

CLARIFICATION FOR GSTR-3B Vs GSTR-2A MISMATCH

-A PERFECT COVER-UP!



CA. Ritesh Arora

Partner, Ritesh Arora & Associates

Author

Circular No.183/15/2022-GST dated December 27, 2022, has been issued to clarify the mechanism to deal with the difference in Input Tax Credit (ITC) availed in Form GSTR-3B as compared to that detailed in Form GSTR-2A for F.Y. 2017-18 and 2018-19.

Let us discuss about the GSTR-3B vs GSTR-2A mismatch and the legality of this circular.

1. GSTR-3B Vs GSTR-2A mismatch, is this really a mismatch?

The answer is **"BIG NO"**. There is no provision under the statute that provides for matching of ITC claimed in GSTR-3B and reported in GSTR-2A for the period 2017-18, 2018-19.

2. What is the legal backing of the Notices issued for the difference in ITC claimed in GSTR-3B and GSTR-2A for the period 2017-18, 2018-19?

- Any notice issued for the difference in ITC claimed in GSTR-3B vs reported in GSTR-2A for the period 2017-18, 2018-19 is not a valid notice.
- ITC claimed in GSTR-3B and reported in GSTR-2A are not supposed to match (for the particular period).
- For the initial phases of the implementation of GST, there was no mechanism to check GSTR-2A (and even no requirement under the law). ITC for the particular period was supposed to be claimed on a self-assessment basis (Section 59), subject

to the conditions laid down in Section 16. The whole of the GST Law revolves around the most powerful Section i.e. **Section 59-Self Assessment** (yet, most underrated Section).

3. What is the Revenue's stand in the case of GSTR-2A Vs GSTR-3B mismatches?

- The Revenue has been resorting to unwarranted abuse of the provisions of the law amidst the "Pro-Revenue" approach.
- Every notice must specify clearly the provisions of the law which are violated and must produce probative evidence in support. But unfortunately, the notices are issued just stating the difference in ITC reported in GSTR-2A Vs claimed in GSTR-3B, without mentioning the exact provisions of the law violated.
- The department takes a stand that a mismatch in GSTR-2A Vs GSTR-3B "**COULD**" be the violation of provisions of Section 16(2)(c). Mismatch in GSTR-2A Vs GSTR-3B in no concrete evidence for the violation of conditions of Section 16(2)(c), therefore unsustainable in the litigation.
- There could be instances where credit is reflected in GSTR-2A and tax liability is not discharged by the supplier (violation of 16(2)(c)).

4. Possible Reason to issue Circular No.183/15/2022-GST?

- Legality of all the notices issued based on the mismatch in ITC in GSTR-3B Vs GSTR-2A is being challenged before the Judiciary and there are numerous judgments stating these notices are ultra-vires the law.
- The Government has very smartly attempted to sway away the attention from the legality of these notices by issuing this circular.
- CBIC brings circulars/procedures as per its own whims and fancies.

5. What is the plight of the cases already decided for the period?

- The cases where liability/tax has already been paid for such issues have not been given any option/relief by way of this circular.
- The option to obtain a certificate (CA/CMA/self) has been given only to the ongoing proceedings. (Appeal or adjudication pending for 17-18, 18-19).

6. What are the challenges for taxpayers to obtain certificates?

In cases where the mismatch is more than Rs.5 Lakhs, a certificate from CA/CMA is required to be produced to substantiate the claim of eligible ITC. Certain Challenges are:-

- How does the remittance of tax has to be ascertained for a particular invoice from the GSTR-3B? (GSTR-1 may not come in handy in all situations).
- It would become a tedious task to obtain certificates, where there are large numbers of suppliers who failed to file/file correctly GSTR-1.

- How CA/CMA will issue the certificate, where tax is discharged through DRC-03 instead of GSTR-3B?
- Who will bear the cost of certification and who's CA/CMA, whether supplier or taxpayer will issue the certificate?
- Conditions of Section 16(4) as laid down in Para 4.2 of the circular will still haunt the genuine taxpayers.

7. What is the way forward for the taxpayers?

- Legislature has declared GST to be a "Self-Assessment" tax as per Section 59 and this itself is the greatest defense and safeguard for the taxpayers.
- One more circular issued by the department has to be added to the ultra-vires category and is certainly not binding on the taxpayers. Wherever this circular comes to the rescue of taxpayers, it must be referred to; otherwise, all adjudication has to be done on merits and provisions of the law, not circulars.

8. Can ASMT-10 be issued for the mismatch of ITC in GSTR-3B Vs GSTR-2A for the period 2017-18, and 2018-19?

- As per the provisions of Section 61, ASMT-10 can be issued for any discrepancy noticed by the proper officer from the scrutiny of returns and related particulars.
- GSTR-2A is not filed by the taxpayer, and therefore, ASMT-10 cannot be issued for this mismatch.
- Any discrepancy under Section 61 has to come from the returns and related particulars not from the intelligence gathered by the proper officer.

(The content and views stated in this article are solely for informational purposes and for the reader's non-commercial personal use. It does not constitute professional advice or recommendation in any manner whatsoever. For any feedback and queries write to me at caritesharora1628@gmail.com)

Know More About The Author:

CA Ritesh Arora (Treasurer 2022-23 Amritsar Branch of ICAI)

Partner – Ritesh Arora & Associates

FCA, B.Com(P), DISA

Follow Me On LinkedIn: <https://www.linkedin.com/in/ca-ritesh-arora-a26b75125/>