

Can the taxpayer be denied the benefit of ITC on the basis of Form-2A?

It is now well known that the benefit of Input Tax Credit (ITC) is available to a registered taxpayer under GST laws subject to the fulfilment of certain specified conditions. The 4 (four) pre-conditions are contained in Section 16(2) of the CGST Act, 2017 which are as under:

1. The recipient taxpayer is in the possession of the tax Invoice or debit note or any other specified taxpaying document issued by the supplier in accordance with law;
2. The recipient taxpayer has received the goods or services or both;
3. Subject to the provisions of Section 41 or Section 43A, the supplier has discharged the tax liability on the supply made by him, in cash, or by debit to the admissible ITC relating to such supply;
4. The recipient taxpayer has furnished the Return as prescribed under Section 39.

If the legality of all the aforesaid four pre-conditions is accepted, then undeniably, a taxpayer is obliged to fulfil all the conditions before claiming the benefit of ITC. It is in this statutory context that the questions arise: "Can a taxpayer be denied the benefit of ITC merely on the basis of the details appearing in the Form GSTR-2A? Can the recipient taxpayer be deprived of the benefit of ITC in case the tax invoices in respect of the supplies made by the supplier during the relevant period are not uploaded in the Form-2A?"

This issue has become a subject matter of wide debate and also a headache for the taxpayer. The Revenue Officers and particularly the Audit Officers, on the basis of the difference between the Form-2A and Form GSTR-3B, are raising the demand towards the ITC availed by the taxpayers and also forcing them to reverse the same. Under these circumstances, it is essential to examine the validity and maintainability of such action being taken by the department.

It may be clarified at the outset that the present discussion is in the context of the Rules 59 and 60 of the CGST Rules, 2017 as in force from July 01, 2017 to December 31, 2020 and not in the context of the amended Rules 59 and 60 which have come into force from January 01, 2021.

Every registered taxpayer is required to file a Return in Form GSTR-1, on monthly basis, in respect of the outward supplies of the goods or services or both made by him during the relevant month. The small taxpayer is extended the facility of filing such Return on quarterly basis. However, for the sake of simplicity, the present discussion is being made in the context of the Return being filed on monthly basis only.

Once a taxpayer (supplier) has filed the Return in Form GSTR-1 in the manner prescribed under Rule 59(1) and (2), the details of outward supplies furnished by such supplier are made available electronically by the GSTN Portal to the recipient taxpayer in Form GSTR-2A in terms of Rule 59(3) of the CGST Rules, 2017. The main purpose behind this provision is to make the recipient taxpayer aware of the details furnished by the supplier. The recipient taxpayer, on the basis of the details available in Form 2A, can take up the issue with the supplier in respect of any tax invoice not reflected in the said Form -2A. Undisputedly, Form -2A is for the convenience of the taxpayer procuring the supplies of goods or services or both.

Consequently, the denial of ITC to a taxpayer in respect of a tax invoice not reflected in Form-2A is not only unjustified, but also illegal. It must be remembered that Form GSTR-2A is not a Return (notwithstanding the description) and it is not the responsibility of the taxpayer to file the same nor it is so prescribed in law. Form-2A is a system-generated statement, the purpose of which is to facilitate the recipient-taxpayer and keep him on the vigil. This beneficial or facilitating provision cannot become a liability or curse for the taxpayer!

On the closer examination, it will also be observed that form GSTR-2A has no legal support, either under Section 37 or any other provisions of the CGST Act, 2017. Though this Form is referred to in Rule 59(3) from the inception i.e. since July 01, 2017, it has no legal backing. Almost two years after the introduction of the GST, the Central Government, vide Notification No.49/2019-CT issued on October 09, 2019, has tried to provide some credibility to the Form GSTR-2A in an indirect manner by inserting Rule 36(4) in the CGST Rules, 2017. As per Rule 36(4), in case the details in respect of invoices or debit notes have not been uploaded by a supplier under Section 37(1), the registered person (the recipient) in respect of such invoices/debit notes can avail the ITC which shall not exceed the prescribed percentage (presently 5%) of the eligible credit available in respect of the invoices/debit notes, the details of which have been uploaded by the supplier under Section 37 (1). However, it is interesting to note that there is no mention of the Form GSTR-2A in Rule 36(4) at all. Moreover, Rule 36(4), in any case, is absolutely illegal and its validity is already under challenge before the different High Courts.

There is also a clear conflict between Rule 36(4) of the Rules and Section 16(2) of the Act. If any tax invoice of a supplier is not reflected in Form GSTR-2A, an inference can be drawn that the supplier, either for a valid and genuine reason or by malafide intention, has not furnished the Return in Form GSTR-1 and has not discharged the tax liability. Or it may happen that even if the liability is discharged by the supplier through Form GSTR-3B, he has not furnished the Form GSTR-1. Whatever may be the reason, this requires the examination of the factual and legal position. However, the fact remains that if the supplier has not paid the tax, then the recipient taxpayer is not entitled for the ITC at all going by the condition prescribed in Section 16(2)(c) of the Act. Consequently, can the provision of Rule 36(4) extending the partial credit to a taxpayer even under such circumstances be considered as valid and legal? Can the provision of Rule prevail upon the provision of the Parent Act? The answer is explicitly 'No'. Merely because Rule 36 (4), at first glance, appears to a beneficial piece of legislation, it cannot override nor can it be contrary to the provisions of Section 16(2) of the CGST Act, 2017.

It is therefore viewed that the action being taken by the department for the denial and recovery of ITC merely on the basis of the differences between Form-2A and Form 3B is unreasonable, unjustified and absolutely illegal.

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