

**GOVERNMENT OF WEST BENGAL
DIRECTORATE OF COMMERCIAL TAXES
14, BELIAGHATA ROAD, KOLKATA-700015**

TRADE CIRCULAR No. 15/2022

(Corresponding Central Circular No. 183/15/2022-GST)

DATED: 29.12.2022

Subject: Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19.

Section 16 of the West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as “WBGST Act”) provides for eligibility and conditions for availing Input Tax Credit (ITC). During the initial period of implementation of GST, during the **financial years 2017-18 and 2018-19**, in many cases, the suppliers have failed to furnish the correct details of outward supplies in their FORM GSTR-1, which has led to certain deficiencies or discrepancies in FORM GSTR-2A of their recipients. However, the concerned recipients may have availed input tax credit on the said supplies in their returns in FORM GSTR-3B. The discrepancies between the amount of ITC availed by the registered persons in their returns in FORM GSTR-3B and the amount as available in their FORM GSTR-2A are being noticed by the tax officers during proceedings such as scrutiny/audit/ investigation etc. due to such credit not flowing to FORM GSTR-2A of the said registered persons. Such discrepancies are considered by the tax officers as representing ineligible ITC availed by the registered persons, and are being flagged seeking explanation from the registered persons for such discrepancies and/or for reversal of such ineligible ITC.

2. It is mentioned that FORM GSTR-2A could not be made available to the taxpayers on the common portal during the initial stages of implementation of GST. Further, restrictions regarding availment of ITC by the registered persons upto certain specified limit beyond the ITC available as per FORM GSTR-2A were provided under rule 36(4) of West Bengal Goods and Services Tax Rules, 2017 (hereinafter referred to as “WBGST Rules”) only with effect from 9th October 2019. However, the availability of ITC was subjected to restrictions and conditions specified in Section 16 of WBGST Act from 1st July, 2017 itself. In view of this, various representations have been received from the trade as well as the tax authorities, seeking clarification regarding the manner of dealing with such discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A during **FY 2017-18 and FY 2018-19**.

3. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Commissioner, in exercise of his powers conferred under section 168 of the WBGST Act, hereby clarifies as follows:

S. No.	Scenario	Clarification
a.	Where the supplier has failed to file FORM GSTR-1 for a tax period but has filed the return in FORM GSTR-3B for said tax period, due to which the supplies made in the said tax period do not get reflected in FORM GSTR-2A of the recipients.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.
b.	Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but has failed to report a particular supply in FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the recipient.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.
c.	Where supplies were made to a registered person and invoice is issued as per Rule 46 of WBGST Rules containing GSTIN of the recipient, but supplier has wrongly reported the said supply as B2C supply, instead of B2B supply, in his FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the said registered person.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.
d.	Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has declared the supply with wrong GSTIN of the recipient in FORM GSTR-1.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below. In addition, the proper officer of the actual

		<p>recipient shall intimate the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly, that ITC on those transactions is required to be disallowed, if claimed by such recipients in their FORM GSTR-3B. However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person, whose GSTIN has been mentioned wrongly, and such action will be pursued as an independent action.</p>
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4. The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR- 3B but which are not reflecting in his FORM GSTR -2A. He shall then ascertain fulfillment of the following conditions of Section 16 of WBGST Act in respect of the input tax credit availed on such invoices by the said registered person:

- i) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;
- ii) that he has received the goods or services or both;
- iii) that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier.

Besides, the proper officer shall also check whether any reversal of input tax credit is required to be made in accordance with section 17 or section 18 of WBGST Act and also whether the said input tax credit has been availed within the time period specified under sub-section (4) of section 16 of WBGST Act.

4.1 In order to verify the condition of clause (c) of sub-section (2) of Section 16 of WBGST Act that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer:

4.1.1 In case, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR -3B. Certificate issued by CA or CMA shall contain UDIN. UDIN of the certificate issued by CAs can be verified from ICAI website <https://udin.icai.org/search-udin> and that issued by CMAs can be verified from ICMAI website <https://eicmai.in/udin/VerifyUDIN.aspx>.

4.1.2 In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR- 2A of the registered person in respect of a supplier for the said financial year is upto Rs 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR- 3B.

4.2 However, it may be noted that for the period **FY 2017-18**, as per proviso to section 16(4) of WBGST Act, the aforesaid relaxations shall not be applicable to the claim of ITC made in the FORM GSTR-3B return filed after the due date of furnishing return for the month of September, 2018 till the due date of furnishing return for March, 2019, if supplier had not furnished details of the said supply in his FORM GSTR-1 till the due date of furnishing FORM GSTR- 1 for the month of March, 2019.

5. It may also be noted that the clarifications given hereunder are case specific and are applicable to the *bonafide* errors committed in reporting during **FY 2017-18 and 2018-19**. Further, these guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.

6. These instructions will apply only to the ongoing proceedings in scrutiny/audit/ investigation, etc. for **FY 2017-18 and 2018-19** and not to the completed proceedings. However, these instructions will apply in those cases for **FY 2017-18 and 2018-19** where any adjudication or appeal proceedings are still pending.

7. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Commissioner.

Sd/-
(Khalid Aizaz Anwar)
Commissioner, State Tax,
West Bengal

Memo. No.- 140 /CT/PRO
3C/PRO/2022

Date: 29.12.2022

Copy forwarded to the Special Commissioner, State tax /ISD for information and for uploading it on the official website of the Directorate for information of all concerned.

Sd/-
(Nabanita Pal)
Special Commissioner,
State Tax, & PRO