of Invoice i.e. Second Proviso to Sec 16(2) read with Rule 37.

Electronic Credit Reversal and Re-claimed Statement																		
		From		31-08-2023														
		To		03-11-2023														
S.No.	Date	Reference No.	Return period	Description	ITC Claimed (Table 4A(5)) (₹) (All Other ITC)			ITC Reversal (Table 4B(2)) (₹) Eligible to Re-claim			ITC Reclaimed (Table 4D(1)) (₹)			Closing Balance (₹) (Opening Balance + Reversal (4B(2)) - Reclaimed (4D(1)))				
					Integrated Tax	Central Tax	State/UT Tax	Integrated Tax	Central Tax	State/UT Tax	Integrated T	Central Tax	State/UT Tax	Integrated Tax	Central Tax	State/UT Tax		
1	-	-	-	Opening Balance	-	-	-	-	-	-	-	-	-	0	0	0		
2	20-09-2023	AA1908237572023	Aug-23	Filing of Form GSTR-3B	24,43,824.47	8132.46	8132.46	14,849.39	238.64	238.64	2512.84	0	0	12,336.55	238.64	238.64		
3	20-10-2023	AB190923129696K	Sep-23	Filing of Form GSTR-3B	22,92,493.08	7128.77	7128.77	60,564.64	89.91	89.91	684.52	0	0	72,216.67	328.55	328.55		
4	-	-	-	Closing Balance	-	-	-	-	-	-	-	-	-	72,216.67	328.55	328.55		

- This statement will help the taxpayers in tracking of their ITC that has been reversed in Table 4(B)(2) and thereafter re-claimed in Table 4(D)(1) and 4(A)(5) for each return period, **starting from August return period.**
- This validation will trigger a **warning message if a taxpayer attempts to re-claim excess ITC in table 4D(1) than the available ITC reversal balance in the statement along with ITC reversal made in current return period in Table 4B(2).** The taxpayers are advised **not to reclaim ITC exceeding the closing balance** of “Electronic Credit Reversal and Re-claimed Statement.”
- Taxpayers are being provided a **facility to report their cumulative ITC reversal (ITC that has been reversed earlier and has not yet been reclaimed)** as **opening balance** for “Electronic Credit Reversal and Re-claimed Statement”.
 - a. Taxpayers having **monthly** filing frequency are required to **report their opening balance considering the ITC reversal done till the return period of July 2023.**
 - b. In contrast, **quarterly** taxpayers shall **report their opening balance up to Q1** of the financial year 2023-24, considering the **ITC reversal made till the April-June 2023** return period.
 - c. The taxpayers have the opportunity to declare their opening balance for ITC reversal **until 31st January 2024 (Extended deadline).**
- With the provision for taxpayers to report their accumulated ITC reversal balance, **the portal will subsequently maintain a record of reversal and re-claimed amounts on a return period basis in statement.**

- The taxpayers shall also be provided **3 (three) amendment opportunities to correct their opening balance** in case of any mistakes or inaccuracies in reporting. Importantly, **until 30th November 2023, both reporting and amendment facilities are accessible.** Extended to 31.01.2024 for reporting opening balances.



Advisor

Declaration of Opening Balance of Accumulated ITC Reversal which is pending for re-claim as on

Date	Integrated Tax (₹)	Central tax (₹)	State/UT Tax (₹)	Cess (₹)
31/08/2023	0.00	0.00	0.00	0.00

Note: When reporting the accumulated balance of reversed ITC, it is important to take into account only those ITC which were previously reversed in Table 4B(2) but are eligible for re-claim and have not yet been re-claimed.

Process flow to reach GST Scrutiny Notices (ASMT-10)



Self-Assessment (Section 59)



सत्यमेव जयते
Government Of India

**Related to Sales
Outward Supplies (Section 37)**

**Related to Input Tax Credit
Input Tax Credit (Section 16)
Inward Supplies (Section 38)**

Returns (Section 39)

**Mismatch Notices
in ASMT-10**

Provisions of Scrutiny of Returns

- Scrutiny means “critical observation or examination”

GSTR 3B,
GSTR-9, etc.



Returns



Sales Register,
Purchase Register,
GSTR-2A, GSTR-2B, Etc.



Related
Particulars

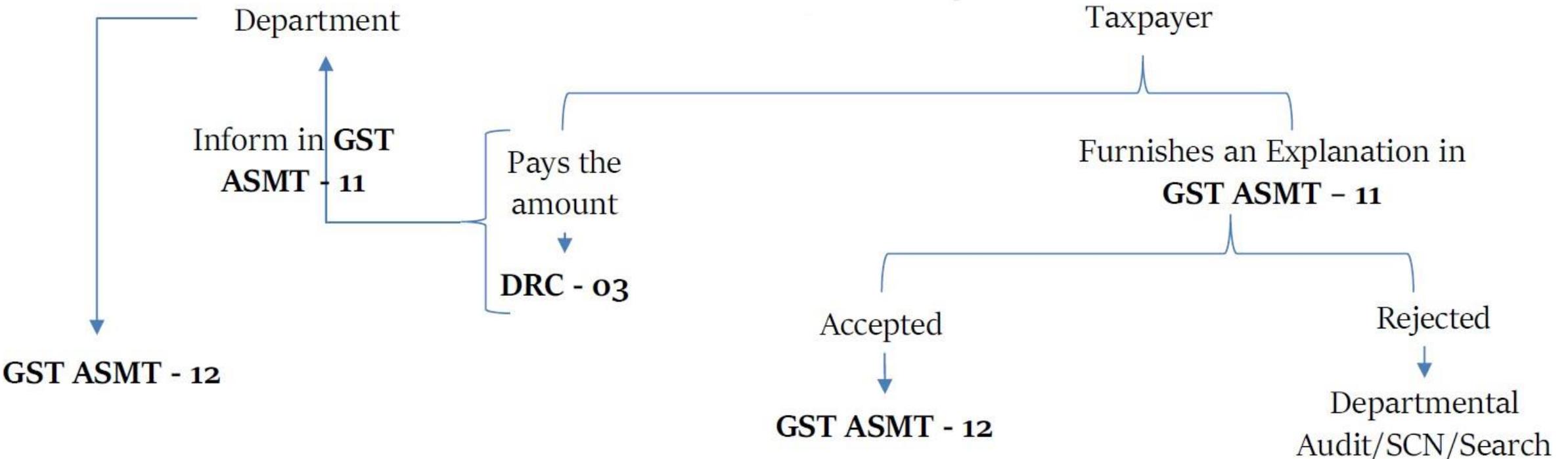
Process Flow of GST Scrutiny



सत्यमेव जयते
Government Of India

Scrutiny notice communicated
to Taxpayer via **GST ASMT-10**

→ **Taxpayer**



Provisions of Scrutiny of Returns

- As per Section 61(1) of the CGST Act, 2017, “The proper officer may **scrutinize** the **return and related particulars** furnished by the registered person **to verify the correctness** of the return **AND** inform him of the **discrepancies noticed**, if any, in such manner as may be prescribed and seek his explanation thereto.”
- As per Section 61(2) of the CGST Act, 2017, “In case the explanation is found acceptable, the registered person shall be informed accordingly **AND NO** further action shall be taken in this regard.”
- As per Section 61(3) of the CGST Act, 2017, “In case **NO** satisfactory explanation is furnished **within a period of THIRTY (30) DAYS** of being informed by the proper officer or **such further period** as may be permitted by him or **where the registered person, after accepting the discrepancies, fails** to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer **MAY** initiate appropriate action including those under **section 65 (Audit by Department)** or **section 66 (Special Audit by Department)** or **section 67, (Inspection, Search and Seizure by Department)** or proceed to determine the tax and other dues under section 73 (**Determination of tax due by Department on reasons other than on account of fraud, etc.**). or **section 74 (Determination of tax due by Department on account of fraud, etc.)**.”

- As per Rule 99(1) of the CGST Rules, 2017, “Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same in accordance with the provisions of section 61 with **reference to the information available with him**, **AND** in case of any discrepancy, he shall issue a notice to the said person in **FORM GST ASMT-10**, informing him of such discrepancy and seeking his explanation thereto within such time, **not exceeding thirty days from the date of service of the notice** or such further period as may be permitted by him and also, **where possible, quantifying the amount** of tax, interest and any other amount payable in relation to such discrepancy.”
- As per Rule 99(2) of the CGST Rules, 2017, “The registered person may accept the discrepancy mentioned in the notice issued under sub-rule (1), **AND** pay the tax, interest and any other amount arising from such discrepancy **AND** inform the same **OR** furnish an explanation for the discrepancy in **FORM GST ASMT- 11** to the proper officer.”
- As per Rule 99(3) of the CGST Rules, 2017, “Where the explanation furnished by the registered person or the information submitted under sub-rule (2) is found to be acceptable, the proper officer **SHALL** inform him accordingly in **FORM GST ASMT-12.**”
- **STANDARD OPERATING PROCEDURE (SOP) for Scrutiny:** For F.Y.(s) 2017-18 and 2018-19, refer to **Instruction No. 02/2022-GST dt. 22nd March 2022** and for F.Y.(s) 2019-20 and onwards, refer to **Instruction No. 02/2023-GST, dated 26th May 2023**
- Any communication with the taxpayer for the purpose of scrutiny shall be made with the use of **DIN** (as per the guidelines mentioned in the Circular No. 122/41/2019-GST dated 5th November 2019.)

Notable Points about Scrutiny of GST Returns u/s 61



- Scrutiny of the returns and related particulars furnished by the registered person to **VERIFY THE CORRECTNESS** of the return. **Information available** with the proper officer in various **returns and statements** furnished by the registered person and the **data/details made available through various sources like DGARM, ADVAIT, GSTN, E-WAY BILL PORTAL, etc.** may be relied upon for this purpose.
- It may be noted that the data provided by the DGARM is generated at a **particular point of time which MAY undergo change** at the time of scrutiny of returns by the proper officer **due to subsequent compliances** carried out by the taxpayer or by the suppliers of the taxpayer. **THE PROPER OFFICER SHALL, THEREFORE, RELY UPON THE LATEST AVAILABLE DATA.**
- Vide *Circular No. 3/3/2017 – GST dated 05.07.2017*, “**Superintendent of Central Tax**” has been assigned the functions as the **proper officer** in relation to section 61(1) and section 61(3) of the CGST Act.
- Accordingly, scrutiny of returns of a taxpayer may be conducted by **SUPERINTENDENT OF CENTRAL TAX** in charge of **the jurisdictional range** of the said taxpayer.
- It may be noted that at this stage, the proper officer is expected to **rely upon the information available with him or with the department. AS FAR AS POSSIBLE, SCRUTINY OF RETURNS SHOULD HAVE MINIMAL INTERFACE BETWEEN THE PROPER OFFICER AND THE REGISTERED PERSON** and, there should **normally NOT be any need for seeking documents/ records from the taxpayers BEFORE ISSUANCE of FORM GST ASMT-10**

BRIEF OF THE STANDARD OPERATING PROCEDURE (SOP) as per Instruction No. 02/2022-GST dt. 22.3.2022 and as per Instruction No. 02/2023-GST dt. 26.5.2023

Total Paragraphs: 11

Para 1: To provide an **interim measure** to the departmental officers as to how to select the GSTIN for scrutiny.

Para 2: Relevant statutory provisions

Para 3: Selection of returns for scrutiny

Para 4: Proper officer for scrutiny of returns

Para 5: Scrutiny Schedule

Para 6: Process of scrutiny by the Proper Officer

Para 7: Timelines for scrutiny of returns

Para 8: Reporting and Monitoring

Para 9: Mandatory use of DIN

Para 10: Minimal interaction with the registered persons.

Para 11: Difficulties, if any, in implementation of these instructions may be informed to the Board.

BRIEF OF THE STANDARD OPERATING PROCEDURE (SOP)

Total Annexures: 4

Annexure A: Scrutiny Schedule (Refer Para 5.1)

ANNEXURE B: INDICATIVE LIST OF PARAMETERS FOR SCRUTINY (REFER PARA 6.2)

[13 IN TOTAL]

Annexure C: Scrutiny register to be maintained by the proper officer (Refer Para 8)

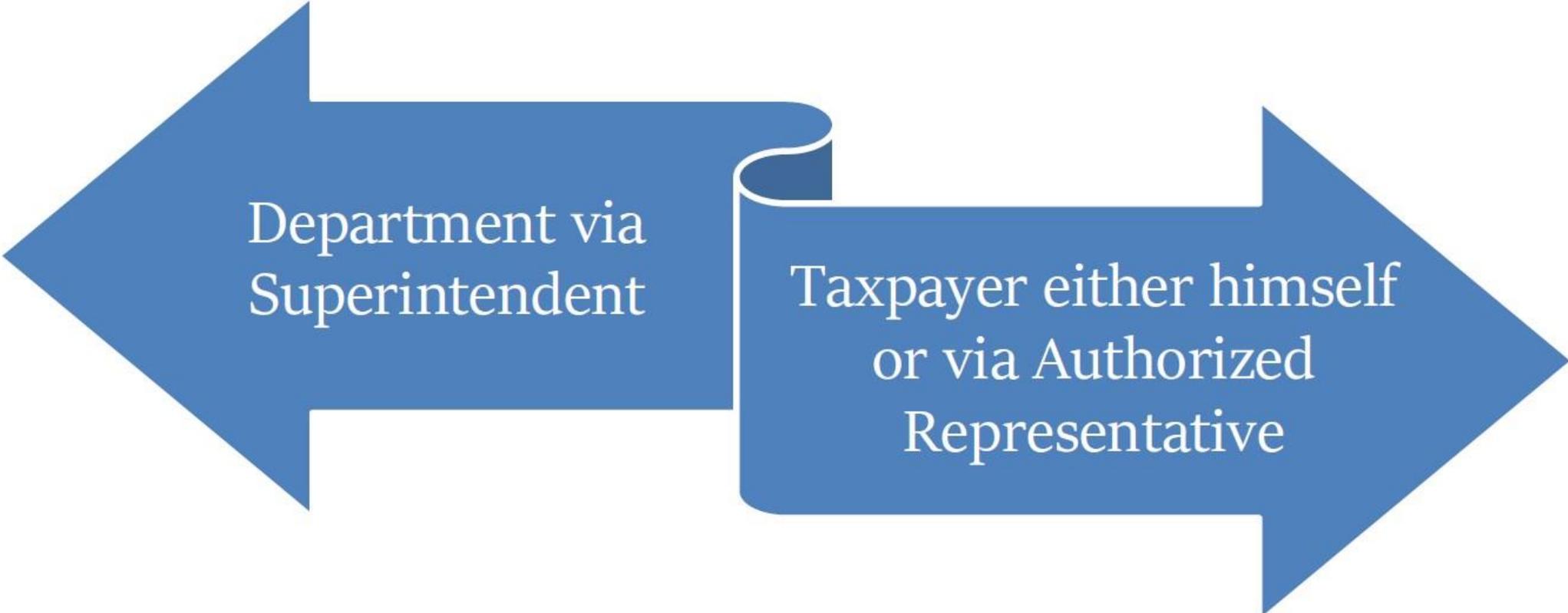
Annexure D: Monthly scrutiny progress report (Refer Para 8)

Para 1: “Interim Measure”

Subject: Standard Operating Procedure (SOP) for Scrutiny of returns for FY 2017-18 and 2018-19

- Section 61 of the CGST, 2017 read with rule 99 of CGST Rules, 2017 provides for scrutiny of returns and related particulars furnished by the registered person.
- **TILL THE TIME** a Scrutiny Module for online scrutiny of returns is made available on the CBIC-GST application, as an **interim measure**, the following Standard Operating Procedure (SOP) is being issued by the Board in order to ensure **UNIFORMITY** in selection/ identification of returns for scrutiny, methodology of scrutiny of such returns and other related procedures.
- Frequency of Scrutiny- Scrutiny is to be taken up independently for every year. However, in case while scrutinizing a case for a particular year it is found that the taxpayer **had a mismatch in the previous year also and the same was not taken in scrutiny in that year** the same shall be **taken up for scrutiny with the current year scrutiny also.**
(Other State SOPs)
- Issuing of **single line notices without clearly outlining the gap / discrepancy** leads to confusion and harassment to the taxpayers as he cannot fathom the reasons of such notice. All officers, shall issue **clear and speaking notices** wherein **parameters** should be clearly mentioned. Officers shall strive to issue high quality notices. *(Other State SOPs)*

Para 2.2: Parties to the transaction

A diagram consisting of two blue arrows pointing towards each other. The left arrow points right and contains the text 'Department via Superintendent'. The right arrow points left and contains the text 'Taxpayer either himself or via Authorized Representative'. The two arrows meet in the center, creating a space between them.

Department via
Superintendent

Taxpayer either himself
or via Authorized
Representative

Relevant Paragraph 2.2 of the SOP



- The aforementioned provisions suggest that scrutiny of returns entails the following:
 - (a) Selection of returns furnished by a registered person for scrutiny, preferably based on **robust risk parameters**.
 - (b) Scrutiny of the returns and related particulars furnished by the registered person to **VERIFY THE CORRECTNESS** of the return. **Information available** with the proper officer in various **returns and statements** furnished by the registered person and the **data/details made available through various sources like DGARM, ADVAIT, GSTN, E-WAY BILL PORTAL, etc.** may be relied upon for this purpose.
 - (c) Informing the registered person of the discrepancies noticed, if any, along with **quantification of the amount of tax, interest** and any other amount payable in relation to such discrepancy and seeking his explanation thereto.

Para 3: Selection of returns for scrutiny

- 3.1 Selection of returns for scrutiny is to be based on **specific risk parameters**. For this purpose, the **DGARM** has been assigned the task to **select the GSTINs** registered with Central tax authorities, whose returns are to be scrutinized, and to **communicate the same to the field formations** from time to time through the DDM portal (to the nodal officer of the Commissionerate concerned) for further action.
- 3.2 For convenience of field officers, DGARM would also provide some **relevant data** (along with likely revenue implication) pertaining to the returns to be scrutinized through the DDM portal. It may be noted that the data provided by the DGARM is generated at a **particular point of time which MAY undergo change** at the time of scrutiny of returns by the proper officer **due to subsequent compliances** carried out by the taxpayer or by the suppliers of the taxpayer. **THE PROPER OFFICER SHALL, THEREFORE, RELY UPON THE LATEST AVAILABLE DATA.**

Para 4: Proper officer for scrutiny of returns

- Vide Circular No. 3/3/2017 – GST dated 05.07.2017, “**Superintendent of Central Tax**” has been assigned the functions as the **proper officer** in relation to section 61(1) and section 61(3) of the CGST Act.
- Accordingly, scrutiny of returns of a taxpayer may be conducted by **SUPERINTENDENT OF CENTRAL TAX** in charge of the **jurisdictional range** of the said taxpayer.

Relevant Paragraph 5 of the SOP



Para 5: Scrutiny Schedule

- Once the list of GSTINs, whose returns have been selected for scrutiny, is communicated to the field formations, the proper officer (**Superintendent**), **WITH THE APPROVAL OF THE DIVISIONAL ASSISTANT /DEPUTY COMMISSIONER**, shall **finalize a scrutiny schedule**. Such scrutiny schedule will specify **month-wise schedule** for scrutiny in respect of all the GSTINs selected for scrutiny. While preparing the scrutiny schedule, the scrutiny of the GSTINs, which appear to be **riskier** based on the likely **revenue implication indicated by DGARM**, may be **prioritized**. Such scrutiny schedules in respect of all the ranges within the CGST Zone SHALL be **reported to the Directorate General of Goods and Services Tax (DGGST)** by the concerned Zone, in the format enclosed as **Annexure A**.
- The proper officer shall conduct scrutiny of returns pertaining **TO MINIMUM OF 3 GSTINS PER MONTH**. Scrutiny of returns of one GSTIN shall mean **scrutiny of all returns pertaining to a financial year** for which the said GSTIN has been identified for scrutiny.
- Question: Is a **sufficient time limit** provided for the field formations to complete the ASSESSMENTS?
- **4.2** The proper officer shall conduct scrutiny of returns pertaining to minimum of **4 GSTINs** per month. Scrutiny of returns of one GSTIN shall **mean scrutiny of all returns pertaining to a financial year** for which the said GSTIN has been selected for scrutiny. *(New SOP dt. 26.5.2023 for FY 2019-20 and FY 2020-21)*

Para 6: Process of scrutiny by the Proper Officer

- The Proper Officer shall scrutinize the returns and related particulars furnished by the registered person to **verify the CORRECTNESS** of the returns. Information available with the proper officer on the system in the form of various returns and statements furnished by the registered person and the data/details made available through various sources like **DGARM, ADVAIT, GSTN, E-Way Bill Portal, etc. MAY** be relied upon for this purpose.
- For convenience of proper officers, **AN INDICATIVE LIST** of parameters to be verified is enclosed as Annexure B. It may be noted that the said list is only indicative, and **NOT EXHAUSTIVE**. The proper officer **may also consider any other parameter**, as he may deem fit, for the purpose of scrutiny.
- It may be noted that at this stage, the proper officer is expected to **rely upon the information available with him or with the department. AS FAR AS POSSIBLE, SCRUTINY OF RETURNS SHOULD HAVE MINIMAL INTERFACE BETWEEN THE PROPER OFFICER AND THE REGISTERED PERSON** and, there should **normally NOT be any need for seeking documents/ records from the taxpayers BEFORE ISSUANCE of FORM GST ASMT-10.**

Relevant Paragraph 6 of the SOP



Para 6: Process of scrutiny by the Proper Officer

- The proper officer shall issue a notice to the registered person in **FORM GST ASMT-10** informing him of the discrepancies noticed and seeking his explanation thereto. While issuing such notice, the Proper Officer may, **AS FAR AS POSSIBLE, quantify the amount of tax, interest** and any other amount payable in relation to such discrepancies. It may also be ensured that the discrepancies so communicated may, **AS FAR AS POSSIBLE, be specific in nature and not vague or general.** There may be cases where the registered person **may already have made additional payment of tax, cess, etc., after filing of the returns for the relevant tax period, through FORM GST DRC-03. The payments thus made through FORM GST DRC-03 may also be taken into consideration** while communicating discrepancies to the taxpayer in FORM GST ASMT-10.
- For each GSTIN identified for scrutiny for a financial year, the proper officer **is required to scrutinize ALL the returns pertaining to the corresponding Financial Year** under consideration and **A SINGLE COMPILED NOTICE in FORM GST ASMT-10** may be issued to the taxpayer for that financial year.

Para 6: Process of scrutiny by the Proper Officer

- The registered person may accept the discrepancy mentioned in the notice issued in **FORM GST ASMT-10**, and **pay** the tax, interest and any other amount arising from such discrepancy through **FORM GST DRC-03** and inform the same or **may** furnish an explanation for the discrepancy in **FORM GST ASMT-11** to the proper officer **WITHIN THE TIME PERIOD PRESCRIBED UNDER RULE 99** of CGST Rules.
- Where the explanation furnished by the registered person **OR** the information submitted in respect of acceptance of discrepancy **AND** payment of dues is found to be acceptable by the Proper Officer, he shall **CONCLUDE** the proceedings by informing the registered person in **FORM GST ASMT-12**.

Relevant Paragraph 6 of the SOP

Para 6: Process of scrutiny by the Proper Officer

- In case **NO** satisfactory explanation is furnished by the registered person in FORM GST ASMT-11 within a period of **THIRTY (30) DAYS** of being informed by the proper officer or **such further period** as may be permitted by him **OR** where the registered person, **AFTER ACCEPTING THE DISCREPANCIES, FAILS TO PAY** the tax, interest and any other amount arising from such discrepancies, the proper officer, may proceed to determine the tax and other dues under section **73 or section 74**.
- Needless to mention, for proceeding under section 73 or section 74, **monetary limits as specified in Circular No. 31/05/2018-GST dated 9th February 2018** shall be adhered to. However, if the proper officer is of the opinion that the matter needs to be pursued further through **audit or investigation** to determine the correct liability of the said registered person, then he may refer the matter to the **jurisdictional Principal Commissioner / Commissioner through the divisional Assistant / Deputy Commissioner**, for the decision whether the matter needs to be referred to **Audit Commissionerate or Anti-evasion Wing** of the Commissionerate, as the case may be.

Timelines for scrutiny of returns as per Instruction No. 2/2023-GST dt.26.5.23

S. no.	Process/Event	Timeline/ Frequency
(i)	Communication of GSTINs selected for scrutiny by DGARM on ACES GST Application for a financial year	From time to time.
(ii)	Finalization of scrutiny schedule with the approval of the concerned Assistant/Deputy Commissioner	Within seven working days of receipt of the details of the concerned GSTINs on ACES-GST application
(iii)	Issuance of notice by the proper officer for intimating discrepancies in FORM GST ASMT-10, where required	Within the month, as mentioned in scrutiny schedule for scrutiny for the said GSTIN.
(iv)	Reply by the registered person in FORM GST ASMT-11	Within a period of thirty days of being informed by the proper officer in FORM GST ASMT-10 or such further period as may be permitted by the proper officer
(v)	Issuance of order in FORM GST ASMT-12 for acceptance of reply furnished by the registered person, where applicable	Within thirty days from receipt of reply from the registered person in FORM GST ASMT-11
(vi)	Initiation of appropriate action for determination of the tax and other dues under section 73 or section 74, in cases where no reply is furnished by the registered person	Within a period of fifteen days after completion of the period of thirty days of issuance of notice in FORM GST ASMT-10 or such further period as permitted by the proper officer
(vii)	Initiation of appropriate action for determination of the tax and other dues under section 73 or section 74, in cases where reply is furnished by the registered person, but the same is not found acceptable by the proper officer	Within thirty days from receipt of reply from the registered person in FORM GST ASMT-11
(viii)	Reference, if any, to the Audit Commissionerate or the anti-evasion wing of the Commissionerate for action, under section 65 or section 66 or section 67, as the case may be.	Within thirty days from receipt of reply from the registered person in FORM GST ASMT-11 or within a period of forty-five days of issuance of FORM GST ASMT-10, in case no explanation is furnished by the registered person.



Circular No. 31/05/2018-GST dated 9th February 2018

Sl. No.	Officer	Monetary Limit (CGST)	Monetary Limit (CGST + IGST)	Monetary Limit (IGST)
1.	Superintendent	Not exceeding ₹. 10 lakhs	Not exceeding ₹. 20 lakhs	Not exceeding ₹. 20 lakhs
2.	Deputy or Assistant Commissioner	Above ₹. 10 lakhs and not exceeding ₹. 1 crore	Above ₹. 20 lakhs and not exceeding ₹. 2 crore	Above ₹. 20 lakhs and not exceeding ₹. 2 crore
3.	Additional or Joint Commissioner	Above ₹. 1 crore without any limit	Above ₹. 2 crore without any limit	Above ₹. 2 crore without any limit

Para 7: Timelines for scrutiny of returns further extended vide NN. 09/2023-CT dt. 31.03.2023 and NN. 56/2023-CT dt. 28.12.2023

<u>Serial No.</u>	<u>Tax Period</u>	<u>Last date to file Annual Return</u>	<u>Last date to Issue SCN u/s 73(2) of CGST Act, 2017</u>	<u>Last date to Issue order u/s 73(9) read with Sec 73(10) of CGST Act, 2017</u>
1	2017-18	7th February, 2020 <i>(Notification No. 06/2020-CT dt. 03.02.2020)</i>	30th September, 2023	31st December, 2023
2	2018-19	31st December, 2020 <i>(Notification No. 80/2020-CT dt. 28.10.2020)</i>	31st January, 2024	30th April, 2024
3	2019-20	31st March, 2021 <i>(Notification No. 04/2021-CT dt 28.02.2021)</i>	31st May, 2024	31st August, 2024
4	2020-21	28 th February, 2022 <i>(Notification No. 40/2021-CT dt. 29.12.2021)</i>	27th November, 2024	27th February, 2025
5	2021-22	31st December, 2022	30th September, 2025	30th December, 2025

- These dates should be considered for calculating period of 3 years for issuing SCN and confirming demand (further extended) as stated in CBIC Instruction No. 2/2021-GST Investigation dated 22.09.2021

Para 7: Timelines for scrutiny of returns further extended vide NN. 09/2023-CT dt. 31.03.2023 and NN. 56/2023-CT dt. 28.12.2023

FORM GST DRC - 01
[See rule 100(2) & 142(1)(a)]

Date - 20-05-2024

Reference No. [Redacted]

To

GSTIN/ID [Redacted]
 Name: [Redacted]
 Address: [Redacted]

Tax Period : APR 2019 - MAR 2020

F.Y- From : 2019-2020 F.Y- To : 2019-2020

Act/ Rules Provisions - sgst

Section / sub-section under which SCN is being issued - 73

Summary of Show Cause Notice

- (a) Brief Fact of the Case : attached
- (b) Grounds : attached
- (c) Tax and other dues :

(Amount in Rs.)

Financial Year: 2019-2020 (Amount in ₹)

Sr. No.	Tax Rate(%)	Turnover	Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Fee	Others	Total
			From	To								
1	2	3	4	5	6	7	8	9	10	11	12	13
1	0		APR 2019	MAR 2020	CGST		55404	45708	10000	NA		111112.00

2	0		APR 2019	MAR 2020	SGST		55404	45708	10000	NA		111112.00
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Total Amount (For all Financial Years) (Amount in ₹)

Tax Period	Act	Tax/Cess	Interest	Penalty	Fees	Others	Total
2019-20	CGST	55404	45708	10000	0	0	111112
2019-20	IGST	0	0	0	0	0	0
2019-20	SGST	55404	45708	10000	0	0	111112
2019-20	CESS	0	0	0	0	0	0
Total (Act wise)	CGST	55404	45708	10000	0	0	111112
	IGST	0	0	0	0	0	0
	SGST	55404	45708	10000	0	0	111112
	CESS	0	0	0	0	0	0
Total			110808	91416	20000	0	222224

Show Cause Notice is attached.

Supporting documents attached by officer:
 [Redacted]

Details of personal hearing and due date to file reply:

Sr. No.	Description	Particulars
1	Date by which reply has to be submitted	20-06-2024
2	Date of personal hearing	20-06-2024
3	Time of personal hearing	11:06 am
4	Venue where personal hearing will be held	[Redacted]

Sample Scrutiny ASMT-10 Notice



GST ASMT - 10 [See rule 99(1)]

Reference No.: Z[REDACTED]

Date: 02/08/2022

To

GSTIN: [REDACTED]

Name: [REDACTED]

Address: [REDACTED]

Tax period: JUL 2017 - MAR 2018

F.Y.: 2017-2018

Type of Return: GSTR-3B

Act/ Rules Provisions :

For details, please see the following documents attached with this Notice -
Communication of Discrepancies (Attachment 1)
Details of Discrepancies (Attachment 2)

Notice for intimating discrepancies in the return after scrutiny

This is to inform that during scrutiny of the return for the tax period referred to above, discrepancies noticed have been mentioned in the attached annexure..

You are hereby directed to explain the reasons for the aforesaid discrepancies by the date mentioned in the table below.

If no explanation is received by the said date, it will be presumed that you have nothing to say in the matter and proceedings in accordance with law may be initiated against you without making any further reference to you in this regard.

Sr. No.	Description	Particulars
1	Section under which notice is issued	61
2	Date by which reply has to be submitted	18/08/2022
3	Date of personal hearing	NA
4	Time of personal hearing	NA
5	Venue where personal hearing will be held	NA

Signature

Sample Scrutiny ASMT-10 Notice Attachments

GOVERNMENT OF WEST BENGAL
Directorate of Commercial Taxes
Office of the Charge Officer/ (Charge)

To,

GSTIN :

Legal Name :

Trade Name :

Ref :-

Scrutiny Case ID :

Date of case creation : 02/08/2022

Scrutiny for the period of : 2017-18

Sub- Discrepancies found during Scrutiny of returns u/s-61 of the CGST Act, 2017 and WBGST Act, 2017
(to be read as "Attachment-1" to ASMT-10 issued in respect of the Scrutiny Case ID)

The Table below shows the summary of discrepancies noticed during scrutiny of returns (GSTR-3B) furnished by you with reference to the information available, if any, in your GSTR-1, GSTR-2A, GSTR-9 and GSTR-9C for the aforesaid period.

Sl No.	Description of discrepancies noticed	Integrated Tax	Central Tax	State Tax (WBGST)	Cess
1	Tax short paid on outward supply	80,056.65	-	-	-
2	Tax short paid on Inward supply (RCM)	2,540.90	-	-	-
3	ITC availed in excess	14,84,312.27	35,015.55	35,015.55	-
4	ITC found reversible, if availed	14,223.00	4,591.44	4,591.44	-
5	Interest payable (for reasons other than those mentioned above)	-	69,273.89	1,77,020.99	-
	Total amount =	15,81,132.82	1,08,880.88	2,16,627.98	-

The detail figures on basis of which these discrepancies have come out can be found in **Attachment -2 ("Detail of discrepancies.pdf")** annexed with this document.

You may accept such discrepancies, and pay the tax, interest and any other amount arising from such discrepancies and inform the same or furnish an explanation for the discrepancy in FORM GST ASMT-11 to the undersigned.

Supporting documents/ evidences should be uploaded with your reply as much as the upload limit permits (5Mb x 4 files) and rest of them, if any, should be mailed to the undersigned from your registered mail id or submitted in hard copies (duly signed and stamped) at his office.

During your reconciliation, you may find that some of these discrepancies might have already been communicated to you in any earlier proceedings and you might have already paid such tax, interest or reversed such ITC in those proceeding or on your own motion. In such cases, you are requested to mention the same in your reply in FORM GST ASMT-11.

As a result of your reconciliation, your liability to pay tax, interest and/ or reverse ITC may even be more than what are shown in the above table. You are required to pay the tax, interest and/ or reverse the ITC which may actually be found payable/ reversible by you during the preparation of your reply to this notice.

You are also required to pay applicable interest, tax-head wise, calculated up to the date of making such payments with respect to the amounts found payable by you against sl. no. 1 to 4 of the above table. In addition to this, interest shown payable at sl. no. 5 of the table is also required to be paid.

Please note that your failure to comply with the above requirement within the date mentioned in FORM GST ASMT-10 will lead to initiation of appropriate actions against you as prescribed in the said Acts, without making any further reference to you in this regard.

For any query, you may call or mail the undersigned in his/ her contact details given below.

Sample Reply in Form ASMT-11 (Generated Online)



Form GST ASMT - 11 [See rule 99(2)]

Reply to notice issued under section 61 intimating discrepancies in the return

ARN: [REDACTED]

Date: 26/08/2022

1. GSTIN	[REDACTED]	
2. Name	[REDACTED]	
3. Detail of notice	Reference No.: [REDACTED]	Date: 02/08/2022
4. Tax Period	JUL-2017 MAR-2018	
5. Reply to the discrepancies	<p>Point(1): Tax short paid of Rs. 79,550 and Interest of Rs. 27,464 paid vide Form DRC-03 dated 11.01.2020 with GSTR-9C for F.Y. 2017-18. The shortfall amount of IGST of Rs. 501 and interest to be paid now. Reference: <u>Annexure-1</u></p> <p>Point(2): Admitted IGST Rs. 2540.90 with interest paid now.</p> <p>Point (3): There is no ITC availed which is in excess and to be reversed. Reference: <u>Annexures 2 to 8.</u></p> <p>Point (4): ITC on CDN No. 1 dated 1.1.2018 of Rs. 14,094 of A.M.POLYPLAST PRIVATE LIMITED already reversed in GSTR-3B. Both ITC and CDN of IGST Rs. 129 from Ministry of Railways not recorded in GSTR-3B. Kindly find at <u>tachment Submission-1</u> challenging ITC found reversible of Rs. 2,971.44 and Rs. 1620 each of CGST and SGST.</p> <p>Point (5): Payment of interest of Rs. 69,254 of CGST and Rs. 1,67,823 of SGST been made by Form DRC-03 fall in interest payment of SGST of Rs. 9177.74 and of Rs. 20.25 each of CGST and SGST shall be paid now. Reference: <u>Annexure-9</u></p>	

6. Amount Admitted And Paid, if Any :

Sr. No	Tax Period		Act	Tax (₹)	Interest (₹)	Others (₹)	Total (₹)
	From	To					
1	JUL 2017	MAR 2018	SGST	0.00	9,198.00	0.00	9,198.00
2	JUL 2017	MAR 2018	CGST	0.00	21.00	0.00	21.00
3	JUL 2017	MAR 2018	IGST	3,042.00	2,829.00	0.00	5,871.00

7. Verification :

I hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my/our knowledge and belief and nothing has been concealed therefrom.

Sample Form DRC-03 for payment



FORM GST DRC - 03

[See rule 142(2)&142(3)]

Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement

ARN : ██████████

Date :01/09/2022

1.	GSTIN												
2.	Name												
3.	Cause of Payment											Scrutiny	
4.	Section under which voluntary payment is made											61	
5.	Details of show cause notice, if payment is made within 30 days of its issue											Reference	Date Of issue:02/08/2022
6.	Financial Year											2017-2018	
7.	Details of payment made including interest and penalty, if applicable (Amount in Rs.)												
Sr. No.	Tax Period	Act	Place of supply	Tax/Cess	Interest	Penalty, if applicable	Fee	Others	Total	Ledger utilised (Cash/credit)	Debit entry no.	Date of debit entry	
1.	JUL 2017-MAR 2018	SGST	West Bengal	0.00	9,198.00	0.00	0.00	0.00	9,198.00	Cash	DC1909220000903	01/09/2022	
2.	JUL 2017-MAR 2018	CGST	West Bengal	0.00	21.00	0.00	0.00	0.00	21.00	Cash	DC1909220000903	01/09/2022	
3.	JUL 2017-MAR 2018	IGST	Gujarat	1,413.00	1,315.00	0.00	0.00	0.00	2,728.00	Cash	DC1909220000903	01/09/2022	
4.	JUL 2017-MAR 2018	IGST	Maharashtra	468.00	435.00	0.00	0.00	0.00	903.00	Cash	DC1909220000903	01/09/2022	
5.	JUL 2017-MAR 2018	IGST	Telangana	1,161.00	1,079.00	0.00	0.00	0.00	2,240.00	Cash	DC1909220000903	01/09/2022	

Sample Form DRC-03 for payment



Voluntary Payment made in respect of reply submission made in ASMT-11 against ASMT-10 issued vide Ref No. [REDACTED] dated 2.8.2022

9. Verification -

I hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom .

Signature of Authorized Signatory

Name: [REDACTED]

Designation: DIRECTOR

Date: 26/08/2022

Sample Order in Form ASMT-12



Form GST ASMT - 12 [See rule 99(3)]

Reference No.: ZD1909220191768

Date: 20/09/2022

To

Tax period: JUL 2017 - MAR 2018

F.Y.: 2017-2018

ARN: AD190822010230M

Date: 22/08/2022

Act/ Rules Provisions :

RTP furnished reply through two ASMT -11 vide ARN:ZD1909220187353 DATED:19.09.2022 & ARN:ZD1909220144486 dated;14.09.2022. Reply of the RTP along with all other supporting documents (Annexure 1 to 16) have been uploaded by the RTP in the portal .RTP admitted his tax liability for un reconciled parts and Payment made through DRC-03 vide ARN:AD1909220050559 dated:14.09.2022 .No further liability is detected to the best of my judgement ,hence no further action is to be taken U/s 61(2) of WB GST Act,2017. ASMT- 12 shall be issued accordingly.
Order copy is attached in separate sheet.

Order of acceptance of reply against the notice issued under section 61

This has reference to your reply, details of which is mentioned in table below, in response to the notice issued to you as per details mentioned in table below.

In this regard, your reply has been found to be satisfactory and no further action is required to be taken in the matter.

Sr. No.	Description	Particulars
1	Date of reply filed	NA
2	Notice Ref. No.	ZD190822021452K
3	Date of notice	22/08/2022

Signature

- ❖ **No compulsion** to discharge voluntary tax payment in Form DRC-03 during investigations **mandatorily using Electronic Cash Ledger.**
- ❖ Amount in **Electronic credit ledger (ECL)** can be utilised for payment towards **output tax (Other than RCM)** as under:
 - ✓ whether self-assessed in the return or
 - ✓ payable as a **consequence of any proceeding instituted** under the provisions of GST Laws.

[Circular No. 172/04/2022-GST dated 6.07.2022]

- ❖ Amount in the Electronic Credit ledger (ECL) **cannot be used** for the following:
 - ✓ Payment of **any interest, penalty, fees** or any other amount payable;
 - ✓ Payment of erroneous refund sanctioned to the taxpayer, where such refund was sanctioned in cash. **[CircularNo.172/04/2022-GST dated 6.07.2022]**

Common Issues raised during GST Scrutiny

<u>S.No.</u>	<u>Parameter</u>	<u>Description of Parameter</u>	<u>Remarks</u>	<u>Practical Case Studies</u>
1	Tax Liability on Outward Supplies and short-payment of tax	Tax liability on account of “Outward taxable supplies (other than zero rated, nil rated and exempted)” and “Outward taxable supplies (zero rated)” as declared in table 3.1(a) and table 3.1(b) respectively of FORM GSTR-3B may be verified with corresponding tax liability in respect of outward taxable supplies declared in table 4 (other than table 4B), table 5, table 6, table 7A(1), table 7B(1), table 11A and table 11B (along with the net effect of amendments thereof in Table 9, 10	(1) Where the tax liability in respect of supplies declared in the aforementioned tables of FORM GSTR-1 exceeds the liability declared in FORM GSTR-3B, it may indicate short payment of tax. As per SOP, in all cases the Liability in GSTR-3B >= Liability in GSTR-1. However, such short-payment of tax may not be true in all cases as is illustrated in the adjacent case study. (2) Since the GST regime	(1) Mr. Aakash, a registered person has made outward supply of ₹ 15L in the month of December, 2021 to Mr. Prateek. A purchase return of an amount of Rs.3L was made by Mr. Prateek to Mr. Aakash in March 2022. Mr. Aakash could not report Credit note (CDN) of Rs. 3L in GSTR-3B of March 2022 since there were no outward supplies for the said month against which the CDN could be adjusted even though he has reported such CDN in GSTR-1 for March 2022. The said CDN may be reported in GSTR-3B of April 2022 , provided there is enough outward supplies for April 2022. Therefore, for F.Y. 2022-23, the Liability in GSTR-3B < Liability in GSTR-1 and as per the SOP a scrutiny notice may be issued even though this is not a case of short payment of tax and an appropriate reply along with sales reconciliation has to be

and 11(II) of FORM GSTR-1.

was at a nascent stage during FY 2017-18 and 2018-19, there could be genuine cases of mismatch in information of outward supplies and output tax reported in GSTR-1 and GSTR-3B. A lenient stance should be adopted by the Department.

(3) Subsequent period reporting must be verified

(4) GSTR 3B/9 is matching as per financial statements

provided.

(2) In case due to a clerical mistake in reporting outward supplies in Table 3.1(a) or Table 3.1(b) in GSTR-3B of March 2022 by mistakenly reporting Rs. 30,000 instead of the correct amount of Rs. 3,00,000 would create a difference of Rs. 2,70,000 against the correct amount of Rs. 3,00,000 reported in GSTR-1 in F.Y. 2021-22. Also, in case the difference of Rs. 2,70,000 of outward supplies is reported in GSTR-3B of April 2022, whereas no such amount shall be reported in GSTR-1 of April 2022, would again create a difference between outward supplies reported between GSTR-3B and GSTR-1 in F.Y. 2022-23. Therefore, as per the SOP, there may be a scrutiny notice issued for short payment of tax in GSTR-3B of March 2022 even though there may be an inadvertent clerical error.

Common Issues raised during GST Scrutiny



Annexure B:

GSTR – 1	GSTR – 3B
Table 4: Full except 4B Taxable outward supplies made to registered persons (including UIN-holders) other than supplies covered by Table 6. Table 4B: Supplies attracting tax on reverse charge basis	Table 3 Table 3.1 (a): Outward taxable supplies (other than zero rated, nil rated and exempted) Table 3.1 (b): Outward taxable supplies (zero rated)
Table 5: Taxable outward inter-State supplies to un-registered persons where the invoice value is more than Rs 2.5 lakh	
Table 6: Zero rated supplies and Deemed Exports	
Table 7: Table 7A(1): Consolidated rate wise outward supplies Table 7B(1): Place of Supply (Name of State)	
Table 11: Advances	

They are net of Amendments

Practical Case study

Scrutiny of Return : Detail of observations made and discrepancies found (if any)

Pg. No. 1/4

(GSTIN)
(Trade Name)

Point-1.	Tax liability on outward supply	Integrated Tax	Central tax	State tax	Cess
1(A)	Liability on outward supply (non-RCM) declared in GSTR-1 [Net of Table 4,5,6,7,9 and 11 of GSTR-1 (less) Table-4(B) of GSTR-1]	-	1,93,07,179.79	1,93,07,179.79	-
1(B)	Liability on outward supply (non-RCM) declared in GSTR-9 [Table 5N of GSTR-9]	-	1,93,07,179.79	1,93,07,179.79	-
1(C)	Liability on outward supply (non-RCM) declared in GSTR-9C [Table 9A+9C+9E+9G+9I+9J+9K]	-	1,93,07,179.00	1,93,07,179.00	-
1(D)	Liability on outward supplies as received from E-waybill data	-	1,04,23,655.69	1,04,23,655.69	-
1(E)	Liability on outward supply considered for scrutiny [The highest among 1(A), 1(B), 1(C) and 1(D), above]	-	1,93,07,179.79	1,93,07,179.79	-
1(F)	Liability on outward supply declared in GSTR-3B [Table 3.1(a) & 3.1(b) of GSTR-3B]	75,450.78	1,92,69,338.36	1,92,69,338.36	-
1(G)	Tax short paid on outward supply [1(E) - 1(F), above]	-	37,841.43	37,841.43	-

Note - In absence of detail information, tax declared through amendments (if any) has been considered from GSTR-9 instead of GSTR-1.

Reply submitted in the Case Study



Reply submission in Form ASMT-11:

(A) Kindly find **Reason No.1 in Table 10 of GSTR-9C of F.Y. 2018-19** as reproduced hereunder: “In Form GSTR-3B of November 2017, an inadvertent incorrect declaration of outward taxable supplies of Rs. 2,69,467 was **made as intra-state supplies instead of Inter-state Supplies** due to which an excess tax payment under CGST and SGST of Rs. 37,725.43 each had been made instead of tax payment under IGST of Rs. 75,450.77. To rectify this mistake, an **adjustment was carried out in Form GSTR-3B of June 2018**, wherein such output tax under IGST of Rs. 75,450.77 was declared and paid and **CGST and SGST of Rs. 37,725.43 each was downward adjusted against the CGST and SGST tax liability** on Outward Supplies pertaining to June 2018. Therefore, there **has been no short payment** or excess payment in either IGST or CGST/SGST Tax Ledgers.”

(B) Kindly find **Reason No.2 in Table 10 of GSTR-9C of F.Y. 2018-19** as reproduced hereunder: “The unreconciled difference in Tax paid under **CGST and SGST of Rs. 115.35 each has been mistakenly under-reported in GSTR-3B of June 2018** and the shortfall in such **tax shall be discharged now along with applicable interest.**”

Kindly find attached in **Annexure-1** the following Documents (1) Copy of Sale Invoice No. 1528 dated 08/11/2017 of IGST Rs. 75,450.78, (2) Copy of GSTR-9C of F.Y. 2018-19, (3) Copy of GSTR-1 and GSTR-3B of November 2017, (4) Copy of GSTR-1 and GSTR-3B of June 2018, (5) **Copy of DRC-03** dated 06.10.2020 linked with GSTR-9C of FY 2018-19.

Therefore, considering both the reasons, kindly note that the amount of Rs. 37,841.43 each of CGST and SGST **have not been short paid.**

Furthermore, as per **Section 19(2) of IGST Act, 2017 read with Circular 162/18/2021-GST dated 25.09.2021**, **no interest** is to be paid on the amount of IGST payable where a registered person who has paid central tax and State tax on a transaction considered by him to be an intra-State supply, but which is **subsequently held** to be an inter-State supply.

Common Issues raised during GST Scrutiny



<u>S.No.</u>	<u>Parameter</u>	<u>Description of Parameter</u>	<u>Remarks</u>	<u>Practical Case Studies</u>
2	Tax Liability on Inward Supplies (RCM) and Input Tax Credit claimed under RCM	<p>a. ITC availed in Table 4(A)(2) and Table 4(A)(3) of Form GSTR-3B. Note - ITC availed cannot exceed Cash paid under RCM in Table 3.1(d) of Form GSTR-3B.</p> <p>b. ITC in respect of inward supplies attracting reverse charge as appearing in Table 3 and Table 5, net of amendments in Table 4 and Table 6, of FORM GSTR-2A. Note - RCM paid as per GSTR 3B cannot be less than RCM populated in GSTR 2A.</p>	<p>Availment of ITC in excess of the liability discharged on account of reverse charge supplies may indicate either short payment of tax liability on account of RCM supplies or excess availment of input tax credit in respect of RCM supplies. Therefore, as per SOP, in all cases, Liability in 3.1(d) >= ITC in 4(A)(3). However, the same may not be true in all case as is illustrated in the adjacent case study.</p>	<p>(1) Mr. Bikash has paid tax under RCM of Rs. 50,000 and reported in table 3.1(d) of GSTR-3B of March, 2022 and since, he usually claims the corresponding ITC under RCM in Table 4(A)(3) in GSTR-3B of the next month, say, in the given case it shall be, GSTR-3B of April 2022. Therefore, he shall claim such ITC under RCM of Rs. 50,000 by reporting it in Table 4(A)(3) of GSTR-3B of April, 2022 and corresponding tax payment under RCM shall not be reported again in Table 3.1(d) of GSTR-3B of April, 2022. Therefore, for the month of April 2022 in F.Y. 2022-23, amount of ITC under RCM reported in Table 4(A)(3) shall be greater than tax paid under RCM in Table 3.1(d) of the same month. Therefore, as per the SOP, there may be a scrutiny notice issued for short payment of tax</p>

c. Tax/Cess paid in cash as per column 8 of **Table 6.1** of FORM GSTR-3B. In respect of inward supplies liable to RCM, tax/cess is to be **paid in cash**. Besides such RCM payments in cash, there may also be **other payments in cash** by the registered person.

In any case, **tax liability off-set in cash should not be less** than the liability arising on account of RCM **as per table 3.1(d) of FORM GSTR-3B**. Where the tax liability off-set in cash is less than the liability arising on account of RCM, it may indicate short payment of tax.

Details of such **inward supplies from URD persons are not communicated in FORM GSTR-2A**, as only registered persons furnish FORM GSTR-1. Moreover, details of ITC on account of import of services also are **not communicated in FORM GSTR-2A**. As such, the **RCM supplies declared in table 3.1(d) of FORM GSTR-3B cannot be less than the inward supplies attracting RCM as available in FORM GSTR-2A**. However, the same may not be true in all case as is illustrated in the adjacent case study.

under RCM or excess claim on ITC under RCM for F.Y. 2022-23.

(2) Ms. Shilpa has made taxable outward supplies of Rs. 1,00,000 to Ms. Ankita in March 2022. Ms. Shilpa has mistakenly reported such supplies **in Table 4B instead of Table 4A of GSTR-1 of March 2022** and consequently **column 14 of Table 3 of GSTR-2A** of Ms. Ankita is updated with **“Yes”** stating that such inward supplies attracted RCM **whereas it should have been “No”**. As a result of this, the inward supplies attracting RCM as per **GSTR-2A shall be greater than tax liability under RCM reported as per Table 3.1(d) of GSTR-3B of March 2022**. Therefore, as per the SOP, there may be a scrutiny notice issued for **short payment of tax** under RCM for F.Y. 2021-22.

Practical Case study

Data Analysis : Detail of observations made and discrepancies found (if any)

Pg. No. 2/5

(GSTIN)
(Trade Name)

Point-2.	Tax liability on inward supply (RCM)	Integrated Tax	Central tax	State tax	Cess
2(A)	RCM Liability on inward supply (including Import of Service) declared in GSTR-3B [Table 3.1(d) of GSTR-3B]	97,726.60	525.00	525.00	-
2(B)	ITC availed on Import of services [Table 4(B) of GSTR-3B]	3,37,166.46			-
2(C)	RCM Liability on domestic supply derived from GSTR-3B [2(A) - 2(B), above]	-	525.00	525.00	-
2(D)	RCM Liability on domestic supply reported by Regd. Suppliers in GSTR-2A [Table 3, and 5 of GSTR-2A]	-	1,431.74	1,431.74	-
2(E)	RCM Liability on domestic supply considered for this Data Analysis [i.e.- Higher of 2(C) and 2(D), above]	-	1,431.74	1,431.74	-
2(F)	Total RCM Liability (import of service + domestic) as per GSTR-3B/ 2A [2(B) + 2(E), above]	3,37,166.46	1,431.74	1,431.74	-
2(G)	RCM Liability (import of service + domestic) declared in GSTR-9 [Table 4(G) of GSTR-9]	97,726.60	525.00	525.00	-
2(H)	Total RCM Liability (import of service + domestic) as per GSTR-9C [Table 9(B) + 9(D) + 9(F) + 9(H) of GSTR-9C]	97,726.00	525.00	525.00	-
2(I)	Total RCM Liability (import of service + domestic) considered for this Data Analysis [i.e.- The highest among of 2(F), 2(G) and 2(H), above]	3,37,166.46	1,431.74	1,431.74	-
2(J)	Total RCM liability paid (Import of service + domestic) [Table 6(B) of GSTR-3B]	97,728.00	526.00	526.00	-
2(K)	Tax short paid on inward supply (in RCM) [2(I) - 2(J), above]	2,39,438.46	-	-	-

Note - Tax paid in excess (if any) under one Tax-head has not been adjusted with Tax less paid under another Tax-head.

Note - "Such other discrepancies which may be detected subsequently shall also be taken into consideration."

Reply submitted in the Case Study



(A) An amount of Input Tax Credit (ITC) under IGST on import of goods of Rs. 3,37,166.46 had been **inadvertently reported in Table 4A(2)** i.e. **ITC due to Import of Services**, of GSTR-3B instead of correctly reporting it in **Table 4A(1) i.e. ITC due to Import of Goods**, of GSTR-3B of the months of **April 2019**. It is to be noted that the entire amount of ITC under IGST due to Import of goods of Rs. 3,37,166.46 has been **correctly reported in Table 6(E) of GSTR-9 of F.Y. 2019-20**, therefore the rectification in reporting ITC under IGST on import of goods of Rs. 3,37,166.46 had been already carried out in Table 6(E) of GSTR-9 of F.Y.2019-20. Therefore, kindly note that there is no tax short paid on Inward Supply under RCM since the **total RCM Liability (import of service + domestic) considered for scrutiny should be Rs. 97,726.60 and the amount of total RCM liability paid (import of service + domestic) in Table 6(B) of GSTR-3B is Rs. 97,728.**

Kindly find attached in Annexure-1, the following Documents (1) Copies of Bill of Entry, Commercial Invoice and E-receipt of Customs Duty Payment in case of all such instances of import of goods of which Input Tax Credit was inadvertently reported in Table 4(A)(2) in GSTR-3B i.e. ITC due to Import of Services totaling to Rs.3,37,166.46, (2) Copy of GSTR-9 of F.Y. 2019-20 (3) Copy of Extract of GSTR-2A containing details of all ITC available due to Import of Goods and (4) Rectified Details of Discrepancy Sheet w.r.t. Point(2).

(GSTIN)
(Trade Name)

Point-3.	ITC availed from different sources	Integrated Tax	Central tax	State tax	Cess
3(A)	ITC availed on Import of goods (from overseas and SEZ) [Table 4(A)(1) of GSTR-3B]	-			-
3(B)	ITC available on Import of goods (from overseas and SEZ) [Table 10 and 11 of GSTR-2A]	-			-
3(C)	Excess ITC availed on Import of goods [3(A) - 3(B), above]	-			-
3(D)	ITC availed on Import of services (plus) Inward supply on RCM [Table 4(A)(2) and 4(A)(3) of GSTR-3B]	9,153.45	1,58,302.55	1,58,302.55	-
3(E)	Tax paid on Import of services (plus) Inward supply on RCM [Table 6(B) of GSTR-3B]	2,541.00	1,52,613.00	1,52,613.00	-
3(F)	Excess ITC on Import of services (plus) Inward supply on RCM [3(D) - 3(E), above]	6,612.45	5,689.55	5,689.55	-
3(G)	ITC availed from Input Service Distributor [Table 4(A)(4) of GSTR-3B]	-	-	-	-
3(H)	ITC available from Input Service Distributor [Table 7 of GSTR-2A]	-	-	-	-
3(I)	Excess ITC availed on ISD category [3(G) - 3(H), above]	-	-	-	-
3(J)	ITC availed on Inward B2B supply (Including Debit Notes and amendments) [Table 4(A)(5) of GSTR-3B]	83,29,082.87	44,46,108.75	44,46,108.75	-
3(K)	ITC available on Inward B2B supply (Including Debit Notes and amendments) [Table 3. 4 and 5 of GSTR-2A]	86,52,695.45	45,28,336.16	45,28,336.16	-
3(L)	Excess ITC availed on Inward B2B supply [3(J) - 3(K), above]	-	-	-	-
3(M)	Total ITC found to be availed in Excess [Sum of only positive values in 3(C), 3(F), 3(I) and 3(L), above]	6,612.45	5,689.55	5,689.55	-

Note - In absence of detail information, -

- (i) ITC availed in excess (if any) under one source has not been adjusted with ITC less availed under another source.
- (ii) ITC availed in excess (if any) under one Tax-head has not been adjusted with ITC less availed under another Tax-head.

ANNEXURE-9

Part A. Reconciliation Between Tax paid under RCM and ITC claimed under RCM during the F.Y. 2019-20.

Month	ITC availed on Import of services (plus) Inward supply on RCM [Table 4(A)(2) and 4(A)(3) of GSTR-3B]				Tax paid on Import of services (plus) Inward supply on RCM[Table 6(B) of GSTR-3B]				Difference				Remarks	
	IGST	CGST	SGST	TOTAL	IGST	CGST	SGST	TOTAL	IGST	CGST	SGST	TOTAL		
Mar-19					6,608.25	18,752.45	18,752.45	44,113.15						
Apr-19	6,608.25	18,752.45	18,752.45	44,113.15	121.50	14,554.43	14,554.43	29,230.36	6,486.75	4,198.02	4,198.02	14,882.79	Tax under RCM pertaining to March, 2019 of F.Y. 2018-19 paid through GSTR 3B of March, 2019. However, such ITC under RCM of March, 2019 of Rs. 18,752/- each of CGST and SGST and 6,608/- of IGST has been claimed in GSTR 3B of April, 2019 of F.Y. 2019-20. Kindly find attached the copies of GSTR 3B of March, 2019 and GSTR 3B of April, 2019 with highlighted details.	
May-19	121.50	14,554.43	14,554.43	29,230.36	484.00	14,192.00	14,192.00	28,868.00	-362.50	362.43	362.43	362.36	ITC under RCM paid in the month of April, 19 claimed during the current month i.e May 19.	
Jun-19	489.00	14,192.00	14,192.00	28,873.00	896.00	10,133.00	10,133.00	21,162.00	-407.00	4,059.00	4,059.00	7,711.00	ITC under RCM paid in the month of May, 19 claimed during the current month i.e June 19.	
Jul-19	896.00	10,133.00	10,133.00	21,162.00	371.00	9,048.00	9,048.00	18,467.00	525.00	1,085.00	1,085.00	2,695.00	ITC under RCM paid in the month of June, 19 claimed during the current month i.e July 19.	
Aug-19	371.00	9,047.00	9,047.00	18,465.00	186.20	11,212.28	11,212.28	22,610.76	184.80	-2,165.28	-2,165.28	-4,145.76	ITC under RCM paid in the month of July, 19 claimed during the current month i.e August 19.	
Sep-19	186.20	11,212.28	11,212.28	22,610.76	-	6,609.77	6,609.77	13,219.54	186.20	4,602.51	4,602.51	9,391.22	ITC under RCM paid in the month of August, 19 claimed during the current month i.e September 19.	
Oct-19	-	6,609.65	6,609.65	13,219.30	-	6,957.00	6,957.00	13,914.00	-	-347.35	-347.35	-694.70	ITC under RCM paid in the month of September, 19 claimed during the current month i.e October 19.	
Nov-19	-	6,957.13	6,957.13	13,914.26	315.00	8,456.08	8,456.08	17,227.16	-315.00	-1,498.95	-1,498.95	-3,312.90	ITC under RCM paid in the month of October, 19 claimed during the current month i.e November 19.	
Dec-19	315.00	8,456.08	8,456.08	17,227.16	-	17,977.00	17,977.00	35,954.00	315.00	-9,520.92	-9,520.92	-18,726.84	ITC under RCM paid in the month of November, 19 claimed during the current month i.e December 19.	
Jan-20	-	17,977.00	17,977.00	35,954.00	166.50	25,118.70	25,118.70	50,403.90	-166.50	-7,141.70	-7,141.70	-14,449.90	ITC under RCM paid in the month of December, 19 claimed during the current month i.e January 20.	
Feb-20	166.50	25,118.70	25,118.70	50,403.90	-	15,292.83	15,292.83	30,585.66	166.50	9,825.87	9,825.87	19,818.24	ITC under RCM paid in the month of January,20 claimed during the current month i.e Feb 20.	
Mar-20	-	15,292.83	15,292.83	30,585.66	-	13,061.76	13,061.76	26,123.52	-	2,231.07	2,231.07	4,462.14	ITC under RCM paid in the month of Feb,20 claimed during the March month. Further Tax under RCM pertaining to March, 2020 of F.Y. 2019-20 paid through GSTR 3B of March, 2020. However, such ITC under RCM of Rs. 13,062/- of CGST and SGST each has been claimed in GSTR 3B of April, 2020 of F.Y. 2020-21.	
Apr-20	-	13,062.00	13,062.00	26,124.00										
Total	9,153.45	1,58,302.55	1,58,302.55	3,25,758.55	2,540.20	1,52,612.85	1,52,612.85	3,07,765.90	6,613.25	5,689.70	5,689.70	17,992.65		

Part B. Reconciliation Between Tax paid under RCM and ITC claimed under RCM during the F.Y. 2019-20.

Particulars	IGST	CGST	SGST
ITC availed on Import of services (plus) Inward supply on RCM[Table 4(A)(2) and 4(A)(3) of GSTR-3B]	9,153.45	1,58,302.55	1,58,302.55
Less : Tax paid on Import of services (plus) Inward supply on RCM[Table 6(B) of GSTR-3B]	2,540.20	1,52,612.85	1,52,612.85
Excess ITC on Import of services (plus) Inward supply on RCM	6,613.25	5,689.70	5,689.70
Less: ITC under RCM of March 2019 claimed in April 2019	6,608.25	18,752.45	18,752.45
Add: ITC under RCM of March 2020 claimed in April 2020	-	13,062.00	13,062.00
Difference	5.00	-0.75	-0.75

Round Off Difference

- Section 16(4) time limit to claim ITC is 30th November **in respect of any invoice or debit note for supply of goods or services or both**
- u/s 2(66) “invoice” or “**tax invoice**” means the tax invoice referred to in **section 31**.
- **u/s 31(3)(f)**, a registered person who is liable to pay tax u/s 9(3) or 9(4) shall issue an invoice
[self-invoice]
- Documents for availing input tax credit in case of RCM would be the invoice of the supplier if they are registered and **RCM invoice raised by the recipient**.
- Section 13 – Time of supply in case of RCM (import of services or **procurement from URD**) – **date of payment or 61st day from date of invoice in case payment note made**.
- Multiple capacity as supplier and as a recipient.
- ITC to be availed based on the invoice raised by the supplier.
- Interest u/s 50(1) – applicable for delays @ 18% p.a.
- Import of services even without consideration covered under Sch. I of CGST Act

Common Issues raised during GST Scrutiny

<u>S.No.</u>	<u>Parameter</u>	<u>Description of Parameter</u>	<u>Remarks</u>	<u>Practical Case Studies</u>
3	Short Payment of Tax in case of TDS/TCS Deduction. Outward supply in GSTR-3B vs. TDS and TCS Credit	The taxable value declared on account of "Outward taxable supplies in Table 3.1(a) of FORM GSTR-3B should not be less than the net amount liable for TCS and TDS credit as per Column 6 of Table 9 of FORM GSTR-2A.	The details of TDS and TCS are furnished in their FORM GSTR-7 and FORM GSTR-8 respectively and communicated to the registered person in table 9 of FORM GSTR-2A. However, the taxable value declared on account of Outward taxable supplies in FORM GSTR-3B cannot be less than the net amount liable for TCS and TDS credit as per FORM GSTR-2A. A discrepancy on the aforementioned count may indicate short payment of tax.	<p>1) Mr. Mahesh is a government-supplier and making a supply of Rs. 2 Crore with 18% GST in the month of March 2022 under a contract with Government. Payment made by Government Department is Rs. 1.18 Cr. inclusive of GST to Mr. Mahesh for the month of March 2022. TDS has been deducted by Government department @ 2% i.e Rs. 4L on Rs. 2 Cr. supply for the month and the same has been shown in their GSTR-7. On the other-hand Mr. Mahesh has shown outward supply of Rs. 1 Cr for the month of March 2022. In the above situation there is a short payment by Mr. Mahesh of 18% GST on Rs. 1 Cr since the TDS @ 2% was deducted on the entire contact value of Rs. 2 Cr by the Government and Mr. Mahesh shall have to pay an additional GST Rs. 18L out of his pocket.</p> <p>(2) Mr. Sanjeet issues a Tax Invoice of Rs. 10,00,000/- with GST of Rs. 1,80,000/- for supplies made to Government. The Govt.</p>

department should have deducted TDS on Rs. 10,00,000/- **but mistakenly it was deducted on Rs. 11,80,000/-**. In such a case difference in taxable value of outward supplies shall be present in GSTR-3B and GSTR-7. In such a case, scrutiny notice may be issued for mismatch and reply will have to be furnished for the same. In these cases, Mr. Sanjeet shall also have **to follow up the Government Department for a rectification** in GSTR-7.

(3) Mr. Tapas, a contractor, has reported in GSTR-3B of March 2022, the outward supplies of Rs. 50L made to a Government Department in the same month. However, the Govt. Department doesn't deduct the TDS @ 2% on Rs. 50L at the time of credit of account in March, 2022 but **deducts TDS in April 2022** when it makes the payment to the contractor and declares in GSTR-7. Therefore, assuming there are no outward supplies to be reported in GSTR-3B of April, 2022, the **taxable outward supplies reported in GSTR-3B of April 2022 may be lower than the net amount liable for TDS as per Form GSTR-2A.**

Common Issues raised during GST Scrutiny

<u>S.No.</u>	<u>Parameter</u>	<u>Description of Parameter</u>	<u>Remarks</u>
4	Outward supply in GSTR-3B vs. Liability as per E-way bills.	Liability on account of outward supplies as per FORM GSTR-3B should be verified with the Tax liability as declared in e-way bills.	Taxpayer is required to generate e-way bill before commencement of movement of goods of consignment value exceeding fifty thousand rupees, (maybe Rs. 1L or a higher amount for certain states.) E-way bills capture a part of supplies made by the registered person . However, in FORM GSTR-3B, the registered person is required to declare details of all outward supplies . Accordingly, liability declared in FORM GSTR-3B should not be less than tax liability as declared in the e-way bills . It is to be noted that the E-way facility was introduced from 1.4.2018 and onwards . Therefore, for the F.Y. 2017-18 such reconciliation of outward supplies reported in GSTR-3B and liability declared in E-way bills may not be possible . Since, E-way bills are required to be generated in the cases where Delivery Challan is issued instead of Tax invoice such as for Job-work etc. and since it is not a supply, no such supply is reported in GSTR-3B , and this requires a thorough reconciliation. It is to be noted that there may be effect towards outward supplies reported in Table 3.1(a) and Table 3.1(b) due to Credit Notes and Debit notes issued due to rate differences, liquidated damages, discounts etc. which do not require movement of goods and no generation of E-way Bill thereon . During invoice-level reconciliation, such effect has to be eliminated.

(GSTIN)
(Trade Name)

Point-1.	Tax liability on outward (non-RCM) supply	Integrated Tax	Central tax	State tax	Cess
1(A)	Liability in GSTR-1 [Table 4,5,6,7,9,10 and 11 of GSTR-1]	35,32,254.97	87,95,099.27	87,95,099.27	-
1(B)	Outward Taxable supply, tax on which is to be paid by the recipient [Table 4(B) of GSTR-1]	45.00	136.62	136.62	-
1(C)	Liability on outward supply (non-RCM) declared in GSTR-1 [Net of Table 4,5,6,7,9, 10 and 11 of GSTR-1 (less) Table-4(B) of GSTR-1]	35,32,209.97	87,94,962.65	87,94,962.65	-
1(D)	Liability on outward supply (non-RCM) declared in GSTR-9 [Table 5N of GSTR-9]	35,32,254.97	87,95,099.27	87,95,099.27	-
1(E)	Liability on outward supply (non-RCM) declared in GSTR-9C [Table 9A+9C+9E+9G+9I+9J+9K]	35,43,054.00	87,95,098.00	87,95,098.00	-
1(F)	Liability on outward supplies as received from E-waybill data	35,83,489.32	88,21,470.19	88,21,470.19	-
1(G)	Liability on outward supply considered for this Data Analysis [The highest among 1(C), 1(D), 1(E) and 1(F), above]	35,83,489.32	88,21,470.19	88,21,470.19	-
1(H)	Liability on outward supply declared in GSTR-3B [Table 3.1(a) & 3.1(b) of GSTR-3B]	35,32,254.57	87,95,099.23	87,95,099.23	-
1(I)	Tax short paid on outward supply [1(E) - 1(F), above]	51,234.75	26,370.96	26,370.96	-

Note - In absence of detail information, tax declared through amendments (if any) has been considered from GSTR-9 instead of GSTR-1.

Note - "Such other discrepancies which may be detected subsequently shall also be taken into consideration."

Reply submitted in the Case Study

Annexure 1: Master Reconciliation Statement between tax liabilities on outward supplies as per E-way Bills vs. actually paid in GSTR3B of F.Y. 2019-20:

	Particulars	CGST	SGST	IGST	Remarks:
	Liability on outward supplies as received from E-way bill data	88,21,470.19	88,21,470.19	35,83,489.32	As per Point 1(E) of "Detail of observations made and discrepancies found statement"
Add:-	Outward supplies pertaining to supply of service in respect of which generation of E-way bills are not required.	38,736.00	38,736.00	6,909.41	Annexure 3- Details of Outward supplies pertaining to supply of services in respect of which generation of E-way bills are not required.
Add:-	Intra-State Outward supply with Invoice Value less than ₹1,00,000. Hence, generation of E-way bill is not required.	1,10,717.10	1,10,717.10	-	Annexure 4- Details of Intra-State Outward supply with Invoice Value less than ₹1,00,000. Hence, generation of E-way bill is not required.
Add:-	Inter-State Outward supply with Invoice Value less than ₹50,000. Hence, generation of E-way bill is not required.	-	-	23,704.20	Annexure 5- Details of Inter-State Outward supply with Invoice Value less than ₹50,000. Hence, generation of E-way bill is not required.
Less:-	Credit Notes for which E-way Bill is not required to be generated since Invoice Value is lower than Rs. 50,000 for Inter-state and invoice Value is lower than Rs. 1,00,000 for intra-state movement of goods	32,746.24	32,746.24	41,224.33	Annexure 6- Details of Credit Notes in respect of which E-way Bill is not required to be generated due to Invoice Value being lower than the required limits.
Less:-	Credit Note for which E-way Bills were required to be generated but has been generated by the buyer party who is returning goods	1,32,601.75	1,32,601.75	8,213.04	Annexure-7 Details of Credit Notes for which E-way Bills were required to be generated but have been generated by the buyer party who is returning the goods.
Less:-	Differences between E-way Bills as per E-way Bill Portal and Tax Invoices as per Audited Financial Statements for F.Y. 2019-20.	10,476.03	10,476.03	32,410.59	Annexure-8: Details of differences between E-way Bills as per E-way Bill Portal and Tax Invoices as per Audited Financial Statements for F.Y. 2019-20.
	Liability on outward supply declared in GSTR-3B	87,95,099.23	87,95,099.23	35,32,254.57	As per Point 1(H) of "Detail of observations made and discrepancies found statement"

Common Issues raised during GST Scrutiny



<u>S.No.</u>	<u>Parameter</u>	<u>Description of Parameter</u>	<u>Remarks</u>	<u>Practical Case Studies</u>
5	ITC from suppliers whose registration is cancelled	Claim of ITC in respect of supplies from taxpayers whose registrations have been cancelled retrospectively.	In case of retrospective cancellation of registration of a supplier, the recipient is not entitled to claim ITC in respect of invoices or debit notes issued after the effective date of cancellation of the registration. Effective date of cancellation of registrations of the suppliers, if any, is made available in relevant tables of FORM GSTR-2A. Accordingly, it may be verified whether the registered person has availed ITC in respect of such invoices or debit notes issued by the suppliers after the effective date of cancellation of their registrations. However, in case the claim of (1)Bonafide Transaction- genuineness of	<p>Mr. Pritam has purchased goods worth Rs. 59000/- Including GST of Rs. 9000/- from Mr. Amit dated 24/02/2019. Mr. Amit, due to any reason, is not able to file his GSTR-1/3B for the period August 2021 to February 2022. On 27-03-2022, Department passes an order of cancellation of the registration of Mr. Amit w.e.f. 01/07/2017. In such a situation Mr. Pritam may not be entitled to Input tax credit for the purchase invoices of February 2019.</p> <p>However, this is a litigated area with several case judgements in the favour of the taxpayer provided it is a genuine case.</p> <p>Reliance may be placed on the Hon'ble Division Bench of Calcutta high Court in the case of M/s. LGW Industries Limited & Ors. Vs. Union of India & Ors. in W.P.A No.23512 of 2019.</p>

the purchase transactions in question can be proved and when **(2) payments on such purchase along with GST were actually paid** and when such **(3) transactions were made before the cancellation of registration of the supplier, (4)Active when ITC availed-compliance of statutory obligation of verification of identity, validity and existence of the supplier had been done by the buyer,(5) No such disqualifying condition in Law and (6) Non-payment of tax to be proven by the department along with non-recovery.** reliance may be placed on several HC and SC judgments including that of Hon'ble *Calcutta High Court* judgment in the case of *Sanchita Kundu & Anr. Vs. The Assistant Commissioner of State Tax, 2022.*

Hon'ble Delhi High Court in the case of Ashish Garg (20.07.2023) has clarified that GST registrations **cannot be cancelled retrospectively from a period for which GST returns have been filed.** This is because Section 29 of the CGST, 2017, which permits authorities to cancel registrations from a retrospective date, **cannot be exercised arbitrarily.** In the case in question, the petitioner had filed returns regularly until July 2021. While the petitioner had not filed returns for a continuous period of six months, which was the basis for the proposed cancellation, **this did not justify a retrospective cancellation from the date that the registration was initially granted.** The ruling is significant because it provides clarity on the scope of Section 29 of the CGST Act. **It also reinforces the principle that GST registrations should not be cancelled retrospectively in all cases.**

Grounds for challenging retrospective cancellation of registration



- (1) The purchase of goods or service is a **bonafide transaction** and the genuineness of such transactions can be proved by relying upon the purchase invoice, E-Way Bill, Consignment Note, Delivery challan and payment evidence in bank account statement. Reliance is placed on the *Hon'ble Calcutta High Court Judgment in the case of M/S. GARGO TRADERS VERSUS THE JOINT COMMISSIONER, COMMERCIAL TAXES(STATE TAX) & ORS. (2023).*
- (2) The recipient has paid for the purchase along with GST thereon **preferably through bank** and not incash.
- (3) The purchase transactions were made **before the actual date of cancellation of GST registration** of the supplier. In the above example, since the purchase transaction was on 24/02/2019 which is before the **actual date of cancellation** of 27/03/2022, so there is no requirement to reverse the credit. Reliance is placed on the *Hon'ble Calcutta High Court Judgment in the case of SANCHITA KUNDU & ANR. VERSUS THE ASSISTANT COMMISSIONER OF STATE TAX, BUREAU OF INVESTIGATION, SOUTH BENGAL & ORS. (2022).*

Grounds for challenging retrospective cancellation of registration



- (4) The GST registration of the supplier was **active and available on the GST Portal** when the purchase transaction was made and when the Input Tax Credit was claimed.
- (5) The recipient before or at the time of the purchase transaction has carried out the **statutory obligation** of necessary verification to ascertain **the identity, validity and existence of the supplier**. Reliance is placed on the *Hon'ble Calcutta High Court Judgments in the cases of M/S LGW INDUSTRIES LIMITED & ORS. VERSUS UNION OF INDIA & ORS., ANMOL INDUSTRIES LTD. & ANR. VERSUS UNION OF INDIA & ORS., SURYA ALLOY INDUSTRIES LTD. & ANR. VERSUS UNION OF INDIA & ORS., RAJ METAL INDUSTRIES & ANR. VERSUS UNION OF INDIA & ORS. AND VICTORIA GLOBAL & ANR. VERSUS UNION OF INDIA & ORS. (2021).*

Grounds for challenging retrospective cancellation of registration



- (6) The cancellation of GST registration with a retrospective date in the past should not be a **mechanical process or arbitrary** and the reasons of retrospective cancellation **should not be subjective but must be based on the objective criteria**. Merely, because a **taxpayer has not filed his GSTR-3B returns for a continuous period of 6 months does not mean that his GST registration is required to be cancelled with retrospective date also covering the period when his GSTR-3B returns were filed**, and the taxpayer was compliant. Reliance is placed on the *Hon'ble Delhi High Court Judgments in the cases of SHREE BALAJI TRANSPORT VERSUS THE COMMISSIONER OF CENTRAL TAX APPEALS -I & ANR. (2024) and ASHISH GARG L/H OF SH. PAWAN KUMAR, PROPRIETOR OF M/S. KIRTI PLASTICS VERSUS GST OFFICER/AVATO, WARD 63, DELHI & ANR. (2024)*.
- (7) The GST department **cannot establish** with concrete evidence that the purchase transactions were the outcome of any **fake invoicing or fraud or collusion** between the purchaser and the supplier.

(8) There is no material on record to show by the GST Department as to why the GST registration is sought to be cancelled retrospectively from a date in the past. Further, the **Show cause Notice also does not put the taxpayer to notice that the GST registration is liable to be cancelled retrospectively.** Accordingly, the **taxpayer had no opportunity to even object to the retrospective cancellation of the GST registration.** Reliance is placed on the *Hon'ble Delhi High Court Judgment in the case of ARYAN TIMBER STORE THROUGH ITS PROP VIRENDER KUMAR VERSUS SALES TAXOFFICER CLASS II/ AVATO WARD 62 DEPARTMENT OF TRADE AND TAXES IP ESTATE NEW DELHI (2024).*

<u>S.No.</u>	<u>Parameter</u>	<u>Description of Parameter</u>	<u>Remarks</u>	<u>Practical Case Studies</u>
6	Excess Claim of ITC in GSTR3B V/s GSTR2A. (ITC on All other ITC)	ITC availed in respect of “ All other ITC ” in Table 4(A)(5) of FORM GSTR-3B may be verified with Table 3 and Table 5 (along with the net effect of amendments thereof in Table 4 and Table 6 respectively) of FORM GSTR-2A .	Tables 3 and 5 in FORM GSTR-2A contain details of supplies attracting forward as well as RCM. Therefore, only the supplies against which there is “No” or “N” in column 14 of Table 3, column 16 of Table 4, column 15 of Table 5 and column 18 of Table 6 may be considered. Therefore, as per the SOP, ITC as per Table 3 and Table 5 of GSTR-2A should be greater than ITC claimed in Table 4(A)(5) of GSTR-3B . However, the same may not be true in all case as is illustrated in the adjacent case study. Such ITC appearing in GSTR-2A may be greater than ITC to be claimed in Table 4(A)	(1) Mr. Raju Prasad has purchased some goods from Mr. Shankar having business in Bihar. Goods had been dispatched by Mr. Shankar as on 31-03-2022 and the tax invoice had been raised as on 31-03-2022. Mr. Shankar reports the tax invoice on this outward supply in his GSTR-1/IFF for the month of March 2022 . Since the goods have been received by Mr. Raju Prasad as on 03-04-2022 , he is bound to claim such ITC only in the month of April 2022 due to the condition of claiming ITC as per Sec 16(2)(b) of CGST Act. Therefore, in regard to F.Y. 2022-23, ITC claimed in Table 4(A) (5) All Other ITC > ITC as per Table 3 & 5 (GSTR-2A) , even though it is not a case of excess claiming of ITC. Therefore, as per the SOP, there may be a scrutiny notice issued for excess claiming of ITC for F.Y. 2022-23. (2) M/s. Maa Kaali Transport, GTA, has provided Goods Transport Agency services of Rs. 1,50,000 to M/s. Rio Sales Pvt. Ltd. in December 2021 but mistakenly an invoice of Rs. 1,75,000

			<p>(5) of GSTR-3B in usual situations, such as when ITC appearing in GSTR-2A may contain blocked Credit u/s 17(5), however, the ITC to be claimed in Table 4(A)(5) of GSTR-3B should not contain such a ITC. It may be noted that there was no requirement of matching ITC claimed in Table 4(A)(5) of GSTR-3B with GSTR-2A for FY 2017-18 and FY 2018-19. Reliance can be placed on the Press release dated 18.10.2018 and the judgment of Hon'ble Gujarat High Court in M/s. NEW NALBANDH TRADERS vs. STATE OF GUJARAT & 2 other(s).</p>	<p>was issued and uploaded in his GSTR-1 then. Now, a downward amendment of Rs. 25,000 is required to be reported in Table 9A-Amended B2B invoices in March 2022 but mistakenly it has been reported incorrectly and consequently column 16 of Table 4 of GSTR-2A of M/s. Rio Sales Pvt. Ltd. is updated with 'No' stating that such inward supplies of GTA did not attract RCM whereas it should have been "Yes". As a result of this, the inward supplies not attracting RCM as per Table 3, net of amendments in Table 4, of GSTR-2A shall be lower than the ITC claimed in Table 4(A)(5) of GSTR-3B of March 2022. Therefore, as per the SOP, there may be a scrutiny notice issued for excess claiming of ITC for F.Y. 2021-22.</p>
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Note: Reply to Notices of mismatches of ITC between GSTR-2A and GSTR-3B along with grounds of defenses and relevant Court Judgments are **discussed in later slides.**

Common Issues raised during GST Scrutiny



GSTR - 2A

Table 3: Inward supplies received from a registered person including supplies attracting reverse charge

Table 4: Amendment to Inward supplies received from a registered person including supplies attracting reverse charge (Amendment to 3)

Table 5: Debit / Credit notes received during current tax period

Table 6: Amendment to Debit / Credit notes (Amendment to 5)

GSTR - 3B (ITC)

Table 4(A)(5): All other ITC

(GSTIN)
(Trade Name)

Point-3.	ITC availed from different sources	Integrated Tax	Central tax	State tax	Cess
3(A)	ITC availed on Import of goods (from overseas and SEZ) [Table 4(A)(1) of GSTR-3B]	8,11,329.00			-
3(B)	ITC available on Import of goods (from overseas and SEZ) [Table 10 and 11 of GSTR-2A]	23,25,151.00			-
3(C)	Excess ITC availed on Import of goods [3(A) - 3(B), above]	-			-
3(D)	ITC availed on Import of services (plus) Inward supply on RCM [Table 4(A)(2) and 4(A)(3) of GSTR-3B]	844.00	1,68,392.00	1,68,392.00	-
3(E)	Tax paid on Import of services (plus) Inward supply on RCM [Table 6(B) of GSTR-3B]	7,452.00	1,58,569.00	1,58,569.00	-
3(F)	Excess ITC on Import of services (plus) Inward supply on RCM [3(D) - 3(E), above]	-	9,823.00	9,823.00	-
3(G)	ITC availed from Input Service Distributor [Table 4(A)(4) of GSTR-3B]	-	-	-	-
3(H)	ITC available from Input Service Distributor [Table 7 of GSTR-2A]	-	-	-	-
3(I)	Excess ITC availed on ISD category [3(G) - 3(H), above]	-	-	-	-
3(J)	ITC availed on Inward B2B supply (Including Debit Notes and amendments) [Table 4(A)(5) of GSTR-3B]	1,24,68,620.42	1,13,65,090.43	1,13,65,090.43	Total of 4A.5 of 3B
3(K)	ITC available on Inward B2B supply (Including Debit Notes and amendments) [Table 3. 4 and 5 of GSTR-2A]	1,21,99,460.86	1,14,76,592.14	1,14,76,592.14	-
3(L)	Excess ITC availed on Inward B2B supply [3(J) - 3(K), above]	2,69,159.56	-	-	-
3(M)	Total ITC found to be availed in Excess [Sum of only positive values in 3(C), 3(F), 3(I) and 3(L), above]	2,69,159.56	9,823.00	9,823.00	-

Note - In absence of detail information, -

- ITC availed in excess (if any) under one source has not been adjusted with ITC less availed under another source.
- ITC availed in excess (if any) under one Tax-head has not been adjusted with ITC less availed under another Tax-head.

Reply submitted in the Case Study

It has been informed to us through the said Notice that an excess ITC has been availed by us of Rs. 2,69,159.56/- under IGST on the Inward B2B supply. It has been observed, in this regard, that the total of ITC availed on Inward B2B supply, determined from Table 4(A)(5) of GSTR 3B, amounting to Rs. 1,24,68,620.42/- of IGST and Rs. 1,13,65,090.43/- of CGST and SGST each has been mentioned in the Annexure-2 of the Notice issued to us.

It is for your kind consideration that the Input Tax Credit under **IGST of Rs. 7,47,225/- on Import of Goods** vide Inv. No. 8561014899 dt. 21-04-2018; BOE No. 6382323 dt. 15-05-2018 was **inadvertently included in Table 4(A)(5) instead of Table 4(A)(1)** in the GSTR 3B of the month of May, 2018. Further, Input Tax Credit under **IGST of Rs. 7,66,598/- on Import of Goods** vide Inv. No. 8561027262 dt. 21-07-2018; BOE No. 7622141 dt. 13-08-2018 was **also inadvertently included in Table 4(A)(5) instead of Table 4(A)(1)** in the GSTR 3B of the month of August, 2018. Such inadvertent **error was duly rectified in Table 6 of GSTR 9 filed for F.Y. 2018-19.**

Hence, a total of ITC availed on Inward B2B supply under IGST, determined from **Table 4(A)(5) of GSTR 3B has to be reduced by Rs. 15,13,823/- (7,47,225 + 7,66,598)**. Therefore, Input Tax Credit under IGST shall be determined at Rs. **1,09,54,798.52/- (1,24,68,620.42 - 15,13,823) under IGST instead of Rs. 1,24,68,620.42/-** as mentioned in the said Notice.

Therefore, there is no ITC availed in excess under IGST, CGST and SGST w.r.t. F.Y. 2018-19.

Common Issues raised during GST Scrutiny

<u>S.No.</u>	<u>Parameter</u>	<u>Description of Parameter</u>	<u>Remarks</u>	<u>Practical Case Studies</u>
7	ITC on filing of GSTR-1 but non-filing of GSTR 3B. Tax not paid to Government by the Supplier.	Ineligible ITC availed in respect of invoices / debit notes issued by the suppliers who have not filed their GSTR-3B returns for the relevant tax period.	In case where GSTR 3B is not filed, GSTR 2A shall contain status as “No” , which indicates the supplier has furnished invoice details in his FORM GSTR-1, but has not furnished the return in FORM GSTR-3B for the corresponding tax period. The availment of ITC in respect of such invoices /debit notes may be checked. However, this is a litigated area and reliance can be placed on the grounds of violation of Article 14, Article 19(1)(g) and Article 300A of the Constitution of India and the Doctrine	1) Mr. Amreshwar has purchased some goods from Mr. Sarthak, GSTR-1/IFF has been filed by the Mr. Sarthak on the due date but he failed to file GSTR-3B for the said period. In such a case, Invoices will be reflected in GSTR-2A of Mr. Amreshwar, however he is not entitled to claim the ITC as condition laid down u/s 16(2)(c) is not fulfilled. However, this is a litigated area and there are several case judgments of high courts that are in favour of the assessee.

			<p>of Impossibility. Also, reliance may be placed on Press Release dated 4th May 2018 and the judgments of Hon'ble Madras High Court in case of M/s. D. Y. Beathel Enterprises vs. The State Tax Officer (Data Cell) and Hon'ble Chattisgarh High Court in Bharat Aluminium Company Limited V. Union of India and others amongst other High court judgments favouring the assessee.</p>	
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Grounds of Defenses:

- (1) From **Section 41 of CGST Act, 2017**, it is evident that the amendment regarding reversal of ineligible credit of Invoices on which tax has not been paid and its re-availment on payment of tax by the supplier, has been introduced **w.e.f. 1st October 2022 only vide Finance Act, 2022 and is prospective in nature**. From **Rule 37A of CGST Rules, 2017**, it is evident that the rules regarding reversal of ineligible credit of Invoices on which tax has not been paid and its re-availment on payment of tax by the supplier, has been introduced vide Notification No. 26/2022- Central Tax **w.e.f. 26.12.2022**.
- (2) Provisions of **Section 76** it is clear that where the suppliers have collected the duty, the same is **recoverable being payable by the suppliers** to the Department. That the Department can recover the duties collected but not deposited. Thus, for this reason also to **call upon the Recipient to ensure that the suppliers have paid the duty before being eligible for credit is totally arbitrary**, unsustainable and liable to be set aside.
- (3) Position in the Service Tax regime, that in a situation where the supplies are accepted by the supplier but tax has not been paid, the same are **recoverable as arrears of land revenue as per the provisions of Section 75(12) of CGST Act, 2017 read with Section 79(1)(e) of CGST Act, 2017** to the GST enactments. Thus, where the amounts are **recoverable as arrears of land revenue**, it is totally unfair, unjust and arbitrary to deny the credit to the recipients.

Decisions of the Hon'ble Supreme Court and several Hon'ble High Courts:

(1) Decision of the Hon'ble Calcutta High Court: (Ground for ITC Mismatches between GSTR-2A vs GSTR-3B also)

In the cases of *Suncraft Energy Pvt. Ltd. and Another (02.08.2023)* upheld by the Hon'ble Supreme Court on 14.12.2023 and *Lokenath Construction Private Limited*, the Hon'ble Calcutta High Court stated that before demanding reversal of ITC from the recipient, the GST Department **ought to have taken action against the selling dealer** and until and unless it is an **exceptional case where there has been a collusion or where the selling dealer is missing, has closed down its business, doesn't have any assets and such other contingencies, it is unjustified to straight-away direct the recipient to reverse the ITC.**

(2) Decision of the Hon'ble Madras High Court:

It may be noted that reliance may be placed on the judgment of the *Hon'ble Madras High Court in the case of M/S. D.Y. BEATHEL ENTERPRISES VERSUS THE STATE TAX OFFICER (DATA CELL) (2021)*. In the above judgment, given the facts of the present case, the said Court held that the Department **could not demand GST from the recipient without first examining the supplier and initiating recovery action against the supplier** for the amount of output tax liability defaulted and only in **exceptional circumstances**, the recovery may be made from the buyer since the demand of entire tax liability from the **buyer would be in contravention of the principle of natural justice.**

Reply to Notice of reversal of ITC when supplier has not paid tax



(3) Decision of the Hon'ble Chhattisgarh High Court: (Ground for ITC Mismatches between GSTR-2A vs GSTR-3B also)

It is imperative to note the judgment of the *Hon'ble CHHATTISGARH High Court in the case of M/s. BHARAT ALUMINIUM COMPANY LIMITED VERSUS UNION OF INDIA AND OTHERS (2021)*, where it was held that, “the petitioner has come out with the purchases made, but it **did not tally/match with 2A ITC** shown by the seller meaning thereby the seller may not have filed return to remove the same. When the physical verification was offered to be made by petitioner it was not accepted. It is stated that for the recovery of like nature from the buyer, **the action can only be available in the exceptional circumstances.**”

(4) Supreme Court judgement in Union of India Vs Bharti Airtel Ltd. & Ors (2021): (Ground for ITC Mismatches between GSTR-2A vs GSTR-3B also)

As per the said Supreme Court Judgement, GSTR-2A/GSTR-2B have been termed only as **enablers and facilitators or facilities** and that for **procedural facilitation** in aiding to fulfil the primary obligation of the registered taxpayer of self-assessment of output tax liability and Input Tax Credit, therefore, **the right to claim Input Tax credit should not be rejected in case such credit doesn't appear in GSTR-2A/GSTR-2B.**

The relevant extracts from the text of the Judgement to substantiate the above-mentioned point are provided hereunder:

“22. The functions or features provided in the common electronic portal of auto matching and auto populating of the record of the supplier and the recipient and vice versa are only a facility made available to the registered person.”

“46. Form GSTR-2A is only a facilitator for taking an informed decision while doing such self-assessment.”

Since, as per the said Supreme Court Judgment, **the functions or features provided in the common electronic portal pertaining to GSTR-2A of auto matching and auto populating of the record of the supplier and the recipient and vice versa are only a facility made available** to the registered person, therefore, **claiming only such Input tax Credit which are appearing in such forms cannot be mandated.**

(5) **Press Release dated 4.05.2018 issued by the Central Board of GST Council and Minutes of the 28th GST Council Meeting dated 21.7.2018:**

Reliance may be placed on the **Press Release dated 4.05.2018** (Refer page 1 of said Press Release), wherein it was announced that – ***“No automatic reversal of credit: There shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller however reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.”***

(6) **Decisions of the Hon’ble Delhi High Court:**

It is imperative to take cognizance of the judgment of the ***Hon’ble Delhi High Court in the case of ON QUEST MERCHANDISING INDIA PVT. LTD., SUVASINI CHARITABLE TRUST, ARISE INDIA LIMITED, VINAYAK TREXIM, K.R. ANAND, APARICI CERAMICA, ARUN JAIN (HUF), DAMSON TECHNOLOGIES PVT. LTD., SOLVOCHEM, M/S. MEENU TRADING CO., & MAHAN POLYMERS VERSUS GOVERNMENT OF NCT OF DELHI & ORS. & COMMISSIONER OF TRADE & TAXES, DELHI AND ORS., (2017)***, since the aforementioned judgments have put forth few pertinent principles such as:

Treatment of both the parties, the guilty purchaser and the innocent purchaser at par is a violation of **Article 14 of the Constitution** i.e., ***“Equality before law and the State shall not deny to any person equality before the law or the equal protection of the laws.”***

In this case, the purchaser has been asked to do **something that is impossible**, i.e., to **predict or anticipate that the selling dealer may or may not deposit the tax collected to the Government.**

ITC cannot be denied to the recipient in the **absence of any material evidence in the hands of the Department of collusion** between the supplier and the recipient to **defraud the Department.**

So long as the purchasing dealer, at the time of entering into the transaction with the selling dealer, has **taken all the necessary steps to verify that the selling dealer has a valid registration and a tax invoice** has been issued in accordance with the law, he **cannot be reasonably expected to keep a track of whether the selling dealer has indeed deposited the tax so collected.**

(7) Decision of Hon'ble Supreme Court:

It is imperative to note the Judgement of **The Hon'ble Supreme Court in Commissioner of Central Excise, Jalandhar Versus M/s. Kay Kay Industries 2013 (8) TMI 772 - Supreme Court**, wherein the recipient was allowed to claim MODVAT credit even when the supplier had defaulted in his duty to pay tax received from the recipient on inputs to the department, held that an **assessee is not expected to verify with Department whether the supplier had paid duty on inputs** used in the final product in order to avail MODVAT credit since **doing so is practically impossible and would lead to transactions getting delayed.**

(8) Decision of the Hon'ble Calcutta High Court:

Reliance may be placed on the judgment of the *Hon'ble Calcutta High Court* in the case of *M/S LGW INDUSTRIES LIMITED & ORS. VERSUS UNION OF INDIA & ORS., ANMOL INDUSTRIES LTD. & ANR. VERSUS UNION OF INDIA & ORS., SURYA ALLOY INDUSTRIES LTD. & ANR. VERSUS UNION OF INDIA & ORS., RAJ METAL INDUSTRIES & ANR. VERSUS UNION OF INDIA & ORS. AND VICTORIA GLOBAL & ANR. VERSUS UNION OF INDIA & ORS.* In the above judgment, it may be noted that in case of default of payment of tax by the seller, the **recovery shall not be made from the recipient** in case all the **following conditions** are adequately fulfilled, (1) All the **purchases and transactions** in question **are genuine and supported by valid documents**, (2) Transactions in question were made **before the cancellation of registration** of the suppliers, (3) **Payments on purchases in question along with GST were actually paid to the suppliers**, (4) Fulfilment of compliance of statutory obligation by the recipient in **verification of identity of the suppliers.**

(9) **Decision of the Hon'ble Bombay High Court and Doctrine of Impossibility: (Ground for ITC Mismatches between GSTR-2A vs GSTR-3B also)**

It is significant to note the judgment of *the Hon'ble Bombay High Court in the case of "INDIAN SEAMLESS STEEL AND ALLOYS LTD. VERSUS UNION OF INDIA*, wherein the **Doctrine of impossibility** was upheld and that "it is also a well settled principle of law that the **law does not compel a man to do that which he cannot possibly do** and the said principle is well expressed in legal maxim "*lex non cogit ad impossibilia*" and the legal maxim of "*Impotentia Excusat Legem*", which means a **disability that makes it impossible to obey the law can be excused** which is squarely attracted to the facts and circumstances of the present case." Since the **recipient cannot be expected to keep a track of whether the selling dealer has indeed deposited the tax so collected** and therefore, the benefit of ITC ought not be denied to the recipient taxpayer on account of default of the supplier.

(10) **Challenged the vires of Section 16(2)(c) being violative of Articles 14, 19(1)(g) and 300A of the Constitution of India:**

Orissa High Court in the case of M/s. Shree Gobind Alloys Pvt. Ltd. Vs. Union of India and others dated 05.05.2021, before the (ii) **Gujarat High Court** in the case of M/s. Surat Mercantile Association & 5 Others Versus Union of India & 2 Others - 2021-VIL-781-GUJ, before the (iii) **Hon'ble Delhi High Court** in the case of Federation of Indian Small-Scale Battery Associations (REGD.) and ANR. Versus Union of India and ORS. 2021 (5) TMI 420 and before the (iv) **Hon'ble Bombay High Court** in the case of Unifab Engineering Project Pvt. Ltd. & Anr. Vs. The DC of CGST & CEx, Circle-VIII, Group-VIII And Ors. 2021 TMI 646, (v) **Hon'ble Tripura High Court Judgement** in the case of M/S. SAHIL ENTERPRISES VERSUS UNION OF INDIA

Reply to Notice of reversal of ITC when supplier has not paid tax



(11) Decision of the Hon'ble Punjab and Haryana High Court: (Ground for ITC Mismatches between GSTR-2A vs GSTR-3B also)

It may be noted that reliance may be placed on the judgment of the *Hon'ble Punjab and Haryana High Court in the case of Gheru Lal Bal Chand Vs. The state of Haryana, (2011)*. As per the said judgment it was held that no liability can be fastened on the purchasing registered dealer on account of non-payment of tax by the selling registered dealer **unless it is fraudulent, or collusion or connivance** with the registered selling dealer or its predecessors with the purchasing registered dealer is established.

(12) Decisions of the Hon'ble Calcutta High Court and Hon'ble Delhi High Court and violation of Article 14 of the Constitution of India:

It is significant to note the judgment of the *Hon'ble High Court of Delhi in the case of Bharti Telemedia Ltd. Vs. Union Of India & Ors. (Delhi High Court) W.P.(C) no 6293/2019 and the judgments of Hon'ble Calcutta High Court in the case of M/S. LGW INDUSTRIES LTD & ORS., RAJ METAL INDUSTRIES & ANR., VICTORIA GLOBAL & ANR., SURYA ALLOY INDUSTRIES LTD. & ANR., M/S. TASHI AIR PRIVATE LTD. & ANR. VERSUS UNION OF INDIA & ORS. (2021)*, the petitioner/assesse challenged on the ground that section 16(2)(c) of the CGST Act, 2017 is **ultra-virus and violative to Article 14 of the Constitution of India**. It was held that the **Department has been vested with all the powers to recover any revenue lost owing to non-payment of taxes by defaulting suppliers**, therefore, the ITC cannot be denied to the recipient for the default on the part of supplier.

(13) Decision of the Hon'ble Madras High Court:

It is to be noted that reliance may be placed on the judgment of the *Hon'ble Madras High Court in the case of M/s. Shri Ranganathar Valves Private Limited v. Assistant Commissioner (CT), (FAC), Velandipalayam Assessment Circle, Coimbatore*, wherein it was held that “*This issue has been dealt with in the case of ASSISTANT COMMISSIONER (CT) , PRESENTLY THIRUVERKADU ASSESSMENT CIRCLE, KOLATHUR, CHENNAI VERSUS INFINITI WHOLESALE LTD. [2016 (9) TMI 1431 - MADRAS HIGH COURT]* wherein it has held that **Input Tax Credit cannot be disallowed on the ground that the seller has not paid tax to the Government**, when the **purchaser is able to prove that the seller has collected tax and issued invoices to the purchaser**. As such, restriction of the amount of Input Tax Credit on this ground, cannot be sustained and requires re-consideration.”

- (14) Hon'ble Madras High Court judgement in the cases of **Sri Ranganathar Valves Private Limited Versus The Assistant Commissioner (CT) (FAC) Coimbatore 2020 (9) TMI 299**, **Sri Vinayaga Agencies Versus The Assistant Commissioner (CT) 2013 (4) TMI 215 - Madras High Court and Althaf Shoes (P) Ltd. Versus Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai-6 2011 (10) TMI 567, TVL. Sahyadri Industries Ltd. Versus the State of Tamil Nadu, represented by, the Joint Commissioner (CT), Erode 2023 (4) TMI 912**, Hon'ble Delhi High Court in the case of **Shanti Kiran India Pvt. Ltd. Versus Commissioner Trade & Tax Deptt. 2013 (2) TMI 80**, Hon'ble Jharkhand High Court in the case of **M/S. TARAPORE & COMPANY, JAMSHEDPUR VERSUS THE STATE OF JHARKHAND** - It was stated that it is **iniquitous to put an onerous burden** on the purchasing dealer to keep a **vigil over the amounts deposited by the selling dealer**. The Court further stated that it **does not see any provision or methodology by which the purchasing dealer can monitor the selling dealer's behavior**, vis-à-vis the latter's VAT returns and **in the absence of any mechanism enabling a purchasing dealer to verify if the selling dealer deposited tax**, the benefit of input credit cannot be denied. ITC cannot be denied citing failure of the supplier to remit tax to the government as a reason if the purchasing dealer **has all the documents and evidence to show that goods were purchased, consideration along with tax was paid, and input tax credit was allowed to be utilized as a set-off against the tax liability** declared in the self-assessed monthly or annual return under the scheme of the act.
- (15) Hon'ble Jharkhand High Court Judgement in the case of **Commissioner of C. EX., East Singhbhum Versus Tata Motors Ltd. 2010 (9) TMI 949 - Jharkhand High Court, Hon'ble Allahabad High Court in the case of The Commissioner of Central Excise Customs & Service Tax Versus M/s. Juhi Alloys Ltd., Anil Kumar Shukla 2014 (1) TMI 1475** - It would be most **unreasonable and unrealistic** to expect the buyer of such inputs to **go and verify the accounts of the supplier or to find out from the department of Central Excise whether actually duty has been paid on the inputs by the supplier**. **No business can be carried out like this, and the law does not expect the impossible**. The buyer can take steps which are within his control, but he cannot be expected to verify the records of the supplier's broker to check whether the supplier has paid duty on the goods supplied by him or not. As long as the **bona fide nature of the consignee transaction is not doubted**, credit should not be denied.

(16) Hon'ble High Courts of several states and the Apex Court have expressed similar view in connection with **doctrine of impossibility** in the following cases:

- i. A.B. Tools Limited v. Commissioner of Central Excise – 2010 (256) E.L.T. 382 (H.P.)
- ii. Engineering Analysis Centre of Excellence P. Ltd Vs. CIT [2021] 432 ITR 471 (SC)
- iii. Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal, (2020) 7 SCC 1
- iv. CIT v/s. Cello Plast (2012) 209 Taxmann 617
- v. Hico Enterprises Vs CC, 2005 (189) ELT 135 (T-LB). Affirmed by SC in 2008 (228) ELT 161 (SC).

(17) **Hon'ble Kerala High Court** Judgement in the case of **Diya Agencies Versus The State Tax Officer, Union of India, The Central Board of Indirect Taxes & Customs, The State of Kerala, 2023 (9) TMI 955-** Whether the petitioner has **paid the tax amount** and the **transactions between the petitioner and seller dealer are genuine are the matter on facts and evidence**. The petitioner has to discharge the burden of proof regarding the **remittance of tax to the seller dealer by giving evidence** as mentioned in the **Judgment of the Supreme Court in The State of Karnataka Versus M/s. Ecom Gill Coffee Trading Private Limited [2023 (3) TMI 533 - Supreme Court]**.

(18) **GSTR-1, GSTR-2 and GSTR-3 kept in abeyance and no full-proof mechanism on GST Portal for purchase invoice-level matching and acceptance: (Ground for ITC Mismatches between GSTR-2A vs GSTR-3B also)**

Due to the suspension of GSTR-2 and GSTR-3 and the introduction of GSTR-3B, the recipients have **no full-proof mechanism** to confirm whether their suppliers are discharging the correct output tax liability. Therefore, the conundrum still stands as to how a recipient of supply may ensure that the supplier has actually paid the output tax liability collected from him that corresponds to the Input Tax Credit claimable by such recipient since **no such purchase invoice-level matching and acceptance was made available or functional**. The expectation that the recipient ought to **monitor the actual payment of GST collected by each of their vendors** is **not only onerous but also impractical and impossible**.

- (19) Unavailability of any window or facility in the hands of the recipient to ascertain whether his supplier's supplier has discharged his tax liability, burden of proof on recipient is unjust and invoking doctrine of impossibility: (Ground for ITC Mismatches between GSTR-2A vs GSTR-3B also)

Since there is **no window or facility available in the hands of the recipient** to ascertain whether his supplier's supplier has discharged his output tax liability, the requirement of **burden of proof as provided u/s 155 of CGST Act**, to ascertain the fulfilment of the condition to claim ITC as laid out u/s 16(2)(c) by such an innocent recipient is **onerous, unjust and practically impossible**.

- (20) Violation of Article 300A of the Constitution of India: (Ground for ITC Mismatches between GSTR-2A vs GSTR-3B also) The recipient may invoke the defense of violation of his constitutional right by virtue of **Article 300A** of the Constitution of India i.e. **No person shall be deprived of his property save by the authority of law**.

Additional Grounds of Defenses for reply to Notices of mismatches between ITC in GSTR-2A and claimed in GSTR 3B for F.Y. 2017-18 and F.Y. 2018-19:

- Satisfaction of all **4 conditions** of Section 16(2) of CGST Act, 2017 to claim ITC. Availability of ITC in GSTR-2A **was not a pre-condition to claim ITC for the period up to 31.12.2021.**
- Availability of ITC in GSTR-2B as a precondition to claim ITC per Section 16(2)(aa) of CGST Act, 2017 read with Rule 36(4) and Section 37(1) was in effect only for the period **from and after 1.1.2022.**
- The input tax credit is an **indefeasible and vested Right**. Reliance can be placed in the case of ***Shabnam Petrofils Private Limited vs. Union of India (2019) 29 G.S.T.L. 225 (Guj.), Eicher Motors Ltd. Vs UOI – 1999 (106) ELT 3 (SC), Dai Ichi Karkaria vs. UOI - 1999(112) ELT 353(SC)***
- GSTR-2A was **not made available until September 2018 and later made available in a phased-manner** and therefore, the **recipient was unaware of any such mistake** committed by the supplier in reporting supplies in his GSTR-1.
- In case, supplier has **mistakenly reported B2B supply as B2C supply** or has **reported incorrect GSTIN** of the recipient due to which ITC is not appearing in GSTR-2A of the recipient and had not rectified its GSTR-1 by 13.4.2019 and ITC has been denied to the recipient, then reliance may be placed on the judgments of ***The Hon'ble Orissa HC in M/s. Shiva Jyoti Construction vs The Chairperson, CBEC and others, 2023, Calcutta High Court in TMC-Hi Tech Vs. Asst. Commissioner State GST (2022), Jharkhand HC in M/s. Mahalaxmi Infra Contract Ltd. Vs. GST Council through The Secretary, (2022)*** wherein it is stated that GSTR-1 may be allowed to be amended beyond the statutory due date due to reasons:

- ✓ Supplier has discharged the tax by utilization of ITC or payment by cash, therefore, it is a **revenue neutral situation since there is no loss to the Government Exchequer.**
- ✓ **Automated Return System in GSTR-1, GSTR-2 and GSTR-3 kept in abeyance and no full-proof mechanism on GST Portal for purchase invoice-level matching and acceptance.** Earlier, supplier was to file GSTR-1 and such invoices should be auto-populated in GSTR-2A of the recipient and such invoices **could be added, modified or deleted** while filing GSTR-2. Such modified invoices would then get auto-populated in GSTR-1A of the supplier and the supplier **may accept or reject** such invoices while filing his GSTR-3 and holistic provisions of Sections 37,38,39,42,43 was to be read together. The opportunities that the recipient would have rectified the B2B invoice mistakenly reported as B2C invoice in its GSTR-2 and the supplier would have accepted in its GSTR-1A, were never provided due to such abeyance. Therefore, time limit as provided in 2nd proviso Section 37(3) i.e. 13.04.2019, **should not be read independently.**
- ✓ However, the *Hon'ble Telangana HC* in the case of *M/s. Yokohama India Pvt. Ltd. Vs. State of Telangana (2022)*, has **denied rectification** of errors and omissions in GSTR-1 beyond the statutorily prescribed period since such rectification which would inevitably affect obligations and liabilities of other stakeholders because of the cascading effect in the electronic records.
- ✓ In the case of *Agrawal and Brothers vs Union of India (13.06.2023)*, the *Hon'ble Madhya Pradesh High Court* ruled that **taxpayers should not bear the consequences of a supplier's mistake in GST reporting.** The supplier had uploaded the invoice with GSTIN of another taxpayer and such ITC did not appear in the recipient's GSTR-2A. However, relief was provided to the recipient.

- **CLARIFICATION:**

1. 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

2. 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

SITUATION

3. Where 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 FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the said registered person.

4. 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-

PROCEDURE TO BE FOLLOWED BY OFFICER:

- **Verify the details** of 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.
- Ascertain **fulfilment of the 4 conditions** of Section 16(2) of CGST Act, 2017 in respect of the input tax credit availed on such invoices.
- Whether any **reversal of input tax credit** is required to be made in accordance with section 17 or section 18 of CGST Act.
- Whether the said input tax credit has been availed within the **time period** specified under sub-section (4) of section 16 of CGST Act.
- In order to **verify** the condition of Section 16(2)(c) of CGST Act that **tax on the said supply has been paid** by the supplier:-
 - ✓ **In respect of individual supplier, difference in GSTR-3B vs. GSTR-2A in F.Y. exceeds Rs. 5.00 Lakhs: -**
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, (1) **have actually been made by the supplier to the said registered person** and (2) the **tax on such supplies has been paid by the said supplier** in his return in FORM GSTR 3B. Certificate issued by CA or CM shall contain UDIN.

PROCEDURE TO BE FOLLOWED BY OFFICER:

- ✓ In respect of individual supplier, difference in GSTR-3B vs GSTR-2A in FY up to Rs.5.00 lakhs: -
Produce a certificate from the concerned supplier to the effect that said supplies (1) **have actually been made by him to the said registered person** and (2) **the tax on said supplies has been paid by the said supplier** in his return in FORM GSTR 3B.
- 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.
- These instructions will **apply only to the ongoing proceedings in scrutiny/audit/ investigation, etc. for FY 2017-18 and 2018-19 and not to the completed proceedings.**
- However, these instructions will apply in those cases for F.Y. 2017-18 and F.Y.2018-19 **where any adjudication or appeal proceedings are still pending but not to the completed proceedings.**
- **Circular No. 193/05/2023-GST dated 17.07.2023** issued extending the same benefit for the period **01.04.2019 to 31.12.2021. However, even after the application of the benefit, only following additional ITC can be claimed over and above the ITC reflected in GSTR-2A: (1) 1st April 2017 to 8th October- Without Any limit, (2) 9th Oct 2019 to 31st Dec 2019- 20% of eligible credit as per GSTR-2A, (3) 1st Jan 2020 to 31st Dec 2020- 10% of eligible credit as per GSTR-2A, (4) 1st Jan 2021 to 31st Dec 2021- 5% of eligible credit as per GSTR-2A**

Mismatches between ITC as per GSTR-2A and as per GSTR-3B from 1st April 2019 onwards is to be dealt with as per following example – (*Circular No. 123/42/2019- GST dated 11th November, 2019*)

- 1. 1st April 2019- 8th October 2019:** ITC available as per FORM **GSTR-2A - Rs. 3,00,000**, ITC taken in FORM **GSTR-3B - Rs. 5,00,000**, ITC available u/r 36(4) - **No Rule 36(4)** Declaration u/c 193 **allowed - Rs.2,00,000**
- 2. 9th Oct 2019 to 31st Dec 2019:** ITC available as per FORM **GSTR-2A - Rs. 3,00,000**, ITC taken in FORM **GSTR-3B - Rs. 5,00,000**, ITC available **u/r 36(4) - Rs. 3,60,000**, Declaration u/c 193 **allowed - Rs.60,000**
- 3. 1st Jan 2020 to 31st Dec 2020:** ITC available as per FORM **GSTR-2A - Rs. 3,00,000**, ITC taken in FORM **GSTR-3B - Rs. 5,00,000**, ITC available **u/r 36(4) - Rs. 3,30,000**, Declaration u/c 193 **allowed - Rs.30,000**
- 4. 1st Jan 2021 to 31st Dec 2021:** ITC available as per FORM **GSTR-2A - Rs. 3,00,000**, ITC taken in FORM **GSTR-3B - Rs. 5,00,000**, ITC available **u/r 36(4) - Rs. 3,15,000**, Declaration u/c 193 **allowed - Rs.15,000**
- 5. 1st Jan 2022 onwards:** ITC available as per FORM **GSTR-2B - Rs. 3,00,000**, ITC taken in FORM **GSTR-3B - Rs. 5,00,000**, ITC available **u/s 16(2)(aa) read with Rule 36(4) - Rs. 3,00,000**, Declaration u/c 193 **allowed - Rs. NIL**

- The supplier's GSTIN may be **cancelled, due to closure of business or due to non-business connection anymore**, attaining such certificate by the recipient may not be practically feasible in all cases.
- Seeking cooperation from the supplier in acquiring such a certificate may be a practical challenge, even in cases where the supplier may have paid the relevant taxes to the Government for previous period of FY 2017-18, FY 2018-19 and onwards.
- Difficulty for CA or CMA in ascertaining the actual payment of output tax by the supplier in respect to the concerned invoices since only information **whether GSTR-3B has been filed by the supplier** is available in GSTR-2A of the recipient and there is **no full-proof mechanism on GST Portal for purchase invoice-level matching and acceptance.**
- The said circular is yet to be tested for other practical challenges.

Format of the Certificate



// 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 GSTNhaving 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 GSTNhaving 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)

Format of the Certificate



— 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						

M/S SHREE DURGA ISPAT UDYOG

WORKS – AT – SATHHIPUR
P.O – Ranigoda, Dist – jajpur (Odisha)
GSTIN-21ANAPS7558J1ZQ

Ref No :

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

Date :

TO WHOM SO EVER IT CONCEN

We, M/s. Shree DurgaispatUdyog/PravakarSamanta, holders of GSTN 21ANAPS7558J1ZQ having principal place of business at 76, RANIGODA, SATHHIPUR, Jajpur, Odisha, 755025 and allotted to State-Odisha, Range & Circle –Jajpur 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. RamjiJaiswal/Taraknath Iron & Steel Corporation, holders of GSTN 19AVJPS1011K1ZG having principal place of business at 31/11, GANGARAM BAIRAGI LANE, HOWRAH, Howrah, West Bengal, 711101.

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.

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 2018-19 with reference to our supplies in

SHREEDURGA ISPAT UDYOG

Pravakar Samanta
PROPRIETOR

M/S SHREE DURGA ISPAT UDYOG

WORKS - AT - SATHHIPUR
P.O - Ranigoda, Dist - Jajpur (Odisha)
GSTIN-21ANAPS7558J1ZQ

Ref No : 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. **Date :**

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

Place: Jajpur, Odisha
Date: 22.04.2023

Signature of the Authorised Person with seal

SHREE DURGA ISPAT UDYOG

Ranjana Samanta
PROPRIETOR

ANNEXURE

Invoice details for the supplies made to **M/s. RamilJaiswal/Taraknath Iron & Steel Corporation**, holders of GSTIN **19AVJPS1011K1ZG** having principal place of business at **31/11, GANGARAM BAIRAGI LANE, HOWRAH, Howrah, West Bengal, 711101.**

S.No.	Invoice No. and date	Taxable Value	IGST	CGST	SGST	Cess
1	Invoice No. 027 dated 02.09.2018	5,64,300	1,01,574	-	-	-
2	Invoice No. 028 dated 07.09.2018	4,35,600	78,408	-	-	-

Place: Jajpur, Odisha
Date: 22.04.2023

Signature of the Authorised Person with seal

SHREE DURGA ISPAT UDYOG

Ranjana Samanta
PROPRIETOR

Common Issues raised during GST Scrutiny



<u>S.No.</u>	<u>Parameter</u>	<u>Description of Parameter</u>	<u>Remarks</u>
8	ITC on returns filed post due date for filing of GST Returns	Whether GSTR-3B of a tax period is filed after the last date of availment of ITC in respect of any invoice / debit note as per section 16(4). In such cases, no ITC shall be availed in the return.	Sec 16(4) of CGST Act provides for availment of ITC only till the due date of furnishing of FORM GSTR-3B for the month of September following the end of FY to which such ITC pertains or furnishing of relevant Annual Return, whichever is earlier. Accordingly, if any return in FORM GSTR-3B is furnished after such time by the registered person under scrutiny, any ITC availed therein is inadmissible. For FY 2017-18, availment of ITC was allowed till the due date of furnishing of the return in FORM GSTR-3B for the month of March, 2019 i.e. 23rd April, 2019, provided the suppliers have furnished details of such invoices/debit notes in GSTR-1 and filed within due date of March, 2019 i.e. 13th April, 2019. For F.Y.(s) 2022-23 and onwards such a due date is 30th November of the subsequent financial year.

Time Limit u/s 16(4) disputable?

Credit availment within 30th November of succeeding year

- Late filing returns-can avail ITC
- GSTR-3B filed with interest and applicable late fee
- Ex: Feb 2019 return filed in November 2019- credit of Feb 2019 availed
- AP High Court: M/s Thirumalakonda Plywoods [(2023) 8 Centax 276 (A.P.)]
 - ❖ Time limit prescribed is not violative of Article 14, 19(1)(g) and 300A
 - ❖ Sec 16(2) has no overriding effect on Sec 16(4), as both are not contradictory and will operate independently.
 - ❖ Mere acceptance of GSTR-3B with late fee will not exonerate the delay in claiming ITC beyond time limit. Similar case in Patna HC –M/s Aastha enterprises.
 - ❖ Madurai bench of Madras HC granted relief by allowing taxpayer to file manual GSTR-3B return to claim input tax credit within time limit of Sec. 16(4) – TVL. KAVIN HP GAS GRAMIN VITRAK – 2023 (12) TMI 1051
 - ❖ Apex Court in the case of M/S. TVS Motor Company Ltd. vs The State of Tamil Nadu And Others, 2018 763 SC and in The Hon'ble Supreme Court of India in ALD Automotive Pvt. Ltd. Vs The Commercial Tax Officer & Ors., (2019) 13 SCC 255- ITC eligibility **must follow certain conditions, rules and regulations and without it, it does not vest on any RTP. Mere compliance with Section 16(2) does not make ITC a vested right for any RTP** as it is one among the many conditions for ensuring eligibility of ITC.

Possible arguments:

- The scheme of GST return as per the **legislature and as per the GST portal are not in sync**. Legislature does not make it mandatory to make the payment of balance GST liability before filing the return, which in **turn obstructs and delays the initial claim of credit itself**.
- Methodology to 'avail' the ITC lies in grey area. Distinction between 'Availing' of ITC and its 'Entitlement'. One may argue that last date of availment of credit is not linked with GSTR 3B return at all and **claim of ITC in books is sufficient compliance** of the deadline.
- **Delayed filing of GSTR 3B is a procedural lapse** and it **cannot take away the substantial right of claiming credit – No other mechanism provided to avail ITC** in the electronic credit ledger – ITC is a vested right.
- In many cases it may be the aftermath of availing the benefit of GST amnesty (late fees waiver in filing GSTR 3B). When supplier has paid the taxes to government recipient should be allowed the claim of ITC in the spirit of serving due justice.

Time Limit u/s 16(4) disputable?

Section 16(4) reads about taking 'take' credit:- Union of India v. Bharti Airtel Ltd., [2021] 131 taxmann.com 319 (SC)-: Thus, the Hon'ble Apex Court has observed that it is the **books of accounts which is the primary material on which self-assessment is done.** The input tax credit is **additionally recorded in the electronic credit ledger** under the Act. It held that the **common portal is only a facilitator to feed or retrieve such information and need not be the primary source for doing self-assessment.** The **primary source** is in the form of agreements, **invoices/challans, receipts of the goods and services and books of accounts** which are maintained by the assessee manually/electronically.

Section 16(1) has divided the concept of taking ITC into two parts. One is “**entitled to take credit of input tax**” and the other is “**shall be credited to the electronic credit ledger of such person**”. Thus, it has **separated the process of taking of ITC in books from the process of getting it credited** in the electronic credit ledger of such person.

The same bifurcation as mentioned above has also been made in **Section 41(1)** as mentioned above which mentions that ITC shall be **availed as self-assessed in the return filed and then shall be credited to the Electronic Credit Ledger.**

It is apparent that **both taking ITC and crediting the same in electronic credit ledger with the help of returns are entirely different concepts.** **It is the books of accounts wherein the ITC is first taken, then it is availed in return filed and then credited in Electronic Credit Ledger in portal.** Thus, it is a three staged process and entitlement is decided **in the first stage itself i.e. taking of credit which is done in the books of accounts.**

Thus, it is clear that crediting ITC in the Electronic Credit Ledger **is just an additional requirement and not the primary vesting condition.** **It is the taking of credit in books of accounts which is the primary vesting condition.**

Thus, the conclusion very amply depicts the intent of the law wherein it says that ITC must be recorded in the books of accounts of the assessee within a specified time period.

- **Substantive Right Cannot Be Taken Away by A Procedural Lapse:-** In M/s Ramnath Exports Pvt Ltd vs Vinita Mehta & Anr. (Civil Appeal No. 4639 of 2022) [Arising out of SLP (C) No. 30216 of 2018], it was held as under:
It is a trite law that the **procedural defect** may fall within the purview of irregularity and capable of being cured, **but it should not be allowed to defeat the substantive right** accrued to the litigant without affording reasonable opportunity.
The legislature shall never intend to take away a substantive right earned by the taxpayer u/s 16(1), by **imposing a harsh procedural condition which may cause the entire purpose of the enactment of the new law being defeated.**
- **Relation of Section 16(2)(aa) and Section 16(4):** Now there is a school of thought that this **reflection in GSTR-2B of the RTP should be within the time limit specified u/s 16(4).** Thus, even if the RTP has taken ITC in his books within the four corners of Section 16(4), he is **being barred from claiming ITC only due to the default committed by a third person who is not in control of the RTP.** Thus, it does not appear logical to think that the **legislature would intend to punish the RTP due to a procedural default committed by some other person.** Further, when taking of credit is the primary requirement of the section, it cannot be interpreted in a manner to defeat the very intent of the law.
- **Returns filed under Amnesty Notifications Are Subject to Section 16(4):**
When it is allowing to file returns from July, 2017, it is **also allowing to claim ITC which is also allowed while filing of returns.** The words used in the notification are “after payment of any amount due as tax”. The words “amount due” shall have to be read with the provisions of Section 59 which relates to Self-Assessment of Taxes. **ITC is first taken in books of accounts, then the taxes are self-assessed and ITC is availed through filing of returns and then the same gets credited to the Electronic Credit Ledger.**
- If the legislature **would have intended to disallow the availment of ITC after taking the same, it would have made the ITC column inactive in GSTR-3B in such cases.**
The intent of legislature seems to be clear that **Section 16(4) in such cases shall not be applicable as the ITC has already been taken in the books of accounts by the RTP.**

SCs notice in challenge to Section 16(4) disallowing ITC for belated return-filing; Tags matter with other cases with similar grounds.

The issue of Section 16(4) is already **under judicial scrutiny** in the following cases among many others:

- > Surat Mercantile Association v. Union of India, [2021] 124 taxmann.com 342 (Gujarat)
- > Shri Kumaran Construction Co. v. Union of India, [2021] 124 taxmann.com 291 (Jharkhand)
- > Trimurthy Sales Corporation v. Union of India, [2021] 124 taxmann.com 300 (Jharkhand)
- > Arjundas Construction Corporation and Another vs. The Union of India [TS(DB)-GST-HC(CAL)-2020-695], 25-11-2020
- > Rainbow Infrastructure Private Limited vs. Assistant Commissioner, State Tax, Goods and Service Tax, Barrakpore Zone [TS(DB)-GST-HC(CAL)-2020-691]
- > Balachandra Yallappa Salabhavi [TS(DB)-GST-HC(KAR)-2020-589]

Common Issues raised during GST Scrutiny and Departmental Audit



<u>S.No.</u>	<u>Parameter</u>	<u>Description of Parameter</u>	<u>Remarks</u>
9	ITC on Import of Goods	ITC availed in respect of "Import of goods" in Table 4(A)(1) of FORM GSTR-3B may be verified with corresponding details in Table 10 and Table 11 of FORM GSTR-2A.	<p>The details of such imports may also be cross-verified from ICEGATE portal. Bill of Entry details appear on ICEGATE portal as well. However, there may be few cases in which the importer imports goods from foreign country and pays IGST at the time of filing of Bill of Entry for home consumption, but such ITC is not reflected in GSTR-2A due to certain error in Bill of Entry or any other reasons. It is to be noted that for F.Y. 2017-18 and F.Y. 2018-19, the use of GSTR-2A was not made mandatory for claiming ITC. Also, in case details of IGST paid on import of goods doesn't appear in GSTR-2A, ITC may be claimed on the basis of copy of BOE, challan of IGST paid and other specified documents since these are prescribed u/r 36 of CGST Act to be the basis of claiming ITC and the same has also been specified in Internal Circular No. 02A of 2022 dated 25 February 2022 issued by Maharashtra Government. Clarification mentioned in Serial No. 1 of Circular No. 123/42/2019-GST dated 11.11.2019, it is mentioned that taxpayers may avail full ITC in respect of IGST paid on import, documents issued under RCM, credit received from ISD etc. which are outside the ambit of section 37(1). A facility of "Search BOE" on GST portal under "User Services" has been provided wherein details such as Port Code, BOE Number, BOE Date and Reference date are to be provided to view the details of Bill of Entry, shared from the ICEGATE portal.</p> <p>As per Section 37(1) read with Rule 36(4), a non-resident taxable person is not required to file its GSTR-1, therefore claiming ITC on IGST paid on import of goods or services on only being available in GSTR-2B is not required u/s 16(2)(aa). Therefore, such ITC can be claimed even though it may not be available in GSTR-2A/2B of the recipient.</p>

Common Issues raised during GST Scrutiny and Departmental Audit



<u>S.No.</u>	<u>Parameter</u>	<u>Description of Parameter</u>	<u>Remarks</u>	<u>Practical Case Studies</u>
10	Reversal of ITC as per Rule 42 and 43 (Common Credit)	Reversals of ITC in accordance with provisions of rule 42 and rule 43 of the CGST Rules.	<p>The registered person avails ITC in table 4(A)(5) of FORM GSTR-3B and reverses in Table 4(B)(1). It may be verified whether requisite reversals have actually been made by the said registered person if any persons is engaged in both, exempt Supply and taxable supply. In such a case, provisions of Rule 42 and rule 43 will be applicable.</p> <p>Note: No ITC reversal u/r. 42/43 for Turnover of Duty Credit Scrips (MEIS/SEIS etc.) [Notification No. 14/2022-Central Tax]</p>	<p>1) Ripco Sales Pvt. Ltd. is engaged in magazine sale as well as pendrive sales. Magazine sale is exempt and pendrive sale is taxable. Ripco Sales purchased envelope of Rs. 50,000/- with GST of Rs. 9,000/- for packing the magazine and pendrive. In such a case if Ripco Sales has claimed the entire ITC of Rs. 9000/-, then Ripco Sales has to proportionately reverse the ITC on the supply of exempt goods as per Rule 42. Same will be applicable in case of Capital Goods i.e. computer, mobile phone, as per Rule 43.</p>

Practical Case Study



Scrutiny of Return : Detail of observations made and discrepancies found (if any)
(GSTIN)
(Trade Name)

Pg. No. 4/5

Point-4.	ITC found reversible, if availed	Integrated Tax	Central tax	State tax	Cess
4(A)	ITC uploaded by suppliers whose registration has been cancelled retrospectively [i.e.- Cancellation date is earlier than Invoice date] [Table 3 and 5 of GSTR-2A]	-	-	-	-
4(B)	ITC uploaded by suppliers who have not filed relevant GSTR-3B [Table 3 and 5 of GSTR-2A]	-	25,267.59	25,267.59	-
4(C)	ITC in GSTR-2A where P-o-S is not shown as W.B. [Table 3 and 5 of GSTR-2A]	-	-	-	-
4(D)	ITC found reversible in respect of credit notes received [Table 5 of GSTR-2A]	10,47,011.05	70,503.85	70,503.83	-
4(E)	ITC found reversible in proportion to exempt supply, if any [as per working given in annexure below]	1,887.92	1,639.53	1,639.53	-
4(F)	ITC availed in GSTR-3B filed after the last date prescribed u/s- 16(4) [From Table 4A of those GSTR-3B that have been filed after 20-10-2019]	-	-	-	-
4(G)	Total ITC found reversible (if availed) [sum of 4(A), 4(B), 4(C), 4(D), 4(E) and 4(F)]	10,48,898.97	97,410.97	97,410.95	-

Note - In absence of detail information, ITC reversed in GSTR-3B, if any, has not been considered as "ITC reversed for the reasons mentioned above".

Annexure - workings for 4(E) above

1	Total Turnover [From GSTR-1/GSTR-3B/GSTR-9, whichever is the highest]	26,27,00,978.23			
2	Exempted, Nil rated and Non-GST supply [From GSTR-1/GSTR-3B/GSTR-9, whichever is the highest]	-			
3	Supplies made @ 0% but shown under Taxable supply in GSTR-1 [Table 4A of GSTR-1]	-			
4	Supply on which the recipient is liable to pay tax on RCM [Table -4B of GSTR-1]	37,344.00			
5	Value of exempt supply determined in terms of sec. 17(3) [2 + 3 + 4, above]	37,344.00			
6	Ratio of exempt supply to total turnover [5 / 1, above]	0.01%			
		Integrated Tax	Central tax	State tax	Cess
7	Total ITC availed (Tax head-wise) [from Table 4A of GSTR-3B]	1,32,80,793.42	1,15,33,482.43	1,15,33,482.43	-
8	ITC reversible in proportion to exempt supply (Tax head-wise) [Figures from this row are taken to 4E above]	1,887.92	1,639.53	1,639.53	-

Scrutiny of Return : Detail of observations made and discrepancies found (if any)
19AADCP1019J1ZH
PLASTO ELTRONICS PVT LTD
(GSTIN)
(Trade Name)

Pg. No. 5/5

Reply to Practical Case Study

ANNEXURE 16: Details of Regular Taxable Supply in the nature of Forward Charge Mechanism mistakenly reported as an RCM invoice in GSTR 01.

SL NO	INVOICE NO.	CUSTOMER	INVOICE DATE	TAXABLE VALUE	CGST AMOUNT	SGST AMOUNT	IGST AMOUNT	INVOICE VALUE	REMARKS
1	DN/09	LANDIS PLUS GYR LIMITED	30-10-2018	1,728.00	155.52	155.52	-	2,039.00	Regular Taxable Supply in the nature of Forward Charge Mechanism mistakenly reported as an RCM invoice in GSTR 01 of October 2018. However, rectification has been carried out in Table 4(B) and 5(c) of GSTR 9 of F.Y. 2018-19. Therefore, such outward supply is not in the nature of Exempt Supply, hence, no ITC reversal is required. Furthermore, Debit note of Landis Plus GYR Ltd. was inadvertently uploaded as B2B invoice of Universal Plastic in GSTR 1 of October, 2018.
2	DN/10	LANDIS PLUS GYR LIMITED	30-10-2018	2,592.00	233.28	233.28	-	3,059.00	
3	DN/11	LANDIS PLUS GYR LIMITED	30-10-2018	3,024.00	272.16	272.16	-	3,568.00	
4	JW/O/02/01	LANDIS PLUS GYR LIMITED	09-05-2018	15,000.00	1,350.00	1,350.00	-	17,700.00	Regular Taxable Supply in the nature of Forward Charge Mechanism mistakenly reported as an RCM invoice in GSTR 01 of May 2018. However, rectification has been carried out in Table 4(B) and 5(c) of GSTR 9 of F.Y. 2018-19. Therefore, such outward supply is not in the nature of Exempt Supply, hence, no ITC reversal is required.
5	JW/O/06/03	VTL ELECTRONICS LIMITED	09-10-2018	15,000.00	1,350.00	1,350.00	-	17,700.00	Regular Taxable Supply in the nature of Forward Charge Mechanism mistakenly reported as an RCM invoice in GSTR 01 of October 2018. However, rectification has been carried out in Table 4(B) and 5(c) of GSTR 9 of F.Y. 2018-19. Therefore, such outward supply is not in the nature of Exempt Supply, hence, no ITC reversal is required.
				37,344.00	3,360.96	3,360.96	-	44,066.00	

<u>S.No.</u>	<u>Parameter</u>	<u>Description of Parameter</u>	<u>Remarks</u>
11	Payment of Interest as per Sec 50	Whether the registered person has paid interest liability in terms of section 50.	As per section 50 of the CGST Act a registered person is required to pay interest on delayed payment of tax . It may be verified whether interest payable as per the said provisions has actually been paid by the registered person. Interest at the rate of 18% is applicable on tax paid in cash only and not on gross liability in case of delayed filing of GSTR-3B . Interest liability should be paid by the registered person in their GSTR- 3B on regular basis.

- Retrospective amendment in section 50(3) from 01.07.2017 to provide that interest will be payable on the wrongly availed ITC only when the **same is utilized**.
- **Rule 88B - Supplies declared in return** – Interest on tax debited using Electronic Cash ledger for the **period of delay in filing the said return** beyond the due date;
- **ITC wrongly availed and utilised** – Interest shall be calculated on the amount of credit wrongly availed and utilised, for the period starting from the date of utilization of such credit till the date of reversal or payment of tax.
- ITC wrongly availed shall be construed to have been utilised, when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.
- Date of utilization of such ITC shall be earlier of due date of GSTR-3B Return or actual date of filing. In other cases i.e. Payment by DRC-03, Debit of ITC on erroneous Refund, date of Debit in ITC Ledger. (Discussed Later)

Practical Case Study

Point-5.	Interest payable (For reasons other than those mentioned in Point 1 to 4)	Integrated Tax	Central tax	State tax	Cess
5(A)	Interest (on tax paid from cash ledger) for delayed filing of return [Table 6 of GSTR-3B]	-	3,384.40	8,204.81	-
5(B)	Interest (on full liability) for delayed reporting of invoices [Table - 4A of GSTR-1]	-	-	-	-
5(C)	Total Interest payable (For reasons other than those mentioned in Point 1 to 4)	-	3,384.40	8,204.81	-

Note - In absence of detail information, Interest paid in GSTR-3B, if any, has not been considered as "Interest paid for the reasons mentioned above".

Reply to Practical Case Study



Annexure 18: Statement of Interest Calculation for Delayed Filing of Return:-

Period	Total Liability			Total Input			Net Payable in Cash			Total	Due Date	Filing Date	Delay in Days	Interest Payable			Interest Paid in GSTR 3B		
	IGST	CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST					IGST	CGST	SGST	IGST	CGST	SGST
Apr-18	1,72,638.00	22,32,498.00	22,32,498.00	1,72,638.00	22,24,963.00	20,02,713.00	-	7,535.00	2,29,785.00	2,37,320.00	22-05-2018	14-06-2018	23	-	85.47	2,606.33	-	-	-
May-18	2,44,979.00	24,65,953.00	24,65,953.00	2,44,979.00	20,99,528.00	8,92,734.00	-	3,66,425.00	15,73,219.00	19,39,644.00	20-06-2018	14-06-2018	-6	-	-	-	-	-	-
Jun-18	2,22,970.00	18,81,019.00	18,81,019.00	2,22,970.00	18,66,744.00	16,98,899.00	-	14,275.00	1,82,120.00	1,96,395.00	20-07-2018	19-07-2018	-1	-	-	-	-	-	-
Jul-18	4,12,253.00	23,65,538.00	23,65,538.00	4,12,253.00	22,24,094.00	12,99,189.00	-	1,41,444.00	10,66,349.00	12,07,793.00	24-08-2018	16-08-2018	-8	-	-	-	-	-	-
Aug-18	4,35,819.00	18,98,751.00	18,98,751.00	4,35,819.00	18,86,680.00	13,38,102.00	-	12,071.00	5,60,649.00	5,72,720.00	20-09-2018	25-09-2018	5	-	29.76	1,382.42	-	-	-
Sep-18	5,21,235.00	20,42,025.00	20,42,025.00	5,21,235.00	13,36,273.00	12,82,952.00	-	7,05,752.00	7,59,073.00	14,64,825.00	25-10-2018	30-10-2018	5	-	1,740.21	1,871.69	-	-	-
Oct-18	4,19,189.00	21,13,983.00	21,13,983.00	4,19,189.00	20,97,488.00	20,37,550.00	-	16,495.00	76,433.00	92,928.00	20-11-2018	19-11-2018	-1	-	-	-	-	-	-
Nov-18	3,78,393.00	18,67,529.00	18,67,529.00	3,78,393.00	13,63,112.00	7,85,708.00	-	5,04,417.00	10,81,821.00	15,86,238.00	20-12-2018	20-12-2018	0	-	-	-	-	1,007.00	1,007.00
Dec-18	6,72,856.00	11,82,097.00	11,82,097.00	5,17,298.00	6,11,908.00	6,11,908.00	1,55,558.00	5,70,189.00	5,70,189.00	12,95,936.00	20-01-2019	18-01-2019	-2	-	-	-	-	-	-
Jan-19	4,36,129.00	13,36,987.00	13,36,987.00	4,35,903.00	11,01,374.00	4,43,632.00	226.00	2,35,613.00	8,93,355.00	11,29,194.00	22-02-2019	19-02-2019	-3	-	-	-	-	-	-
Feb-19	2,89,487.00	11,06,157.00	11,06,157.00	2,89,174.00	10,90,918.00	6,99,152.00	313.00	15,239.00	4,07,005.00	4,22,557.00	20-03-2019	15-03-2019	-5	-	-	-	-	-	-
Mar-19	2,12,529.00	11,09,200.00	11,09,200.00	2,05,921.00	6,66,287.00	4,30,077.00	6,608.00	4,42,913.00	6,79,123.00	11,28,644.00	23-04-2019	30-04-2019	7	22.81	1,528.96	2,344.37	985.00	-	-
Total														22.81	3,384.40	8,204.81	985.00	1,007.00	1,007.00
Shortfall in payment of Interest on delayed filings of GSTR-3B of F.Y. 2018-19														(962.19)	2,377.40	7,197.81			

- ✓ Benefit of interest payable on **net liability only** i.e. payment by cash ledger, where GSTR-3B has been late filed.
- ✓ Rule 88B (1) and (2) have been notified to clarify on calculation of interest

Case	Interest
<ul style="list-style-type: none">- Tax liability for June – Rs 2,00,000- Return filed on 28th July 2022 (i.e., 8 days delay)- Tax liability discharged - Rs 2,00,000- Rs 40,000 by cash and Rs 1,60,000 by ITC	<ul style="list-style-type: none">- Return filed late.- Interest @18% on cash portion of liability i.e. interest on Rs 40,000 for 8 days
<ul style="list-style-type: none">- Tax liability consequent to proceedings initiated by department i.e. ASMT-10, ADT-02, DRC-01A, DRC-01, DRC-07 etc	<ul style="list-style-type: none">- If payment after sec 73/74 proceedings – Gross- Other – Net
<ul style="list-style-type: none">- Payment of liability through DRC-03	<ul style="list-style-type: none">- As above

Manner of calculation of Interest – Rule 88B



Case	Interest
<ul style="list-style-type: none">- Tax liability for of June – Rs 2,00,000- Return filed on 28th July 2022 (i.e., 8 days delay)- Tax liability discharged - Rs 1,80,000- Rs 30,000 by cash and Rs 1,50,000 by ITC- Balance tax liability of Rs 20,000 discharged in GSTR-3B of November, filed on due date. There was sufficient balance of ITC	<p>For GSTR-3B of June -</p> <ul style="list-style-type: none">- Return filed late.- Interest @18% on cash portion of liability i.e. interest on Rs 30,000 <p>For GSTR-3B of November –</p> <ul style="list-style-type: none">- Interest @18% on 20,000 for 6 months (even though there was sufficient ITC) <p><i>(Is it intent?)</i></p>



- ✓ What if balance is lying in Cash ledger by way of a deposit of taxes within time..??
- ✓ Taxes paid other than through returns..??

- Manner of calculation of interest in case of ITC “availed and utilised”? **[Notification No. 14/2022-Central Tax] – [Effective from Jul 1, 2022]**
 - Interest @18% on ITC **availed and utilised** *
 - From **date of utilisation** *
 - To date of reversal of such credit / payment of tax in respect of such amount

“Availed and utilized” (explanation (1) to Rule 88B)

- Where $ECL < ITC$ wrongly availed, shortfall between wrong availment and ECL balance would be “availed and utilized” ITC.
- Eg – ITC wrongly availed Rs 10L. ECL balance as on today = Rs 6L. ITC availed and utilized = Rs 4L

“Date of utilization” (explanation (2) to Rule 88B)

- Balance falls due to GSTR-3B return – earlier of filing date or due date of GSTR-3B.
- Balance falls due to other reasons (DRC-03 payment, refund of ITC etc.) – date of debiting in the electronic credit ledger

Common Issues raised during GST Scrutiny and Departmental Audit



Circular No. 192/04/2023-GST Dated the 17th July, 2023

Issue:

In the cases of **wrong availment of IGST credit** by a registered person and reversal thereof, for the calculation of interest under rule 88B of CGST Rules, whether the **balance of input tax credit available in electronic credit ledger under the head of IGST only needs to be considered or total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has to be considered.**

Clarification:

Since the amount of **input tax credit available in electronic credit ledger, under any of the heads of IGST, CGST or SGST, can be utilized for payment of liability of IGST**, it is the **total input tax credit available in electronic credit ledger, under the heads of IGST, CGST and SGST taken together, that has to be considered for calculation of interest under rule 88B of CGST Rules and for determining as to whether the balance in the electronic credit ledger has fallen below the amount of wrongly availed input tax credit of IGST**, and to what extent the balance in electronic credit ledger has fallen below the said amount of wrongly availed credit. Thus, in the cases **where IGST credit has been wrongly availed and subsequently reversed on a certain date, there will not be any interest liability under sub-section (3) of section 50 of CGST Act if, during the time period starting from such availment and up to such reversal, the balance of input tax credit (ITC) in the electronic credit ledger, under the heads of IGST, CGST and SGST taken together, has never fallen below the amount of such wrongly availed ITC, even if available balance of IGST credit in electronic credit ledger individually falls below the amount of such wrongly availed IGST credit.** However, when the balance of ITC, under the heads of IGST, CGST and SGST of electronic credit ledger taken together, falls below such wrongly availed amount of IGST credit, then it will amount to the utilization of such wrongly availed IGST credit and the extent of utilization will be the extent to which the total balance in electronic credit ledger under heads of IGST, CGST and SGST taken together falls below such amount of wrongly availed IGST credit, and will attract interest as per sub-section (3) of section 50 of CGST Act, read with section 20 of Integrated Goods and Services Tax Act, 2017 and sub-rule (3) of rule 88B of CGST Rules.

Common Issues raised during GST Scrutiny and Departmental Audit



<u>S.No.</u>	<u>Parameter</u>	<u>Description of Parameter</u>	<u>Remarks</u>	<u>Practical Case Studies</u>
12	Payment of Late Fees as per Sec 47	Whether the registered person has paid late fee in terms of section 47 in respect of returns/statements.	As per section 47 of the CGST Act a registered person is required to pay late fee for delayed filing of returns / statements under the Act. It may be verified whether late fee payable as per the provisions of section 47 of the CGST Act has actually been paid by the registered person. Sometimes, late fees may not be calculated by the portal according to section 47. In such a case registered person is liable to pay late Fees as per section 47. As per the announcement made in the 45th GST Council meeting, the Late fee for delayed filing of FORM GSTR-1 is to be auto-populated and collected in the next open return in FORM	<p>1) M/s. Sharma Engineering having a turnover of Rs. 7 Cr. for the F.Y. 2020-21, and had filed his GSTR- 9 on 7/3/2022 and filed his GSTR-9C as on 25/03/2022 i.e. after the due date of 28/02/2022. In such a case it is liable to pay late fee as per section 47, however the portal shall not calculate the same. So in such a case M/s. Sharma Engineering is liable to pay late fees as per section 47 during scrutiny of returns.</p> <p>Recently the Council recommended to rationalise this late fee for delayed filing of annual return in FORM GSTR-9 for FY 2022-23 onwards, for registered persons having aggregate turnover in a financial year upto Rs 20 crore, as below:</p>

			<p>GSTR-3B and it is important to know the rationalized late fees on form GSTR-1 as per Notification No. 20/2021-Central Tax dated 1.06.2021.</p>	<p>o Registered persons having an aggregate turnover of up to Rs. 5 crores in the said financial year: Rs 50 per day (Rs 25 CGST + Rs 25 SGST), subject to a maximum of 0.04 per cent of his turnover in the State or Union territory (0.02% CGST + 0.02% SGST).</p> <p>o Registered persons having an aggregate turnover of more than Rs. 5 crores and up to Rs. 20 crores in the said financial year: Rs 100 per day (Rs 50 CGST + Rs 50 SGST), subject to a maximum of 0.04 per cent of his turnover in the State or Union territory (0.02% CGST + 0.02% SGST).</p>
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- **IGST paid instead of CGST & SGST**

- ✓ Can be adjusted in next subsequent months return as per the above ***Circular No. 26/26/2017-GST dated 29.12.2017***

- ✓ **Section 77 of CGST Act & Section 19 of IGST Act will apply-**no interest liability** read with *Circular 162/18/2021-GST dated 25.09.2021***

- ✓ Application can be filed for adjustment of above or can wait till assessment

- ✓ Rule 89(1A) of CGST Rules clarifies that the **refund can be claimed before the expiry of two years from the date of payment of tax under the correct head, i.e. Integrated tax paid in respect of subsequently held inter-State supply, or Central and State Tax in respect of subsequently held intra-State supply,** as the case may be. However, in cases, where the taxpayer has made the payment in the correct head **before the date of issuance of Notification No.35/2021-Central Tax dated 24.09.2021,** the refund application under section 77 of the CGST Act/ section 19 of the IGST Act can be filed before the expiry of two years from the date of issuance of the said notification. i.e. from 24.09.2021.

Further Issues raised during GST Scrutiny

- ✓ A taxpayer “A” has issued the invoice dated 10.03.2018 charging CGST and SGST on a transaction and accordingly paid the applicable tax (CGST and SGST) in the return for March, 2018 tax period. The following scenarios are explained hereunder:

S.No.	Scenario	Last date for filing the refund claim
1	Proper officer or adjudication authority or appellate authority of “A” has held the transaction as an inter-State supply and accordingly, “A” has paid the IGST in respect of the said transaction on 10.05.2019	Since “A” has paid the tax in the correct head before issuance of notification No. 35/2021-Central Tax, dated 24.09.2021, the last date for filing refund application in FORM GST RFD-01 would be 23.09.23 (two years from date of notification)
2	Proper officer or adjudication authority or appellate authority of “A” has held the transaction as an inter-State supply and accordingly, “A” has paid the IGST in respect of the said transaction on 10.11.2022 i.e. after issuance of notification No. 35/2021- Central Tax dated 24.09.2021	Since “A” has paid the correct tax on 10.11.2022 , in terms of rule 89 (1A) of the CGST Rules, the last date for filing refund application in FORM GST RFD-01 would be 09.11.2024 (two years from the date of payment of tax under the correct head, i.e. integrated tax)

- **IGST Credit availed instead of CGST & SGST:**
 - ✓ IGST ITC can be adjusted in next month GSTR-3B
 - ✓ In case time limit for amendment in GSTR-3B has lapsed: Revenue neutral since it does not lead to overall excess claim of ITC. However, department could still dispute stating that SGST/ CGST cannot be cross utilised and credit claim by converting it as IGST to utilise for all types of payment is not right.
 - ✓ Taxes were correctly paid on output supplies using ITC so available & availed and **no undue benefit** was taken by disclosing the same under wrong head. Mere wrong disclosure about heading of ITC so availed while filing GSTR-3B, **should not be treated as 'wrong / undue availment' of ITC.**
 - ✓ The department **should not unjustly enrich itself due to inadvertent errors made in the returns**, more so when there is no dispute regarding eligibility of credit.
 - ✓ Circular No. 26/26/2017-GST dated 29.12.2017
 - ✓ Correct ITC can be shown in Table 6 of GSTR-9 with suitable disclosures made in GSTR-9C.

Summary of possible types of notices:

Sr. No	Type	Form 1	Form 2	Legal Framework	
				Sec	Rule
1	Outward	GSTR 1	GSTR 3B	37, 39	59, 61, 61A,
2	Outward	GSTR 1	GSTR 9	37, 44	59, 80
3	Outward	E-Way Bill	GSTR 1	68, 37	59, 138
4	Inward	GSTR 2A	GSTR 3B	38	60, 61, 61A
5	Inward	GSTR 2B	GSTR 3B	38	60, 61, 61A
6	Inward	E-Way Bill	GSTR 3B	68, 38	61, 61A, 138
7	Inward	GSTR 3B	GSTR 9	38, 44	61, 61A, 80

How to draft a reply to ASMT-10 Notice:



1. DO NOT WRITE A LETTER THAT YOU WOULD NOT WANT TO READ.
2. Understand the facts.
3. Prepare RECONCILIATIONS between **outward supplies** declared in **GSTR-1 vs GSTR-3B, GSTR-1 vs Books, GSTR-3B vs Books.**
4. Prepare RECONCILIATIONS between **inward supplies declared in GSTR-2A vs GSTR-3B, GSTR-3B vs Books of accounts.**
5. Prepare RECONCILIATIONS between **tax paid under RCM as per GSTR-3B vs. tax paid under RCM as per Books of Accounts.**
6. Prepare RECONCILIATIONS between **ITC subject to RCM claimed as per GSTR-3B vs. ITC subject to RCM claimed as per books.**
7. Prepare RECONCILIATIONS between **ITC subject to RCM appearing in GSTR-2A vs. ITC subject to RCM claimed in GSTR-3B.**
8. Prepare RECONCILIATIONS between **ITC subject to RCM appearing in GSTR-2A vs. Tax paid under RCM as per GSTR-3B.**
9. There is a word limit of **1000 characters or 185 words** approximately while **replying in ASMT-11 online.**
10. In case the reply exceeds 1000 characters, a comprehensive reply in **hard copy ASMT-11 may be physically submitted** to the Jurisdictional Superintendent. Reconciliations prepared may be annexed in Annexures.

How to draft a reply to ASMT-10 Notice:



11. **Multiple replies in ASMT-11 may be filed online** in case the same is warranted due to facts.
12. However, the option of payment of tax and interest in **DRC-03 may not reappear** on submission of subsequent replies in ASMT-11.
13. A request for adjournment or **extension of time period to reply in ASMT-11 is usually granted**, in case the request is made within 30 days from the date of service of notice in ASMT-10.
14. In case a reply in ASMT-11 is sought by the proper officer **in a shorter period than 30 days**, a request for adjournment or **extension of time period to reply in ASMT-11 in 30 days is usually granted**. (*Instruction No. 02/2022-GST dated 22.3.2022 read with Section 61(3) of CGST Act and Rule 99(1) of CGST Rules.*)
15. Dissect the notice in ASMT-10 – WORD BY WORD, AMOUNT BY AMOUNT, TABLE BY TABLE.
16. In many cases, **three** documents may be received, (1) **Notice in GST ASMT-10**, (2) **Summary Attachment-Communication of discrepancies** found during scrutiny of returns u/s 61, (3) Attachment- **Details of observations made and discrepancies** found (*Samples attached herewith for reference.*)
18. Case laws and citations – **ADD ONLY IF REQUIRED** since at the Superintendent Level, **verification of correctness and explanations to reconciliations** are given **more weightage**.
19. Understand the mindset of the “Signing Authority” i.e. “Adjudicating Authority”.
20. Recommended to meet the Superintendent and **explain and mark the proper trail of reconciliations and provide written reasons for all discrepancies**, even though Personal Hearing is not sought by the P.O.

List of Things to Avoid while preparing reply in ASMT-11



1. Template practice.
2. Emotion in writing.
3. Attachment while writing.
4. Personal Relations with the client.
5. Anger from the department.
6. Aggression towards the department.
7. Getting Personal with the officer.
8. Foul Language against the department.
9. Being scared.
10. Jargons

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Q & A ?

Thank you

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