

GST ARTICLE

Form GSTR-2B communicates matched ITC?

Adv (CA) Kashish Gupta, Managing Partner & CA Sonu Goenka, Associate Partner, Paksh Legal



Introduction

As per provisions incorporated in original GST Act, ITC self-assessed in return was taken to electronic credit ledger on a provisional basis and said provisional credit was converted into final credit once matching is carried out with valid return i.e., a return in which supplier has made full payment of taxes. In result, provisional ITC becomes final if invoice is furnished in GSTR-1, tax is fully paid in GSTR-3B by the supplier. Now as per the amended Act, in light of restrictions that GSTR-1 cannot be filed if Form GSTR-1 for preceding tax period is not filed, and GSTR-3B cannot be filed if GSTR-1 for same tax period is not filed, ITC will be communicated in Form GSTR-2B only in respect of those invoices which are furnished in GSTR-1 and tax in respect whereof is fully paid in GSTR-3B. The only difference is that in pre-amended period, matching has to be carried out and results thereof were to be communicated through statutorily prescribed forms. Whereas in amended regime, entitlement to ITC is based on Form GSTR-2B which communicates the matched results.

Circumscribing role of online matching to communication of matched results

In order to give complete statutory backing to the government's intention of allowing ITC in respect of tax paid invoices, the system of online matching was automated by way of (i) imposing restrictions in furnishing of Form GSTR-1, (ii) linking e-invoicing portal with Form GSTR-1 so that taxpayers not resort to the practice of not furnishing details of invoices to save the payment of taxes, and (iii) ensuring that there are no anomalies or discrepancies between Form GSTR-1 and Form GSTR-3B i.e., taxpayer files the return with full payment of taxes. The focus

got shifted entirely from initiating matching post filing of valid return to communication of matched results in Form GSTR-2B.

Amendments made effective from 01.10.2022

Vide Finance Act, 2022, sections 42, 43 and 43A were omitted w.e.f. *a date to be notified*. Accordingly, consequential amendments were made in [section 16\(2\)](#), [37](#), [38](#) and [41](#) of the GST Act w.e.f. *a date to be notified*. These amendments are now notified w.e.f. 01.10.2020 vide [Notification Number 18/2022-CT](#) dated 28.09.2022 w.e.f. 1-10-2022. As a consequence, rules [69](#) to [77](#) and [79](#) have been omitted from the statutory paper-book vide [NN 19/2022-CT](#) dated 28.09.2022. Read in detail about these amendments below:

1. The amended provisions of section 16(2) reads as under:

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

(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;

¹[(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.

¹ Inserted by the Finance Act, 2021, w.e.f. *a date to be notified*. Notified vide Notification No. 39/2021 Central Tax w.e.f. 01.01.2022.

²[(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 ³[***], 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](#):

[Rule 36 \(4\)](#). No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under sub-section (1) of section 37 unless, -

a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and

b) the details of ⁴[input tax credit in respect of] such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of [rule 60](#)."

2. Condition for entitled to ITC as per section 16(2)(aa) provided that invoice shall be fed into the online system by the supplier by way of furnishing statement of outward supplies Form GSTR-1 and the said details shall also be communicated to the recipient. As per the manner of communication prescribed in Rule 60, details furnished in Form GSTR-1 are communicated in dynamic statement of Form GSTR-2A as well as static statement of Form GSTR-2B. However, Rule 36(4) provided that

² Inserted by the Finance Act, 2022, w.e.f. a date to be notified. Notified vide NN 18/2022-CT dated 28-9-2022, w.e.f. 1-10-2022.

³ The words "a[or section 43A]" omitted by the Finance Act, 2022, w.e.f. a date to be notified. Notified vide NN 18/2022-CT dated 28-9-2022, w.e.f. 1-10-2022.

a. Inserted by the Central Goods and Services Tax (Amendment) Act, 2018, w.e.f. a date to be notified.

⁴ Inserted by the Central Goods and Services Tax (Second Amendment) Rules, 2022 vide Notification No. 19/2022-Central Tax, w.e.f. 1-10-2022.

ITC shall be availed in respect of amounts communicated in Form GSTR-2B which led to various thoughts regarding eligibility to avail ITC in respect of invoices appearing in Form GSTR-2A but not in Form GSTR-2B.

3. Now, an additional condition for entitlement to ITC has been inserted which provides that ITC cannot be availed in respect of invoices which are communicated as “not available” in Form GSTR-2B. At the same time, rule 36(4) has been amended to clarify that it communicates details of ITC. With these amendments, statutory backing is strengthened to Rule 36(4) which provides that ITC shall be availed in respect of invoices which are communicated in Form GSTR-2B.

4. Section 38 has been entirely substituted for following:

“Communication of details of inwards supplies and input tax credit.-

(1) The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an auto-generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.

(2) The auto-generated statement under sub-section (1) shall consist of---

(a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and

(b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37,--

(i) by any registered person within such period of taking registration as may be prescribed; or

- (ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or*
- (iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or*
- (iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or*
- (v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of [section 49](#) subject to such conditions and restrictions as may be prescribed; or*
- (vi) by such other class of persons as may be prescribed.”*

5. In our view, as a result of substituted section 38:

- i. A complete statutory backing is given to Form GSTR-2B.
- ii. It is notable that circumstances in which ITC may be communicated as “not available” are yet to be prescribed. Therefore, taxpayers are advised to take proper decision while ensuring compliances for the tax period September 2022.
- iii. In case where supplier furnished statement of outward supplies in Form GSTR-1 and details thereof are communicated to recipient in Form GSTR-2B, it is notable that the same would be categorised as “available” in said tax period. However, if the supplier does not file his return in Form GSTR-3B, there would be violation of section 16(2)(c) which does not entitle a person to avail ITC if tax in respect thereof is not paid by the corresponding supplier. Therefore, section 38(2)(b)(iii) cannot be read in isolation. It would be

interesting to see whether this ITC would be communicated as available in Form GSTR-2B in first tax period or not and if communicated, whether it would later on be categorised as “not available” if default continues for prescribed tax periods.

Note: It is notable that:

- a. in Form GSTR-2A, the remark in column GSTR-3B would be “not filed”, and
- b. in light of restrictions imposed in filing of Form GSTR-1 for a tax period if GSTR-3B for previous tax period is not filed, these type of cases have effectively been reduced to one tax period only. Therefore, taxpayers would be having enough information to ensure compliance with conditions of section 16(2)(c).

iv. Section 38(2)(b)(iv) corresponds to former Rule 36(4) which provided for a cap of 20% (later on reduced to 10% and then to 5%) over ITC appearing in Form GSTR-2A. It is expected that Government would prescribe such kind of limits to provide slight flexibility in provisions for availing ITC.

6. Presently, instruction 2(b) to Form GSTR-2B mentions following circumstances in which ITC is communicated as restricted. However, it is notable that these circumstances neither finds its mention in section 38(2)(b) nor prescribed till date. These are:

- i. Invoice or debit note for supply of goods or services or both where the recipient is not entitled to input tax credit as per the provisions of sub-section (4) of Section 16 of CGST Act, 2017.
- ii. Invoice or debit note where the Supplier (GSTIN) and place of supply are in the same State while recipient is in another State.

7. The substituted section 41 reads as under:

41. Availment of input tax credit.- (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:

Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.

8. Though section 41 still provides that a registered person can do self-assessment of ITC in Form GSTR-3B but in light of the restrictions imposed in manner of doing compliances, it appears that self-assessment has to be done as per ITC appearing in Form GSTR-2B. The main reason behind this restriction is that if a registered person avails ITC in excess of Form GSTR-2B by a prescribed limit, his GSTIN would be categorised as restricted and all his customers won't be able to avail ITC [refer section 38(2)(b)(iv)].

9. The amended provisions of section 37 reads as under:

37. Furnishing details of outward supplies.—(1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, ⁵[subject to such conditions and restrictions and] in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such

⁵ Inserted vide Finance Act, 2022, w.e.f. a date to be notified. Notified vide NN 18/2022-CT w.e.f. 1-10-2022.

details ⁶[shall, subject to such conditions and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies]:

~~Provided that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period:~~

~~.....~~

~~(2) Every registered person who has been communicated the details under sub-section (3) of section 38 or the details pertaining to inward supplies of Input Service Distributor under sub-section (4) of section 38, shall either accept or reject the details so communicated, on or before the seventeenth day, but not before the fifteenth day, of the month succeeding the tax period and the details furnished by him under sub-section (1) shall stand amended accordingly.~~

(3) Any registered person, who has furnished the details under sub-section (1) for any tax period 7[***], shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

Provided that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after 8[the thirtieth day of November] following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier:

.....

⁶ Substituted for "shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed" by Finance Act, 2022 w.e.f. a date to be notified. Notified vide NN 18/2022-CT w.e.f. 1-10-2022.

⁷ The words "and which have remained unmatched under section 42 or section 43" omitted by the Finance Act, 2022 w.e.f. a date to be notified. Notified vide NN 18/2022-CT w.e.f. 1-10-2022.

⁸ Substituted for the words "furnishing of the return under section 39 for the month of September" by the Finance Act, 2022 w.e.f. a date to be notified. Notified vide NN 18/2022-CT w.e.f. 1-10-2022.

⁹[(4) A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period, if the details of outward supplies for any of the previous tax periods has not been furnished by him:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies under sub-section (1), even if he has not furnished the details of outward supplies for one or more previous tax periods.]

10. In our view, as a result of amendments made in section 37:

i. Statutory backing is given to [Rule 59\(6\)](#) of the CGST Rules i.e., statement in Form GSTR-1 cannot be furnished if GSTR-3B for the preceding tax period / preceding month is not filed.

ii. As Form GSTR-2B now communicates the matched results, subject to slight variation of one tax period for which corresponding supplier do not furnish GSTR-3B, there was no requirement for section 37(2) which provided for communication of discrepancies between supplier and recipient. Hence, the same has been omitted.

iii. As the manner of compliances has been made subject to various restrictions (restrictions in filing of Form GSTR-1, GSTR-3B, blocking of E-Way Bills, e- e-invoice auto-populating data in GSTR-1 and GSTR-2A, suspension of registration in case of anomalies between GSTR-1 and GSTR-3B), and sections [42](#) and [43](#) have been omitted, the reference thereof has been omitted from section 37(3).

⁹ Inserted by the Finance Act, 2022 w.e.f. a date to be notified. Notified vide NN 18/2022-CT w.e.f. 1-10-2022.

iv. Section 37(4) provides an additional restriction in filing of Form GSTR-1 i.e., GSTR-1 cannot be filed if the same is not filed for any of the previous tax periods.

Conclusion

In view of the author, the government has effectively reduced the provisions of section 16(2)(c) to a dead letter in backdrop of various restrictions imposed on filing of Form GSTR-1, as stated above.

i. In pre-amended law, matching provisions triggers pursuant to filing of valid return (section 16(2)(c) read with section 41, 42 rule 69 to 72) and the registered persons were unconditionally entitled to do self-assessment for availing ITC. However, now role of online matching has been circumscribed to communication of matched results in Form GSTR-2B. Therefore, 'section 16(2)(aa), 16(2)(ba)' is a mirror image of former 'section 16(2)(c) read with section 41, 42'. Hence, we still expect that bonafide recipients would not be made victim of non-compliance at the end of supplier and their input tax credit won't be held ineligible.

ii. It is strongly advised to do self-assessment of ITC claims in returns filed for a relevant tax period as also upheld by Hon'ble Supreme Court in the case of ***Bharti Airtel***. However, in light of restrictions inserted vide section 38(2)(b)(iv), the manner of doing the same may be subject to judicial scrutiny.

Authors may be reached at: kashish@pakshlegal.in; sonu.goenka@pakshlegal.in

[Date: 11/10/2022]

(The views expressed in this article are strictly personal.)