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INPUT TAX CREDIT : Mismatch in GSTR-3B Vs. GSTR-2A/2B : Rule 36(4)

Whether ITC can be denied merely on the ground of mismatch between ITC claimed in GSTR-3B and reflected in GSTR-2A/2B ?

1. From last one year, discrepancy notices in GST ASMT-10 have been issued by GST department of almost all States. The said Notice sought explanation from the Assessee for difference between ITC claimed in GSTR-3B and ITC available in GSTR2A. Thus, a question may arise that whether ITC can be denied merely on the ground of mismatch between ITC claimed in GSTR-3B and reflected in GSTR-2A/2B?
2. Mechanism provided under Section 42 r/w Rule 69 for matching of ITC is not into effect. Section 43A provides for procedure of availment of credit in a prescribed manner (manner to be provided by Rules). Rule 36(4) was inserted w.e.f. 09.10.2019. Thus, effectively no matching of ITC was required upto 08.10.2019.
3. CBIC in ***Press Release dt. 18.10.2018*** clarified that:

   "*Furnishing of outward details in FORM GSTR-1 by the corresponding supplier(s) and the facility to view the same in FORM GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis*".
4. Rule 36(4) inserted w.e.f. 9th October 2019 and is applicable on the invoices on which credit is availed after the said date. Presently as per Rule 36(4) Input Tax Credit can be availed upto 105% of GST paid on inward supplies the details of which are uploaded by Supplier on GSTN Portal and reflected in GSTR 2A/2B of the recipient in a tax period.
5. Writ Petitions have been filed by taxpayers to challenge condition of Rule 36(4) on one of the grounds that the said condition is imposed through Rules only and is not provided under the CGST/SGST Act. It is to be noted that Section 43A provides for only PROCEDURE of availing credit in a prescribed manner. It does not empower the Government to provide any restrictions on availment of ITC through Rules.

6. Section 16(2) of the CGST Act provides the conditions to avail the ITC. A new condition is inserted under said Section vide Finance Act 2021, quoted as under:

> *(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.*

* The above condition [Section 16(2)(aa)] is yet to come into effect.

<u>Author's Comment</u>

7. At least upto 08.10.2019, ITC cannot be denied merely on the ground of mismatch between ITC in GSTR-3B and GSTR-2A.

8. Rule 36(4) is inserted without any authority of law. Newly inserted Section 16(2)(aa) is yet to be made effective. Thus, for the period post 08.10.2019, plea can be taken that credit cannot be denied merely on the ground of mismatch of credit.

9. However, it is advisable to ensure filing of GSTR-1/ IFF and GSTR-3B from the Supplier to avoid any unnecessary litigation.

<u>Note:</u>

10. Whether ITC can be denied where Supplier has not paid the tax to Government – refer *Athena Knowledge Sharing: AKS | 2021 | 1*, for relief given by Hon'ble Madras High Court in this respect.

By: ***Adv. (CA) Pawan Arora***

Partner, Athena Law Associates

88000 91636, pawan@athenalawassociates.com

Date: 10.05.2021

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