



PIONEER ONE

**JUST A MINUTE (JAM)**

Clarification issued by CBIC – GST

January 2023

**DEALING WITH NOTICES FROM THE GST DEPARTMENT RELATING TO DIFFERENCE IN ITC  
AVAILABLE AS PER FORM GSTR 3B AND 2A. (CLARIFICATIONS ISSUED BY CBIC  
CIRCULAR NO 183/15/2022-GST DATED 27/12/2022)**

In recent times, many assesseees have started to receive notices from the GST department with regard to mismatch between ITC as per Form GSTR 3B and Form GSTR 2A for the financial years 17-18 and 18-19.

The above mentioned financial years were the initial years of GST implementation and there were many confusions at that time among the taxpayers and officers alike. The circular no 183/15/2022-GST issued by CBIC on 27/12/2022 aims to clarify certain issues relating to availment of ITC in those financial years.

The reason for issuing this circular is to clarify the confusions in dealing with the said notices issued by the department on account of difference in ITC in the following cases,

1. Cases where the supplier had failed to file GSTR 1, leading to non-reflection of ITC in the recipient's GSTR 2A, but the recipient had availed such ITC notwithstanding the fact that the same had not appeared in GSTR 2A.
2. Cases during the initial stages of implementation of GST, where GSTR 2A was not made available to the taxpayers and hence the taxpayers had no means to ensure that they avail correct ITC.

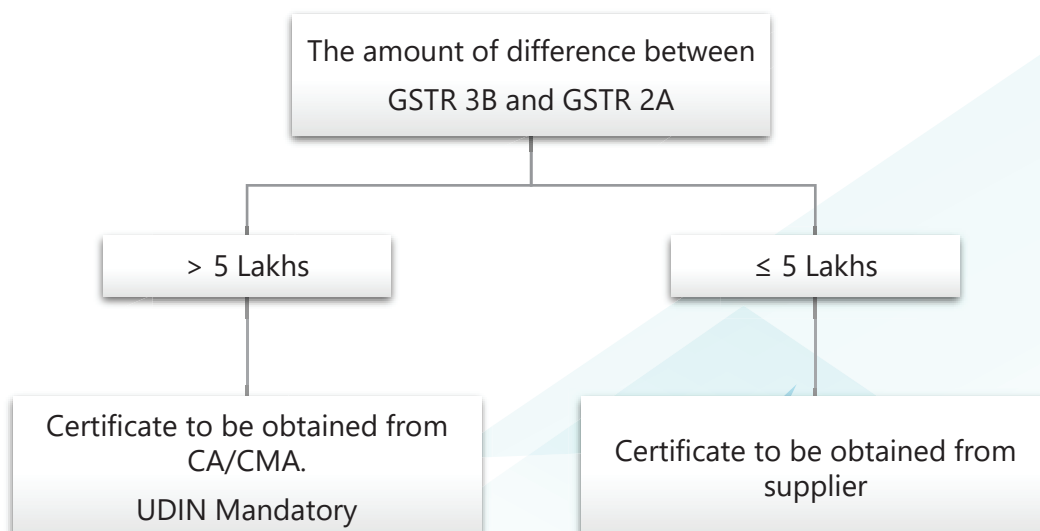
**Instances of clarification issued by CBIC**

S. No	Supplier's Action	Consequence of supplier's action	Recipient's Action	Consequence of Recipient's action	Clarification
1	<ul style="list-style-type: none"><li>• Filed GSTR 1 – No</li><li>• Filed GSTR 3B – Yes</li></ul>	ITC not reflected in recipients GSTR 2A.	Recipient has availed ITC even though the tax was not reflected in GSTR 2A	Difference in ITC as per GSTR 2A and 3B – Notice issued by department requesting explanation for difference	Note 1
2	<ul style="list-style-type: none"><li>• Filed GSTR 1 – Yes <b>(but has failed to report a particular supply)</b></li><li>• Filed GSTR 3B – Yes</li></ul>	ITC relating to that particular supply not reflected in recipients GSTR 2A.	Recipient has availed ITC even though the tax was not reflected in GSTR 2A	Difference in ITC as per GSTR 2A and 3B – Notice issued by department requesting explanation for difference	Note 1
3	<ul style="list-style-type: none"><li>• Filed GSTR 1 – Yes <b>(but has wrongly reported a supply as B2C)</b></li><li>• Filed GSTR 3B – Yes</li></ul>	ITC relating to that particular supply not reflected in recipients GSTR 2A.	Recipient has availed ITC even though the tax was not reflected in GSTR 2A	Difference in ITC as per GSTR 2A and 3B – Notice issued by department requesting explanation for difference	Note 1

S. No	Supplier's Action	Consequence of supplier's action	Recipient's Action	Consequence of Recipient's action	Clarification
4	<ul style="list-style-type: none"> <li>Filed GSTR 1 – Yes <b>(but has mentioned wrong GSTIN of recipient)</b></li> <li>Filed GSTR 3B – Yes</li> </ul>	ITC relating to that particular supply not reflected in recipients GSTR 2A.	Recipient has availed ITC even though the tax was not reflected in GSTR 2A	Difference in ITC as per GSTR 2A and 3B – Notice issued by department requesting explanation for difference	Note 1&2

**Note:**

- In respect of the ITC under question (i.e. the ITC which is not reflected in GSTR 2A but availed by the recipient in his 3B), The proper officer can allow the ITC subject to the following conditions,
  - The proper officer shall first seek all the details of such ITC (invoices included)
  - The proper officer shall ensure that the recipient,
    - Is in possession of a tax invoice or debit note issued by the supplier or such other tax paying document
    - has received the goods or services or both
    - has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier. **(Refer Note 3)**
  - The proper officer shall check whether any reversal of input tax credit is required to be made in accordance with section 17 or section 18 of CGST Act.
  - The proper officer shall also check whether the said input tax credit has been availed within the time period specified under Section 16(4) of CGST Act.
- Since the supplier has mentioned the wrong GSTIN, the ITC would have gone to the GSTR 2A of the registered person whose GSTIN was wrongly mentioned, in such a case, the proper officer who has issued notice to the recipient shall intimate the concerned jurisdictional officer of the registered person to whom the credit was wrongly given. The concerned jurisdictional officer shall then proceed to take recovery actions If that registered person had availed such wrongly credited ITC.
  - 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.
- In order to verify that the tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer:



## Content of Certificate:

- The certificate must state that the
  - Supplies in respect of the said invoices 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 to the government in his return in FORM GSTR 3B.

## Further points to note:

1. These instructions will apply **only to the ongoing proceedings** in respect of FY 2017-18 and 2018-19 and not to the completed proceedings. However, these instructions will apply in respect of those cases where any adjudication or appeal proceedings are still pending.
2. Applicability of relaxations for the FY 17-18
  - a. The time limit to avail ITC as per section 16(4) for the FY 17-18 is on or before the due date of filing the GST return for the month of September 2018 or the date of annual return (whichever is earlier)
  - b. However, for the FY 17-18, the GST council in its 31<sup>st</sup> meeting held on 22.12.2018 had extended the last date for availing ITC till the due date of filing the GST return for the month of March 2019.
  - c. In light of the above extension already given to the taxpayers, the relaxations as stated above is not applicable for the ITC availed by the recipient (after due date of Sep 18 return but before due date of March 2019 return) 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.
3. It has to be noted that the contents of this circular does not bind on the concerned officer since they are mere clarifications 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.

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