

Reply on blocking of differential ITC availed

Date.....

To,

Respected Sir,

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Sub— "Blocking of differential ITC availed"

We confirm having received your mail dated from email i.d. In this regard, we submit as follows –

That, in the attached file and e-mail received, your honor had cited certain discrepancies in ITC availed in GSTR-3B and ITC available in GSTR2A from July'17. We have also seen the public notice attached to the e-mail.

A copy of the email is attached herewith.

At the outset we protest the blockage of Input Tax Credit as arbitrary, whimsical, perverse and the action of the department based on assumptions or presumptions that the tax payer has availed ITC fraudulently or availed Ineligible ITC. No reason has been given by the department for blocking the Input Tax Credit but an e-mail communication has been made citing just as follows,

"There is a difference between ITC availed by your good self in GSTR 3B and ITC available in GSTR-2A, from July 2017. Hence the differential ITC (GSTR3B-GSTR2A) is blocked.

You are requested to contact the jurisdictional Divisional CGST office to unblock the differential ITC along with proper justification for the same.

Please go through the Trade notice given by the & and also available on the site:", without any opportunity of being heard.

The blockage of ITC is against the principles of natural justice and in the gross violation of Article 14 and Article 19(1)(g) of the Constitution of India.

That, the reconciliation of difference in ITC availed in GSTR-3B and ITC available in GSTR2A from July'17 as available on GST portal on date has been hereby stated in detailed format by us in the table below: -

PARTICULARS	July 2017 to December 2019
	Total
ITC availed in GSTR 3B	Rs.

ITC auto populated in GSR 2A as per GST Portal (As on 04-02-2020)	Rs.
DIFFERENCE	Rs.
Inward Supplies liable to RCM net reflected in GSTR 2A, Credit taken in GSTR 3B	Rs.
ITC claimed on import of goods/service. The said it was inadvertently disclosed in table 4(A)(5) "All Other ITC of GST 3B.	Rs.
NET DIFFERENCE (Less ITC availed in GSTR 3B is comparison to ITC available in GSTR2A)	Rs.

A detailed statement has been attached herewith for ITC claimed on Import of goods/service which was inadvertently disclosed in table 4(A)(5) "All Other ITC" of GSTR 3B and marked as Annexure-B.

Hence it is clearly evident we have not availed excess ITC in GSTR-3B in comparison to ITC available in GSTR2A from July'17. On the contrary we have availed less ITC in GSTR 3B than it is available to us by Rs.

In addition to the above-mentioned reasons, the possible reasons of the above differences in the ITC figures as per GSTR 2A and GSTR 3B as available on the GST Portal and as reported by us above are summarized below:

- Timing Gap - Wherein the Invoice would be uploaded in the GSTR 1 of the Counter Party in one month financial year and the ITC for the same would be availed by us in another month financial year.
- There may be certain delays/non-compliance from the supplier's side due to incorrect uploading and data entry mistake in figures or incorrect GSTIN, classifying B2C instead of B2B and there may be some other differences also which are not in our control. In this regard, we also pray to intimate such discrepancy to the suppliers as envisaged u/s 42(3) of The CGST Act 2017.

That, your Honor has blocked the differential ITC for our GSTIN by invoking Rule 86(A) of CGST Rules, 2017 whereby it has been specified that:

86A. Conditions of use of amount available in electronic credit ledger.-

(1) The Commissioner or an officer authorized by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as

(a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 –

(i) issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

(ii) without receipt of goods or services or both; or

(b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or

(c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

(d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36, may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilized amount.

(2) The Commissioner, or the officer authorized by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.

(3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.

It is humbly submitted before your honor that, Rule 86A should not have been invoked on us due to the following reasons:

- No excess Input Tax Credit has been availed through GSTR3B in comparison to GSTR-2A as available on the GST Portal.
- We have not availed any ITC fraudulently.
- We have not availed any Ineligible ITC.
- The ITC has been availed in accordance with Rule 36 of CGST Rules on the basis of valid Tax Invoice/Debit Note/Bill of Entry etc.
- We have availed ITC only after Goods/Service has been received.
- We have taken all the possible actions to ensure that the vendors with whom we are dealing have complied with the GST laws.
- That we have claimed eligible input credit available to us as per Sec. 16 of CGST Act 2017 and

Further, from the email received, we understand that your honor has no reason to invoke Rule 86A of CGST Rules 2017. Just due to a prima-facia mismatch in ITC availed in GSTR3B vis-à-vis ITC available in GSTR2A. As stated by us the mismatch which is mainly due to cumulative reporting of ITC on Import of Goods/Services and all other ITC in Table No. 4(A)(5) in GSTR3B, could have been on valid accounts, the same could have been asked from us by means of a notice rather than blocking ITC which can cause financial hardship to the tax payer. The detailed reason for such differences are explained and justified in our submission above and we hope that the same will suffice your requirement.

Since, we are a law abiding assessee and always comply with the GST Laws, your honor is requested to kindly accept our brief justification in the matter of discrepancies in ITC availed in GSTR-3B and ITC available in GSTR2A from July 17.

Further, we request your honor unblock the differential ITC, since the blocking of eligible ITC may cause financial hardship to us.

We pray to take our reply on record and rest the issue in the light of Provisions as per Law. For this act of kindness, your petitioner as in duty bound shall remain grateful.

Thanking you
Yours truly
For.....

Date:
Place: