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ENTRIES IN GSTR 2A FOR THE YEARS 2017-18 AND 18-19 WHETHER MANDATORY OR OPTIONAL

At the time of introduction of the GST Law for getting the Input tax credit, it has been prescribed for uploading of GSTR-I (Outward supply) & there was a downloading of GSTR-II (Inward supply). There was an idea to finalize the GST Return that is called GSTR-3 based on GSTR-I and GSTR-II. But due to practical difficulties these mechanism was not implemented, hence they have come with GSTR 3B (Summary Return). Whenever assessees upload the data, the invoices relating to supplier used to appear in GSTR 2A. Initially due to lack of knowledge and other practical difficulties GSTR-I had been uploaded wrongly by so many suppliers, ie, instead of uploading B to B they have uploaded in B to C, and also there was lot of clerical mistakes while uploading the outward supply. Hence so many assessees have been facing problem during the GST Audit (By Department) regarding availability of Input Tax Credit. Now it is a big question whether entries in GSTR 2A really mandatory or not?

Meanwhile, so many high courts gave decision in favor of assessees, even though the entry not available in the GSTR 2A they can take the credit. But still department officials are having contradictory views in this regard. Due to this contradictory views Assessing Authorities are used to issue the Show-Cause notice by disallowing Input tax Credit, if the entries are not available in GSTR 2A.

In our opinion & also legally during the period between July 2017 to September 2019, this GSTR 2A was just a facility to a tax payer for reconciliation of ITC, which is not mandatory as per law. However, sub rule (4) was inserted to rule 36 of CGST rule of 2017 w.e.f 9th October 2019 wherein availament of ITC on the basis of GSTR 2A was made mandatory. It is worth noting here that this provision was inserted with prospective effect & not retrospective effect. In spite of this prospective amendment it is observed that reversal of ITC is still demanded for the financial year 2017-18 & 2018-19.

As per section 16(2), taxpayers are required to satisfy the following conditions for availment of ITC:

The registered person is in possession of a tax invoice or debit note issued by a supplier registered, or such other tax paying documents as may be prescribed;

He has received the goods or services or both.

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 utilization of input tax credit admissible in respect of the said supply; and

He has furnished the return under section 39 (i.e. GSTR-3B).

If the assessee satisfies above conditions, he is eligible to take the Input tax credit without satisfying the condition of entries to be appeared in GSTR 2A, but after October 2019 one has to satisfy the conditions of 2A while taking the Input tax credit.

Denying ITC to a buyer of goods or services on account of default of the supplier or services would be arbitrary and irrational and therefore violative of the Article 14, Article 19(1)(g) and Article 300A of the Constitution of India. In this connection, I would like to draw your attention to the judgement pronounced by the Hon'ble Madras High Court in case of M/s. D. Y. Beathel Enterprises vs. The State Tax Officer (Data Cell), wherein it has been mentioned that recovery action has to be first initiated against the seller.

Further, the Hon'ble Delhi, Rajasthan and Orissa High Courts have also issued Notices to the Centre questioning the validity of Section 16(2)(c) and Section 16(2)(d) of the CGST Act, 2017 with respect to the provision of ITC denial to the recipient on account of supplier's default. Apart from above discussion from legal perspective, one need to see practical angles also. It is seen that tax invoices are also not reflected in GSTR-2A due to below reasons:

Wrong GSTIN mentioned by the supplier while filing GSTR-1;

Transaction is reported in B2C instead of B2B;

Wrong invoice number is reported in GSTR-1.

In this regard Maharashtra State Government has issued the Internal circular for the year 2017-18 & 2018-19, which clearly states that,

1. In cases where the difference in ITC claim (CGST/ SGST or IGST) per supplier is 2.5 lakh or more, ask the claimant to obtain certification from the Chartered Accountant of the said supplier certifying the output transactions and tax paid thereon so as to comply with the provisions of section 16.

2. In Case in difference in ITC claim (CGST/SGST or IGST) per supplier is below 2.5 lakh, ask the claimant to obtain ledger confirmation of the concerned supplier along with his/her certifications.

3. Difference in ITC claim may be allowed on the basis of the above.

And also SUPREME COURT CONFIRMED GSTR-2A IS ONLY A FACILITATOR:The Hon'ble Supreme Court of India in the case of Union Of India v. Bharti Airtel Ltd. [2021] 319/ 54 GSTL 257/ [2022] 89 GST 1, has categorically examined the self-assessed input tax credit and the validity of GSTR-2A in claiming Input tax credit by the buyer/recipient :-

At point No 34 -

Section 16 of the 2017 Act deals with eligibility of the registered person 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. The input tax credit is additionally recorded in the electronic credit ledger of such person under the Act. The "electronic credit ledger" is defined in Section 2(46) and is referred to in Section 49(2) of the 2017 Act, which provides for the manner in which ITC may be availed. Section 41(1) envisages that every registered person shall be entitled to take credit of eligible input tax, as self ¬assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.

At point No 35 -

As aforesaid, every assessee is under obligation to self¬-assess the eligible ITC under Section 16(1) and 16(2) and "credit the same in the electronic credit ledger" defined in Section 2(46) read with Section 49(2) of the 2017 Act. Only thereafter, Section 59 steps in, where under the registered person is obliged to self-assess the taxes payable under the Act and furnish a return for each tax period as specified under Section 39 of the Act.

At point No 36 -

Section 59 does make reference to Section 39, which deals with furnishing of returns, but the fact remains that for furnishing of returns, preparatory work has to be done by the assessee himself and is not fully or wholly dependent on the common electronic portal for that purpose.

At point No 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,

based on self-assessment, subject to the provisions of GST Law. And the claim of Input tax credit based on the details auto-populated in GSTR- 2A under rule 36(4) was effective from 09-10-2019 only. So, in light of the above provisions and Judgements, the recovery of tax based on the differences between GSTR-3B and GSTR-2A is not permissible for the financial years 2017-2018, 2018-2019 and for the period from 01-04- 2019 to 09-10-2019.

As a whole, for the year 2017-18 and 2018-19 entries in 2A are not mandatory to take Input tax credit. But in this regard Assessing Authorities have been issuing the show-cause notice by disallowing input tax credit. If they issue the show cause notice it is advisable to reply by referring above decided cases. Still, if they finalize order by levying tax liability on assessees, there will be no other alternative except Appeal. According to our opinion if you face these type of situation it is advisable to file an Appeal against the Order because the GST is still in implementation stage. In the long run we expect that the Hon'ble Supreme Court shall analyze on these type of cases and shall pass the order in favor of assessees on merits. However if the assessees have any apprehension about the negative order they may discharge the tax liability under protest and file Appeal against the order, so that they can avoid the interest & penalty. We know very well there is no option of payment under protest under GST but 'Under protest' is an integral part of 'principles of natural justice'. Payment of tax under protest means challenging the issue on merits. Not accepting the decision or order or notification or circular for seeking natural justice and that too not at the cost of revenue. To contest is your fundamental right or constitutional right. Nobody can snatch this right. Hence some body want pay the tax under protest they can simply submit one letter to assessing authority after payment of tax. In this regard honorable madras high court decision is appropriate (Aditya Energy Holdings Vs Directorate General of GST Intelligence (Madras High Court))