

Appeal against disallowance of ITC due to difference in GSTR-3B and GSTR-2A

FORM GST APL – 01

[See rule 108(3)]

Appeal to Appellate Authority

1. GSTIN/ Temporary ID/UIN –
2. Legal name of the appellant -
3. Trade name, if any –
4. Address -
5. Order no. - Order date -
6. Designation and address of the officer passing the order appealed against -
7. Date of communication of the order appealed against -
8. Name of the authorised representative -
9. Details of the case under dispute -
 - (i) Brief issue of the case under dispute - A significant amount of ITC has been disallowed by the adjudicating authority due to following reason—

During the course of scrutiny of GSTR-3B Return &GSTR-2A for the F.Y. 2017-18 (from July-17 to Mar.18), it was noticed that the ITC pertaining to GSTR-2A (Table 3 & 5 thereof) does not match with the ITC pertaining to the GSTR-3B Table No. 4A(5). The difference of ITC between GSTR-3B and GSTR-2A is the excess ITC availed by the taxpayer and the same is to be recovered from the taxpayer under Section 73 of CGST Act, 2017.

(ii) Description and classification of goods / services in dispute- N/A

(iii) Period of dispute- 2017-2018

(iv) Amount under dispute:

Description	Central Tax	State/UT Tax	Integrated Tax	Cess
a) Tax/ Cess				
b) Interest				
c) Penalty				
d) Fees				
e) Other charges				

(v) Market value of seized goods— N/A

10. Whether the appellant wishes to be heard in person – Yes / No

11. Statement of facts:-

1. The appellant is a and is registered in State of India.

2. This appeal is in reference to demand order no. dated regarding disallowance of excess ITC availed by the taxpayer and the same is to be recovered from the taxpayer under

Section 73 of CGST Act, 2017.

3. The taxpayer has availed ITC on Input & Input Services and utilized the same towards payment of outward Tax.

4. During the proceedings of Scrutiny of Returns for the Financial year discrepancies found are communicated to petitioner in Form ASMT-10 and petitioner were directed to furnish on Common Portal, Explanation in Form GST-ASMT -11 with supporting information and documents online before due date for compliance.

Summary of discrepancies along with tax & applicable interest and penalty

Table

Sr. No.	Objection in brief		IGST	CGST	SGST
1.	Excess ITC claimed in GSTR 3B which is not confirmed in GSTR 2A	GSTR-3B
		GSTR-2A
	Difference	

As per opinion of department, the difference of ITC between GSTR-3B and GSTR-2A is the excess ITC availed by the taxpayer and the same is to be recovered from the taxpayer under Section 73 of CGST Act, 2017.

12. Grounds of appeal:-

1. We would like to submit that the above referred notice directing us to reverse the ITC is not in accordance with law as the ITC availed by us is not irregular. We have received the goods/ services and paid the supplier in full. hence we are not required to reverse the same.
2. As per Rule 36(4) of CGST Rules, 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 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.
3. However the above rule has been inserted through notification No.49/2019-Central Tax Dated: 9th October, 2019. Department cannot apply this for financial year 2017-18. Our matter is related to Financial year 2017-18, thus the above proceedings initiated is required to be set aside.
4. As per circular No.123/42/2019-GST Dated 11th November, 2019 The restriction of rule 36(4) will be applicable only on the invoices /debit notes on which credit is availed after 09.10.2019.
5. You can also refer judgment of Delhi high court in case of Bharti telemedia ltd vs Union of India dated 29.05.2019.
6. With respect to manner specified in section 49, we submit that we have self-assessed the input

tax credit in the return in accordance with section 41. Section 41 reads as follows—

41 (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the 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.

There is no dispute regarding availment of input tax credit in the monthly GSTR-3B return. Hence, this condition is satisfied.

13. Prayer:- In view of the above, it is respectfully prayed that the Hon'ble may pleased to—

(a) Set aside the impungned demand order no. dated passed by the learned Joint commissioner, State tax.

(b) we pary that no recovery shall be made from the taxpayer under Section 73 of CGST Act, 2017 as ITC claimed by the assessee is in accordance with law.

(c) We request your good self to drop further proceedings in this regard.

14. Amount of demand created, admitted and disputed

Particulars of demand/ refund	Particulars		Central tax	State / UT tax	Integrated tax	Cess	Total amount	
							< total >	< total >
Amount of demand created (A)	a) Tax/ Cess						< total >	< total >
	b) Interest						< total >	
	c) Penalty						< total >	
	d) Fees						< total >	
	e) Other charges						< total >	
Amount of demand admitted (B)	a) Tax/ Cess						< total >	< total >
	b) Interest						< total >	
	c) Penalty						< total >	
	d) Fees						< total >	
	e) Other charges						< total >	
Amount of	a) Tax/						< total >	< total >

	demand disputed (C)	Cess					
		b) Interest					< total >
		c) Penalty					< total >
		d) Fees					< total >
		e) Other charges					< total >

15. Details of payment of admitted amount and pre-deposit:-

(a) Details of payment required

Particulars			Central Tax	State/ UT Tax	Integrated Tax	Cess	Total amount	
(a) Admitted amount	Tax/ Cess						< total >	< total >
	Interest						< total >	
	Penalty						< total >	
	Fees						< total >	
	Other Charges						< total >	
(b) Pre-deposit (10% of disputed tax /cess but not exceeding Rs. 25 crore each in respect of CGST, SGST or cess, or not exceeding Rs. 50 crore in respect of IGST and Rs. 25 crore in respect of cess)	Tax/ Cess						< total >	
(c) Pre-deposit in case of sub-section (3) of section 129	Penalty						< total >	

(b) Details of payment of admitted amount and pre-deposit (pre-deposit 10% of the disputed tax and cess but not exceeding Rs. 25 crore each in respect of CGST, SGST or cess, or not exceeding Rs. 50 crore in respect of IGST and Rs. 25 crore in respect of cess)

Sr. No.	Description	Tax payable	Paid through Cash/ Credit Ledger	Debit entry no.	Amount of tax paid			
					Central tax	State/UT tax	Integrated tax	CESS
1	2	3	4	5	6	7	8	9
1.	Integrated tax		Cash Ledger Credit Ledger					
2.	Central tax		Cash Ledger Credit Ledger					
3.	State/UT tax		Cash Ledger Credit Ledger					
4.	CESS		Cash Ledger Credit Ledger					

(c) Interest, penalty, late fee and any other amount payable and paid

Sr. No.	Description	Amount payable				Debit entry no.	Amount paid			
		Integrated tax	Central tax	State/UT tax	CESS		Integrated tax	Central tax	State/UT tax	CESS
1	2	3	4	5	6	7	8	9	10	11
1.	Interest									
2.	Penalty									
3.	Late fee									
4.	Others (specify)									

16. Whether appeal is being filed after the prescribed period - Yes / No

17. If 'Yes' in item 17 -

(a) Period of delay -

(b) Reasons for delay -

18. Place of supply wise details of the integrated tax paid (admitted amount only) mentioned in the Table in sub-clause (a) of clause 15 (item (a)), if any

Place of Supply (Name of State/UT)	Demand	Tax	Interest	Penalty	Other	Total
1	2	3	4	5	6	7
	Admitted amount [in the Table in sub-clause (a) of clause 15 (item (a))]					

Verification

I, <..... >, hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Place:

Date:

<Signature>

Name of the Applicant: