

Can Form -2A or Form-2B be a valid basis for the denial of ITC?

Shailesh P. Sheth, Advocate

M/s. SPS Legal

Can a recipient taxpayer be denied the benefit of ITC on the basis of the non-availability of the details of the tax invoice or debit note, etc. of the supplier-taxpayer in the Form GSTR-2A or Form GSTR-2B on the GSTN Portal? This issue has become a serious bone of contention between the taxpayers and the GST Authorities. Considering the serious nature and implications of the issue, it requires a detailed judicious analysis.

The author has already explained in this Column (refer Mid-day Gujarati, Issue: Friday, April 09, 2021) that a recipient-taxpayer cannot be legally denied the benefit of ITC merely on the ground that the details of tax invoices, etc. of the supplier-taxpayer are not available in Form GSTR-2A.

The previous discussion was in the context of the Rule 59 and 60 of the CGST Rules, 2017 as in force up to 31.12.2020. The said Rules have however, been amended with effect from January 01, 2021. The present discussion on the above contentious issue is in the context of the amended provisions which have come into force from January 01, 2021.

While the controversy surrounding the departmental action of denying the ITC to the taxpayer on the basis of Form GSTR-2A was gathering serious proportion, the GST Council, in its 39th Meeting held on March 14, 2020, recommended yet another Form for the convenience(?) of the taxpayers. The proposed Form was issued as 'Form GSTR-2B' on experimental basis in July, 2020 and finally in August, 2020, it was put into operation on a regular basis. Unfortunately, the subject Form GSTR-2B had no statutory support or basis in as much as neither in the CGST Act, 2017 nor in the CGST Rules, 2017, there was any mention of Form GSTR-2B at the time when it was operationalized in August, 2020. Belatedly, the Central Government made an attempt to remedy this lacunae by issue of Notification No. 82/2020-CT dated November 10, 2020. Vide this Notification, Rule 59 and 60, amongst other specified provisions of the CGST Rules, 2017, were substantially amended. The amended/substituted provisions of Rule 59 & 60 were made effective from January 01, 2021. In terms of the amended/substituted provisions, the Central Government has attempted to lend credibility and validity to the

Form GSTR-2B already put into operation in August, 2020 in addition to the then existing FORM GSTR-2A.

In short, effective from January 01, 2021, two Forms viz. Form GSTR-2A and Form GSTR-2B are being made available on the GSTN Portal to every taxpayer. These Forms contain the specified details as prescribed under the substituted Rule 60 with effect from January 01, 2021. However, both these Forms differ in many respects. Without delving deep into this, it is suffice to say that Form GSTR-2A is a '**Dynamic Form**', the details in which may undergo constant change, whereas, Form GSTR-2B is a '**Static Form**', the details in which remain unchanged. There are many other area of differences between the two Forms but the discussion thereon is not warranted here.

The most crucial point to note here is that it is not the responsibility of the taxpayer to file either Form GSTR-2A or Form GSTR-2B nor is there any such provision under the CGST Act, 2017 or CGST Rules, 2017. On the basis of the Form GSTR-1 filed by the supplier-taxpayer, the details of outward supplies are made available electronically on the GSTN Portal to the recipient-taxpayer. Similarly, GSTR-2B is also a system generated Statement containing the specified details and available on the Portal for the perusal or scrutiny of the recipient-taxpayer.

Under these circumstances, the departmental action to deny the benefit of ITC to the recipient-taxpayer merely on the basis of non-availability of the details of outward supplies made by the supplier-taxpayer in its Form GSTR-2A or the Form GSTR-2B is absolutely unjustified and illegal. In the detailed Advisory issued by the GSTN relating to the Form GSTR-2B, it is clearly stated that the statement in Form GSTR-2B is intended for the convenience of the taxpayers who can undertake the regular scrutiny of the availability of the ITC vis-a-vis the outward supplies made by the supplier-taxpayer. In this Advisory, it is also stated that '*the taxpayers are advised to refer FORM GSTR-2B for availing credit in FORM GSTR-3B*'. Unfortunately, a large number of taxpayers and the tax professionals and needless to say, the tax officers are swayed by this Advisory and treating the same as a legal mandate. Accordingly, a view is expressed by all that for availing the ITC, Form GSTR-2A has now become irrelevant and that the ITC benefit shall be reckoned only on the basis of the details available in Form GSTR-2B. This interpretation and understanding is absolutely erroneous and misconceived. Firstly, the Advisory has no statutory binding force whatsoever. Secondly, in the absence of any statutory provision in the Act or the Rules, the eligibility of a taxpayer to claim the

benefit of ITC cannot be made dependent nor can be restricted on the basis of the Form GSTR-2A or Form GSTR-2B. In case the details of any outward supply of a supplier-taxpayer is not available in these Forms, it may be a cause for undertaking the investigation or scrutiny by both the stakeholders, viz. the recipient-taxpayer and the department but merely on that basis, the recipient taxpayer cannot be denied the benefit of ITC.

In the end, it is rather strange and equally unfortunate that the provisions which are intended for the convenience and caution of the taxpayers have become, not only a cause for a legal dispute but also a matter of concern for the taxpayers considering the financial implications of this boiling issue.

Q & A:

Q. In case the department proposes the denial of the ITC on the basis of Form GSTR-2A or Form GSTR-2B, what is the remedy available to a taxpayer?

A. In such circumstances, a taxpayer can ask for the relevant details of the transactions relating to the outward supplies for which the ITC is proposed to be denied and also insist upon the issue of a show cause notice mandatorily required to be issued under the provisions of CGST Act, 2017. It is a settled law that a demand raised without show cause notice is invalid and illegal and no amount of tax or ITC can be demanded, much less recovered, from a taxpayer without issue of the show cause notice.