

Essence of availing input tax credit: GSTR 2A Reconciliation

Introduction

1. GST law which was fraught with uncertainty in the parliament was pending for clearance for almost eleven years, and finally got assent of both the houses of the parliament, ratification by atleast 50% of the State legislatures and assent from the President of India on September 08, 2016. Thereafter, respective central law related enactments got assent of the President of India on April 12, 2017 and July 01, 2017 was set as date on which GST was to come into force. As expected, the government did its best to make GST a success and introduced industry friendly tax rates and at the same time made a headway by achieving tax collections at target rate of Rs. One lakh crore per month. But it was not just economic success for the Country as a whole, this period of new tax regime led to a professional efflorescence that would brand industry as GST savvy. One such area is reconciliation with GSTR 2A or say the "concept of matching" which is the soul of GST and major compliance area.

Reconciliation with GSTR-2A

2. To understand this concept, provisions of section 16(2), 16(4), 37(3), 39(9), 41 and 42 of the CGST Act, 2017 are important. A registered person shall avail of input tax credit for a financial year upto due date of filing return for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains to or furnishing of the relevant annual return, whichever is earlier. It is worthwhile to note that section 16(4) of the Act had inserted a capping over time limit to avail of credit by using the phrase "*due date*".

Conjoint reading of sections 16(2)(c), 41, 42 and 37(3) provides that input tax credit is allowed provisionally to a registered person, i.e., it is subject to the results of matching. The details of tax invoice or debit note, in respect of which credit has been availed by the recipient, must be furnished by the corresponding supplier in GSTR-1 so that matching u/s 42 can take place and credit provisionally allowed to the recipient can become final. In case details of any invoice or debit note have not been furnished, then such error or omission shall be rectified by the corresponding supplier as per provisions of section 37(3) of the Act. It is worthwhile to note that section 37(3) of the Act does not make any reference to the "*due date*" of filing returns as compared to section 16(4), i.e., it only mandates to rectify the errors before the filing of return for the month of September or annual return but it does not mandate to furnish the details on or before the due date of the respective tax periods. However, as per original scheme of law, this essentially does not have any relevance because the provision of section 16(4) would have forced the recipient(s) to get the returns of their corresponding suppliers furnished before the expiry of the specified time period as any delay on the part of the suppliers will make eligibility of credit barred by time.

In view of the said provision, the trade was busy in carrying out the GSTR-2A reconciliation before the due date of filing of return for the month of September 2018, i.e., 25.10.2018. Much as in reconciliation, industry baulked at supporting such an extremist provision. It seemed that industry was reluctant to recognize that they were going to lose credit in respect of invoices not

appearing in GSTR-2A and were thinking how said provision would shape the destiny of still nascent law. The provision had really shrunk the industry's girth.

However, due to the first year of implementation of GST in India there was a lack of familiarity with the new taxation system among the taxpayers due to which various registered persons could not rectify the error or omission in the returns or could not avail of the input tax credit. Therefore, the government has recently provided a relief to the taxpayers by inserting a proviso to section 16(4) of the Act by way of an Order No. 02/2018-CT dated 31.12.2018 which allows to do rectification in GSTR-1, in respect of invoices relating for FY 2017-18, upto 11.04.2019 and allow to avail input tax credit upto 20.04.2019 to recipient(s). These provisions have been reproduced below:

Removal of Difficulty Order No. 02/2018-CT dated 31.12.2018

3. As per the order, the following proviso has been inserted in sub-section (4) of section 16 of the CGST Act:-

"Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.

Further, a proviso has also been inserted in sub-section (3) section 37 as under:-

"Provided further that the rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September, 2018 till the due date for furnishing the details under subsection (1) for the month of March, 2019 or for the quarter January, 2019 to March, 2019."

The net impact of above amendments is as under:

- (i) Rectification of GSTR-1 in respect of invoices pertaining to FY 2017-18 has been allowed upto 11.04.2019
- (ii) A registered person is entitled to take input tax credit for F.Y. 2017-18 till 25.10.2018 but in respect of those invoices which were not reflecting in GSTR-2A, he is entitled to take the credit upto 20.04.2019 provided details thereof have been furnished by corresponding supplier in GSTR-1 by 11.04.2019.

In this juncture, we are required to analyze the following questions for complete understanding of the concept:-

3.1 How the tax related to supplies can be paid whose details have been omitted to be furnished by suppliers in GSTR-1? - As the government is not allowing to furnish the details of

the outward supplies pertaining to the period 2017-18 after the due date of filing of GSTR-1 for the month of March' 2019, i.e., 11.04.2019, therefore, in such cases, where the time period to rectify GSTR-1 has lapsed then the supplier can opt the following:

- (i) make voluntary payment of the tax by way of filing of Form DRC-03 as stated under Rule 142 of the CGST Rules, 2017, or
- (ii) make payment along with GSTR-9, i.e., annual return

The points worth consideration here are that if option 1 is followed, then balance lying in electronic credit ledger can be utilized. However, the same cannot be utilized if paid along with GSTR-9.

3.2 Whether the recipient is eligible to avail input tax credit in such situations wherein the details of supply have not been furnished by the supplier till 11.04.2019 but the tax has been deposited by way of DRC-03 as stated above?

3.2-1 Scenario 1. If the payment has been made after 11.04.2019 but on or before 20.04.2019 -

As per the amended provisions, if the invoices are not furnished in GSTR-1 by 11.04.2019 by corresponding supplier, then recipient shall not be entitled to avail of input tax credit. However, as per scheme of law, said provision would be given effect to in pursuance of provisions of section 42. The matching would be carried out post-filing of GSTR-3B for the month of March 2019 and in case of mis-matched invoices, credit shall be reversed by recipients by way of increasing their output tax liability.

However, one should make purposive interpretation of law, provided intention of the legislature is satisfied. If on account of any reasons, the invoice is omitted to be furnished by taxpayers by 11.04.2019 or GSTR-1 has been filed in period between 11.04.2019 to 20.04.2019 and tax liability has been duly discharged by specified due date, the demand on account of mis-match shall be dropped. In event of any litigation, the attempt of the court should be to expand the reach and ambit of these provisions rather than to attenuate their scope by process of judicial interpretation. This fact certainly provides a lot of gravitas to the appellant's claim that tax has duly been paid to the government.

However, it is recommended for the trade that strict adherence to proviso to section 16(4) shall be made to avoid undue loss of credit or litigation.

3.2-2 Scenario 2. If the payment has been made after 20.04.2019 (due date for the month of March 2019):

Note: It shall also cover the cases where GSTR-1 has been filed within due date but payment of tax has been made by corresponding supplier after specified due date.

In such situations the input tax credit pertaining to those invoices shall not be available to the recipient & the recipient shall be liable to reverse the credit already taken in view of section 16(2)(c) and 16(4) of the Act, read with the spirit of section 42(7).

Note: Section 42(7) makes reference to section 39(9), i.e., time limit to rectify GSTR-3 which is still September 2018 for F.Y. 2017-18. Same might have been done on account of non-operationalization of Form GSTR-3. However, intention and spirit of law cannot be ignored which clearly disallows availment of ITC after specified due date.

Conclusion

4. In view of the above provisions, it becomes essential for the industry to once again reconcile GSTR-2A for the period 2017-18 so that if any mismatch arises, adequate follow up can be made with the corresponding suppliers to furnish the correct details in their GSTR-1 till the due date of filing of return for the month of March, 2019, i.e., on or before 11.04.2019. Further, it is also the duty of the recipient to take confirmation from the suppliers whether the payment in respect to those details have been made on or before 20.04.2019 by way of filing of GSTR-3B, as it is mandatory to avail input tax credit u/s 16(2)(c), read with spirit of section 42(7).

At the same time, it is also important for the suppliers to decide whether payment in respect of invoices, details whereof have omitted to be furnished till time limit allowed under section 37(3), is to be made by way of filing Form DRC-03 prior to filing annual return or at the time of filing of the annual return. This is because if payment is made along with annual return, then input tax credit is not allowed to be set off.

There is also a need to relook or harmonize the newly inserted proviso to section 16(4) as it has been mandated therein to furnish the details of invoices in GSTR-1 and is restricting the input tax credit where tax amount has been deposited prior to the due date of filing of GSTR-3B for the month of March, 2019 but invoice has been omitted to be furnished. This was not a mandatory provision as per the pre-amended provisions.

(Source: Taxmann.com)