TAXMANN®
Tax & Corporate Laws of INDIA

Recent Challenges in GST

CA Satish Saraf

B. Com., LLB., FCA

Chartered Accountant

TAXMANN®
Tax & Corporate Laws of INDIA

Agenda

1. Comparing Input Tax Credit (ITC) between GSTR-2A and GSTR-3B
2. Denial of ITC when the supplier's registration is cancelled with retrospective effect
3. Time limits for availing ITC of the previous financial year
4. Challenges faced by taxable persons regarding cross-empowerment

TAXMANN®
Tax & Corporate Laws of INDIA

Comparing Input Tax Credit (ITC) between GSTR-2A and GSTR-3B

GSTR-2A

- Section 16(2)(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;
  - *Inserted vide sec 109 of The Finance Act, 2021 (No. 13 of 2021), notified through Notification No. 39/2021- CT dated 21.12.2021 - Brought into force* ***w.e.f. 01.01.2022.***
- Rule 60(1) The details of outward supplies furnished by the supplier in FORM GSTR-1 or using the IFF shall be made available electronically to the concerned registered persons (recipients) in Part A of FORM GSTR-2A, in FORM GSTR-4A and in FORM GSTR-6A through the common portal, as the case may be.
- Notification No: 79/2020, Dt: 15-10-2020 WEF 15-10-2020 – Form GSTR-2A is substituted in Rules by way of CGST 12th Amendment Rules, 2020
  - Validity without corresponding Section in the Act?

TAXMANN®
Tax & Corporate Laws of INDIA

Circulars – 2A vs. 3B comparison

Circulars issued by GST Policy Wing of CBIC:

- Central Tax Circular No: 183/15/2022, Dt: 27-12-2022
  - Applicable for 2017-18 & 2018-19
- Central Tax Circular No: 193/05/2023, Dt: 17-07-2023
  - Applicable for 01-04-2019 to 31-12-2021

TAXMANN®
Tax & Corporate Laws of INDIA

Union of India Vs. Bharti Airtel Limited

[2021] 131 taxmann.com 319 (SC)

46. We need not multiply the authorities referred to in the concerned judgments, and cited before us, as in our opinion, these decisions have not dealt with the cardinal aspect of statutory obligation fastened upon the registered person to maintain books of accounts and record within the meaning of Chapter VII of the 2017 Rules, which are primary documents and source material on the basis of which self-assessment is done by the registered person including about his eligibility and entitlement to get ITC and of OTL. **Form GSTR-2A is only a facilitator for taking an informed decision while doing such self-assessment.** Nonperformance or non-operability of Form GSTR-2A or for that matter, other forms, will be of no avail because the dispensation stipulated at the relevant time obliged the registered person to submit returns on the basis of such self-assessment in Form GSTR-3B manually on electronic platform. The provision contained in Section 39(9) of the 2017 Act and Rule 61 of the Rules framed thereunder, as applicable at the relevant time, apply with full vigor to the returns filed by the registered person in Form GSTR-3B.

Suncraft Energy Private Limited Vs. Asst. Commissioner of State Tax
[2023] 153 taxmann.com 81 (Calcutta)

….The reason for denying the input tax credit is on the ground that the detail of the supplier is not reflecting in GSTR 1 of the supplier. The appellant had pointed out that they are in possession of a valid tax invoice and payment details to the supplier have been substantiated by producing the tax invoice and the bank statement. The appellant also referred to the press release dated 18.10.2018. What we find is that the first respondent has not conducted any enquiry on the fourth respondent supplier more particularly when clarification has been issued where furnishing of outward details in Form GSTR 1 by a corresponding supplier and **the facility to view the same in Form GSTR 2A by the recipient is in the nature of tax payer facilitation and does not impact the ability of the tax payers to avail input tax credit on self-assessment basis in consonance with the provisions of Section 16 of the Act……**

Denial of ITC when the supplier's registration is cancelled with retrospective effect

TAXMANN®
Tax & Corporate Laws of INDIA

Conditions for availment of ITC

Section 16. Eligibility and conditions for taking input tax credit.

(1) **Every registered person** shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be **entitled to the credit of any input tax** in respect of any supply of goods or services or both to him **unless**,

(a) he is in **possession** of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(aa) the details of the invoice or debit note referred to in clause (a) has been **furnished by the supplier in the statement of outward supplies** and such details have been **communicated to the recipient** of such invoice or debit note in the manner specified under **section 37**;

(b) he has **received** the goods or services or both.

(ba) the details of input tax credit in respect of the said supply **communicated to such registered person under section 38 has not been restricted;**

(c) subject to the provisions of section 41, the **tax charged in respect of such supply has been actually paid to the Government**, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) **he has furnished the return under section 39**:

TAXMANN®
Tax & Corporate Laws of INDIA

Retrospective cancellation of Registration

Section 29(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,-

a. a registered person has **contravened such provisions of the Act or the rules** made thereunder as may be prescribed; or

b. a person **paying tax under section 10** has not furnished the return for a financial year **beyond three months** from the due date of furnishing the said return; or

c. any registered person, other than a person specified in clause (b), has not furnished returns for a such **continuous tax period** as may be prescribed; or

d. any person who has taken **voluntary registration** under sub-section (3) of section 25 has not **commenced business within six months from the date of registration**; or

e. registration has been **obtained by means of fraud, wilful misstatement or suppression of facts**:

LGW Industries Limited Vs. UOI [2022] 134 taxmann.com 42 (Cal.)

- If it is found upon considering the relevant documents that all the purchases and transactions in question are genuine and supported by valid documents and transactions in question **were made before the cancellation of registration of those suppliers** and after taking into consideration the judgments of the Supreme Court and various High Courts which have been referred in this order and in that event the petitioners **shall be given the benefit of input tax credit in question**.

TAXMANN®
Tax & Corporate Laws of INDIA

Gargo Traders Vs. Jt. Commissioner, Commercial Taxes (State Tax) [2023] 151 taxmann.com 270 (Cal.)

12. **The main contention** of the petitioner that the **transactions in question are genuine and valid** and relying upon all the supporting relevant documents required under law, the petitioner with due diligence verified the genuineness and identity of the supplier and name of the supplier as registered taxable person was available at the Government Portal showing its registration as valid and existing at the time of transaction.

13. Admittedly at the time of transaction, **the name of the supplier as registered taxable person was already available with the Government record and the petitioner has paid the amount of purchased articles as well as tax on the same through bank and not in cash**.

14. It is **not** the case of the respondents that there is a **collusion between the petitioner and supplier** with regard to the transaction.

15. This Court finds that without proper verification, it cannot be said that **there was any failure on the part of the petitioner** in compliance of any obligation required under the statute before entering into the transactions in question.

16. The respondent authorities **only taking into consideration of the cancellation of registration of the supplier** with retrospective effect have rejected the claim of the petitioner without considering the documents relied by the petitioner.

17. The unreported judgment passed in the case of M/s LAW Industries Limited & Ors. (supra) is squarely applicable in the present case.

18. In view of the above, the impugned orders are set aside. The respondent no. 1 is directed to consider the grievance of the petitioner afresh by taking into consideration of the documents which the petitioner intends to rely in support of his claim.

TAXMANN®
Tax & Corporate Laws of INDIA

53rd GST Council Meeting Recommendation

- Relaxation in conditions of section 16(4) of the CGST Act:
  - In respect of initial years of implementation of GST i.e., financial years 2017-18, 2018-19, 2019-20 & 2020-21.
  - **With respect to cases where returns have been filed after revocation.**

Time limits for availing ITC of the previous financial year

TAXMANN®
Tax & Corporate Laws of INDIA

Sec. 16(4) of CGST Act, 2017

Prior to 01-10-2022

A registered person **shall not be entitled** to take input tax credit in respect of any invoice or debit note for supply of goods or services or both **after the due date of furnishing of the return under section 39 for the month of September following the end of financial year** to which such invoice or debit note pertains or **furnishing of the relevant annual return**, whichever is earlier.

From 01-10-2022

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

Amended by Section 100 of Finance Act, 2022 – Notified by CTN 18/2022, Dt: 28-09-2022 – W.E.F. 01-10-2022

M. Trade Links Vs. UOI [2024] 163 taxmann.com 218 (Ker.)

Para 100 - Prior to the amendment in Section 39 by the Finance Act 2022, the date for furnishing the return under Section 39 was 30th September. Considering the difficulties in the initial stage of the implementation of the GST regime, its understanding, and compliance, the Legislature effected the amendment and extended the time for filing the return for September to 30th November in each succeeding Financial Year. The amendment is only procedural to ease the difficulties initially faced by the dealers / taxpayers. Therefore, where for the period from 01.07.2017 till 30.11.2022, if a dealer has filed the return after 30th September and the claim for ITC was made before 30th November, the claim for ITC of such dealer should also be processed if he is otherwise entitled to claim the ITC. It has been pointed out in several cases which are pending before this Court that the claim was made before 30th November of the succeeding Financial Year, but the relevant period was 20th October, which was the extended date for furnishing the return under Section 39 for the month of September. Therefore, if a person has furnished the return for the month of September till 30th November, their claim should also be considered and processed and should not be rejected if the dealer did not furnish the return for the month of September on or before 20th October.

This amendment being procedural has to be given retrospective effect and, therefore, it is provided that it should be treated that the time limit for furnishing the return for the month of September is 30th November in each Financial Year with effect from 01.07.2017, considering the peculiar nature of difficulties in the initial period of implementation of the GST regime.

Constitutional validity of Section 16(4) ?

- Various Hon'ble High Courts held – Section 16(4) is constitutionally valid considering Article 19(1)(g) and Article 300A of Constitution of India.
- At present, around 2 dozen cases pending before the Hon'ble Supreme Court of India – awaiting for out come
- Till the verdict of Hon'ble Supreme Court of India - Hon'ble Kerala High Court Judgement

53rd GST Council Meeting Recommendation

- Relaxation in conditions of section 16(4) of the CGST Act:
  - **In respect of initial years of implementation of GST i.e., financial years 2017-18, 2018-19, 2019-20 & 2020-21.**
  - With respect to cases where returns have been filed after revocation.

TAXMANN®
Tax & Corporate Laws of INDIA

Challenges faced by taxable persons regarding "**CROSS-EMPOWERMENT**"

Enabler for Cross - Empowerment

Section 6. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances.-

(1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, **subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.**

GST Council view

- **9th Council Meeting – Dt: 16-01-2017**
  - Both the Central and the State tax administrations shall have the power to take intelligence-based enforcement action in respect of the entire value chain;
- **22nd Council Meeting – Dt: 06-10-2017**
  - To issue notifications by the Central Government and the State Governments, cross-empowering officers of the Central and State Governments to sanction refund and that an order of refund passed by an officer of the Central or State Government shall cover both the Central tax and the State tax. Similar notification to be issued under the IGST Act by the Central Government;

Notifications – Cross Empowerment

- Central Tax Notification No: 39/2017, Dt: 13-10-2017
  - This notification grants cross empowerment for the purpose of refunds
- Central Tax Notification No: 10/2018, Dt: 23-01-2018
  - Amendment of CTN 39/2017, Dt: 13-10-2017

TAXMANN®
Tax & Corporate Laws of INDIA

TVL Vardhan Infraastructre Vs. The Special Secretary, Head of the GST Council Secretariat [2024] 160 taxmann.com 771 (Mad.)

Since, **no notifications have been issued for cross-empowerment with advise of GST Council, except for the purpose of refund of tax** under Chapter-XI of the respective GST Enactments r/w Chapter X of the respective GST Rules, impugned proceedings are to be held without jurisdiction. **Thus, if an assessee has been assigned administratively with the Central Authorities, the State Authorities have no jurisdiction to interfere with the assessment proceedings in absence of a corresponding Notification under Section 6 of the respective GST Enactments.** Consequently, the impugned proceedings are liable to be interfered in these writ petitions. In absence of a notification for cross-empowerment, the action taken by the respondents are without jurisdiction. **Officers under the State or Central Tax Administration as the case may be cannot usurp the power of investigation or adjudication of an assesse who is not assigned to them.**

TAXMANN
Tax & Corporate Laws of INDIA

The Eco-system for GST Professionals

Books

The Latest & most Amended Books

» Explore Now

Research

Smart Research with Smart Data

» Start your 7 Days Free Trial

Practice

Encyclopedia and Ready Referencer on GST Laws

» Start your 7 Days Free Trial

TAXMANN®

Tax & Corporate Laws of INDIA

Thank You!

For More Information, Visit: https://taxmann.com/

Follow us on Social Media

Download Taxmann App

ANDROID APP ON Google play

Download on the App Store