

- Reply to Recent SCNs for FY 2017-18
- Advisory and Notices for Alleged Bogus Purchases

CA. Deep Koradia

GANDHIDHAM BRANCH OF WIRC OF ICAI

Assessment V/s Audit

	Section	
ASSESSMENT	59	Self-assessment
	60	Provisional assessment
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	63	Assessment of unregistered persons [within 5 years]
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AUDIT	65	Audit by tax authorities
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DEMAND AND RECOVERY

Section 73 v/s 74

	Section 73	Section 74
To be Invoked	OTHER THAN for Fraud OR wilful mis-statement OR Suppression of Facts	FOR Fraud OR wilful-mis statement OR Suppression of Facts
Notice To be issued	Within 33 Months from the due date of Annual Return [3 months prior]	Within 54 Months from the due date of Annual Return [6 months prior]
Statement may be served	For continuing period, Statement can be served instead of Notice	
Reply to SCN		
Passing or Order Max by	Within 3 Years from the due date of Annual Return	Within 5 Years from the due date of Annual Return

DEMAND AND RECOVERY Penal Provisions

If Tax and Interest Paid	Form Issued	Section 73	Section 74
Voluntary Before SERVICE of SCN*	DRC-01A (Intimation)	NIL	15%
Within 30 days of ISSUING SCN**	DRC-01 (SCN)	NIL	25%
While Issuing Order in DRC-07		10% of Tax OR 10000 Whichever is Higher	100%
If Paid Within 30 days of COMMUNICATING of Order		NA	50%
If Paid After 30 days of COMMUNICATING of Order		10% of Tax OR 10000 Whichever is Higher	100%

DEMAND AND RECOVERY - Time barred Limitation

After Extended via NN 09-2023 CT Dated 31-03-2023

FY	Extended Due Date or Original Date of GSTR9	Section 73		Section 74	
		Notice Can be ISSUED Max by [at least 3M before order]	Order can be ISSUED Max by [3 Years from Due date of G9]	Notice Can be ISSUED Max by [at least 6M before order]	Order can be ISSUED Max by [5 Years from Due date of G9]
2017-18	5-Feb-20	30-Sep-23	31-Dec-23	5-Aug-24	5-Feb-25
2018-19	31-Dec-20	31-Dec-23	31-Mar-24	30-Jun-25	31-Dec-25
2019-20	31-Mar-21	31-Mar-24	30-Jun-24	30-Sep-25	31-Mar-26
2020-21	28-Feb-22	30-Nov-24	28-Feb-25	28-Aug-26	28-Feb-27
2021-22	31-Dec-22	30-Sep-25	31-Dec-25	30-Jun-27	31-Dec-27
2022-23	31-Dec-23	30-Sep-26	31-Dec-26	30-Jun-28	31-Dec-28

*In case Tax has been collected but not paid, No time limit u/s 76

** In case of erroneous refund, date of 3 / 5 years to be counted from date of Refund Order

*** When any Notice or Order Stayed by Court or Tribunal, such period will be excluded

DEMAND AND RECOVERY Forms and Process Flow

Form	Particulars of the Form	By
DRC-01A PartA	Intimation of tax ascertained as being payable under section 73(5)/74(5) [Pre-notice consultations] – Optional for Officer	Officer
DRC-01A PartB	Reply to the communication for payment before issue of Show Cause Notice	Tax Payer
DRC-01	Show Cause Notice for Tax, Interest and Penalty	Officer
DRC-02	Statement for “Periodical Demand” for Tax, Interest and Penalty	Officer
DRC-03	Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement	Tax Payer
DRC-04	Acknowledgement of acceptance of payment made voluntarily	Officer
DRC-05	Intimation of conclusion of proceedings	Officer
DRC-06	Reply to the Show Cause Notice	Tax Payer
DRC-07	Summary of Order	Officer

SCN (DRC-01) Or Statement (DRC-02)

- Is it without incomplete investigation? On assumptions?
- Facts – Law – Quantification
- Summary of Amount payable along with DRC-01 / 02
- Ground for DRC-02 MUST be same as DRC-01
- Statement of summary hold as good value as SCN
- Onus on dept to prove any allegation

REPLY TO SCN – DRC-06

- Date of Receipt
- Time limit to reply
- Analysis of Issue with Client and Collection of further Details – COMPLETE FACTS
- Drafting
 - 75% for research 25% for drafting
 - In the Flow
 - Margin, Page numbering, Para numbering, Index if needed, Line spacing, on LH of Noticee, 3 sets properly tagged/stapled, Font, Justify
 - Language
 - Reply to every para – cover every issue – reference to law
 - Be specific, be firm but never hurt the ego
 - Don't use idioms and phrases
 - Annexures
- Accept / Deny Allegation OR Attack Question
- Cross Examination of third party

REPLY TO SCN – DRC-06

- Basis for appeal
- Sequence of Reply to SCN
 - Brief background of the Tax Payer, revenue's case and amount proposed
 - Facts in dispute – Provide the actual fact with evidence
 - Interpretation in dispute – Reply with in detail background of law
 - Address each allegation
 - Alternate plea / submission for issues raised in SCN
 - Mention grounds are separate from each other
 - Prayer to Drop proceedings and to request for PH
- Personal Hearing
 - Compile short-notes / synopsis
 - LoA [Format]
 - Speak softly
 - Start with facts
 - Appearance – Should be presentable

Major Issues in Recent Notices Issued for 17-18

- GSTR2A Vs 3B Difference vis-à-vis Circular 183-2022
- Reversal of ITC Due to Exempted Supplies [Rule 42 / 43]
- Cement, Steel, Sand, Granite etc's ITC's Reversal
- Motor Vehicle's ITC Reversal
- ITC Reversal due to Cancelled dealers, return defaulters & Tax non Payers
- GSTR-1 Vs GSTR-3B Difference

SoP for Notice Issued

1. જે કેસોમાં ઓડીટની કામગીરી થયેલ છે તેવા કેસોમાં ફરીથી IIT Big data દ્વારા આપવામાં આવેલી નોટીસો ડ્રોપ કરવાની રહેશે.
2. જે કેસોમાં રીટર્ન સ્કુટીનીની કામગીરી થયેલ છે તેવા કેસોમાં ફરીથી IIT Big data દ્વારા આપવામાં આવેલી નોટીસોમાં સમાન મુદ્દા હોય તેવા કેસોમાં તે મુદ્દા પૂરતી નોટીસ ડ્રોપ કરવાની રહેશે.
3. જે કેસોમાં એડવાઈઝરી / સમન્સની કામગીરી થયેલ છે તેવા કેસોમાં IIT Big data દ્વારા અપાયેલ નોટીસના મુદ્દાઓનો સમાવેશ એડવાઈઝરી / સમન્સની કામગીરીમાં થઈ ગયેલ હોય તેવા કેસોમાં તે મુદ્દા પૂરતી નોટીસ ડ્રોપ કરવાની રહેશે.
4. અન્વેષણ (State / Centre Authority) કાર્યવાહીના પરિણામે વર્ષ ૧૭/૧૮ માટે કાર્યવાહી ચાલુ છે તે કેસોમાં કલમ-૭૪ હેઠળ કાર્યવાહી કરેલ હોય / કરવાપાત્ર થતી હોય તો તે કિસ્સામાં જે તે ઓથોરીટીને જાણ કરી, કલમ-૭૪ અન્વયે આ મુદ્દાઓનો સમાવેશ કરી IIT Big data દ્વારા અપાયેલ નોટીસ ડ્રોપ કરવાની રહેશે.
5. જે કેસોમાં નોટીસના જે તે મુદ્દા અંગે અગાઉ DRC-03 / DRC-07 થયેલ હોય તે મુદ્દા ચકાસીને આવી નોટીસો ડ્રોપ કરવાની રહેશે.
6. જે કેસોમાં માલની લેવડ-દેવડ વિના ફક્ત બીલો ઇસ્યુ કરવામાં આવેલ છે. તેવા કિસ્સામાં કલમ-૧૨૨ હેઠળ કાર્યવાહી કરવાપાત્ર થતી હોય તો તે કિસ્સામાં IIT Big data દ્વારા અપાયેલ નોટીસ ડ્રોપ કરવાની રહેશે.
7. SEC-17(5) હેઠળ Blocked Credit નાં કિસ્સામાં સિસ્ટમ દ્વારા ૧૭(પ) હેઠળ જે વેરાશાખ Blocked હોય તે તમામ HSN / SAC ના આધારે Blocked Credit નક્કી કરેલ છે તે જ HSN / SAC નો ધંધો કરતાં કરદાતા માટે તે Credit મળવાપાત્ર પણ હોઈ શકે (ઉ.દા. વાહનના વેચાણનો ધંધો કરતા વેપારીને વાહનની ખરીદી પરની વેરાશાખ મળવાપાત્ર થાય છે.) જેથી અધિકારીએ પત્રક આધારે ચકાસણી કરી IIT Big data દ્વારા અપાયેલ નોટીસ ડ્રોપ કરવાની રહેશે. અનિવાર્ય સંજોગો સિવાય કરદાતા પાસેથી સ્પષ્ટતા મેળવવાની રહેશે નહીં.
8. નિયમ- ૪૨/૪૩ પરત્વે Non business transaction કે Exempt supplies નાં ટર્નઓવર પર નોટીસમાં દર્શાવ્યા મુજબના કરવાપાત્ર ઘટાડાની ખરેખર ચકાસણી કરી આવા Exempt supplies ની ખરીદી કરી વેચાણ કરેલ હોય તેવા ટર્નઓવરને બાદ આપીને નિયમ ૪૨/૪૩ મુજબ ખરેખર કેટલો ઘટાડો કરવાપાત્ર થાય છે તેની ચકાસણી પત્રક આધારિત કરવાની રહેશે. અનિવાર્ય સંજોગો સિવાય કરદાતા પાસેથી સ્પષ્ટતા મેળવવાની રહેશે નહીં.
9. ઉપરોક્ત મુદ્દાઓ અન્વયે જે કિસ્સામાં નોટીસ ડ્રોપ કરવાપાત્ર થતી ન હોય તેવા કિસ્સામાં નોટીસ કરદાતાને યોગ્ય રીતે બજવણી કરવાની રહેશે તેમજ કરદાતાને સાંભળવાની પૂરતી તક આપી સમયમર્યાદામાં કાર્યવાહી કરવાની રહેશે.

ઉપરોક્ત સૂચનાઓનું ચુસ્તપણે પાલન કરવાનું રહેશે તેમજ ઉપરોક્ત મુદ્દાઓ પરત્વે જે કેસમાં નોટીસ ડ્રોપ કરવાપાત્ર થતી હોય તેવા કિસ્સામાં કરદાતા પાસેથી લેખિત જવાબ મેળવવાનો રહેશે નહિં કે કરદાતાને રૂબરૂ બોલાવવાના રહેશે નહિં. આવા ડ્રોપ પાત્ર કેસોમાં નોટીસ ડ્રોપ કર્યા અંગેની જાણ જે તે કરદાતાને અચૂક કરવાની રહેશે. વધુમાં, કરદાતાને કોઈપણ જાતની હાલાકી ન પહોંચે તેની દરેક અધિકારીએ અંગત કાળજી લેવાની રહેશે.

GSTR2A Vs 3B Difference – ILLUSTRATIVE NOTICE

You have filed annual return in GSTR-09 for the financial year **2017-18**.

On examination of the information furnished in this return under various heads and also the information furnished in GSTR-01, GSTR-2A, GSTR-3B, EWB and other records available in this office it is found that you have not declared your correct tax liability while filing the annual returns of GSTR-09. The summary of under declared tax is as follows:

SGST Rs.**451255**
CGST Rs.**435166**
Total Rs.**886421**

The details of the above tax liability are as follows:

1. Excess claim of ITC:

The excess input tax credit (ITC) claimed on account of non-reconciliation of information

Under Sec 16(2)(c) every registered person shall be entitled to take credit of ITC on supply of goods or services to him subject to the condition that the tax charged in respect of such supply has been actually paid to the Government either in cash or through utilization of ITC admissible in respect of such supply.

It is observed that the taxpayer has not correctly availed input tax on his inward supplies on reconciliation of turnovers in GSTR-09.

GSTR2A Vs 3B Difference – ILLUSTRATIVE NOTICE

• Scrutiny of ITC availed:

S.No	Description	SGST	CGST	Total
1	2	3	4	5
1	ITC in the year as per Table 8A of GSTR-09	662438	662438	1324876
2	ITC from ISD table 4A (4)	0	0	0
3	ITC from imports table 4A (1) +4A (2)	0	0	0
4	Inward Supplies liability to reverse charge 4A(3) (other than 4A(1) & 4A(2))	23420	23420	46840
5	ITC brought forward from previous FY to current FY, Table 8C of previous FY GSTR-09	0	0	0
6	ITC carried forward from present FY to subsequent FY, Table 8C of GSTR-09	3177	3177	6354
7	Reversals in Table 4B of GSTR-3B	0	0	0
8	ITC Available for use in the same year (S.No 1+2+3+4+5-6-7)	682681	682681	1365362
9	<u>ITC used</u> in same year as per 4C of GSTR-3B	686860	686860	1373720
10	Net excess used (S.No 9-8)	4179	4179	8358

GSTR2A Vs 3B Difference – ILLUSTRATIVE Table-4 of 3B

4. Eligible ITC

Details	Integrated Tax(₹)	Central Tax(₹)	State/UT Tax(₹)	Cess(₹)
A. ITC Available(Whether in Full or Part)	70,146.58	6,86,859.81	6,86,859.81	0.00
(1) Import of goods	0.00	0.00	0.00	0.00
(2) Import of services	0.00	0.00	0.00	0.00
(3) Inward supplies liable to reverse charge (other than 1 & 2 above)	0.00	23,418.62	23,418.62	0.00
(4) Inward supplies from ISD	0.00	0.00	0.00	0.00
(5) All other ITC	70,146.58	6,63,441.19	6,63,441.19	0.00
B. ITC Reversed	0.00	0.00	0.00	0.00
(1) As per rules 42 & 43 of CGST Rules	0.00	0.00	0.00	0.00
(2) Others	0.00	0.00	0.00	0.00
C. Net ITC Available (A-B)	70,146.58	6,86,859.81	6,86,859.81	0.00
D. Ineligible ITC	0.00	0.00	0.00	0.00
(1) As per section 17(5)	0.00	0.00	0.00	0.00
(2) Others	0.00	0.00	0.00	0.00

GSTR2A Vs 3B Difference – ILLUSTRATIVE TABLE 8 of GSTR-9

Pt. III	Details of ITC for the financial year				
Sr.No	Details	Central Tax(₹)	State Tax / UT Tax(₹)	Integrated Tax(₹)	Cess(₹)
	1	2	3	4	5
8	Other ITC related information				
A	ITC as per GSTR-2A (Table 3 & 5 thereof)	6,62,438.32	6,62,438.30	70,749.75	0.00
B	ITC as per sum total of 6(B) and 6(H) above	6,86,859.81	6,86,859.81	70,146.58	0.00
C	ITC on inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZs) received during the financial year but availed in the next financial year upto specified period.	3,176.66	3,176.66	0.00	0.00
D	Difference [A-(B+C)]	-27,598.15	-27,598.17	603.17	0.00
E	ITC available but not availed	0.00	0.00	0.00	0.00
F	ITC available but ineligible	0.00	0.00	0.00	0.00
G	IGST paid on import of goods (including supplies from SEZ)	0.00	0.00	0.00	0.00
H	IGST credit availed on import of goods (as per 6(E) above)	0.00	0.00	0.00	0.00
I	Difference (G-H)	0.00	0.00	0.00	0.00
J	ITC available but not availed on import of goods (Equal to I)	0.00	0.00	0.00	0.00
K	Total ITC to be lapsed in current financial year (E + F + J)	0.00	0.00	0.00	0.00

GSTR2A Vs 3B Diff. – ILLUSTRATIVE NOTICE **BREAKDOWN**

- Table 8 of GSTR-9 Directly not compared, few adjustment has been made and then Compared with NET ITC Taken in 3Bs.
- IGST Difference was not added in SCN, now no go back
- ITC of Imports has been Compared of as taken in 3B with GSTR-2A, but law doesn't mandate requirement of Import's IGST ITC to be found in 2A.

GSTR2A Vs 3B Difference vis-à-vis Circular 183-2022

- For FY 2017-18, 2A was, at all, Required?
- 2A was there at the time of filling 3Bs? Rule 36(4) and Section 16(2)(aa) came later!

What's the Way Out?

- Reconciliation of 2A vs 3B at Invoice level
- DOCUMENTS for Basic Conditions of ITC to be satisfied [Section 16(2)(a) to (d)]
 - Copy of Tax Invoice
 - Receipt of Goods / Services [GRN]
 - Tax has been paid by supplier [CERTIFICATE as per Circular 183-2022]
 - Payment has been made within 180 Days [LEDGER COPY]
- Circular 183-2022
 - Situations – G1 not filled by Supplier / G1 Filled but gone in B2C / G1 Filled but Invoice was totally missed / G1 Filled but Wrong GSTIN entered
 - Certificate from CA/CMA incase Diff exceeds 5L / Certificate from Supplier otherwise
 - No relief if ITC Taken due to extended time limit u/s proviso to 16(4) [Till Due date of 3B of Mar-19]
- Case Laws

Reversal of ITC Due to Exempted Supplies - ILLUSTRATIVE NOTICE

• ITC to be reversed on non-business transactions & exempt supplies

Under Sec 17(1) & (2) where the goods or services or both are used by the registered person partly for the purpose of business, partly for other purposes or partly used for effecting exempt supply and partly for taxable supply then the amount of credit shall be restricted to so much of the input tax as is attributable to the taxable supplies in the course of business. Therefore the taxable person needs to make an apportionment of available input tax credit under Rule 42 & 43 to arrive at the eligible ITC.

However as seen from the GSTR-09 return filed it is evident that you have not made such apportionment resulting in excess claim of ITC than you are eligible. The details of the working are as under:

S.No	Issue	Table no. in GSTR-09	Value of outward supply	SGST	CGST	Total
1	2	3	4	5	6	7
1	Total supplies	5N+10-11	28272864	-	-	-
2	Exempt supplies	5C + 5D + 5E + 5F or {Sum of 3.1 (c) +3.1 (e) of GSTR 3B of all months in FY } which ever is higher	17740495	-	-	-
3	Proportion of common ITC which has to be reversed to the extent of exempt supply (2/1 above) "(Maximum value is '1')"		0.627474	-	-	-
4	Common input tax credit	6O+13	-	712502	686860	1399362
5	ITC to be reversed (S.No.4 (x) [S.No.2 /S.No.1])		-	447076	430987	878063
6	ITC reversed	{7C + 7D + 7F + 7G} or {Sum of 4B (1) of GSTR 3B of all months in FY} which ever is higher	-	0	0	0
7	Difference/Excess ITC claimed (S.No.5-S.No.6)		-	447076	430987	878063

Therefore the excess ITC claimed is proposed to be recovered.

Reversal of ITC Due to Exempted Supplies [Rule 42 / 43]

- Higher of Figures of GSTR9 vis-à-vis GSTR-3B has been taken for exempted Supply, there are possibilities that such error in 3Bs are cured in GSTR-9
- Already ITC Reversed in Notice doesn't contain Table 12 of GSTR-9
- Notices Issued without considering "COMMON ITC" as per Rule 42

Reversal of ITC Due to Exempted Supplies [Rule 42 / 43]

What's the Way Out?

- Need to bifurcate Dedicated ITC used for Taxable Supply, Dedicated ITC used for Exempted Supply
- For the rest of the ITC, Named as “Common ITC” – The Ratio of Rule 42 [Common ITC x Exempted TO / Total TO] can be applied on that part only.
- While calculating such Exempted TO, Following should be excluded [Only for FY 2017-18]
 - Exempted Supply of Services to Nepal or Bhutan against INR
 - Interest Income on Giving Loans / Deposits
 - Value of Supply by transportation by vessel from Custom station of India to Outside India

Reversal of ITC Due to Exempted Supplies [Rule 42 / 43]

RULE NO 42						
Broad view of the Terms	Terms which are used in formulas:	Term's Detailed Meaning	CGST	SGST / UTGST	IGST	CESS
Total Credit [T1, T2, T3, T4, C2]	T	Here, T stands for Total credit of Input and Input Services (But not Capital Goods as same is governed by Rule 43)				
Exclusive Credits which are totally not available	T1	T1 Stands for - attributable to inputs and input services intended to be used exclusively for the purposes other than business				
	T2	T2 Stands for - attributable to inputs and input services intended to be used exclusively for effecting exempt supplies				
	T3	T3 Stands for - in respect of inputs and input services on which credit is not available under sub-section (5) of section 17 [Blocked Credit]				
	C1 = T-(T1+T2+T3)	C1 Stands for - Total input tax credit Less T1,T2,T3	0	0	0	0
Exclusive Credits which are fully available	T4	T4 Stands for - input tax credit attributable to inputs and input services intended to be used exclusively for effecting supplies other than exempted but including zero rated supplies [Taxable Supply including Zero rated Supply]				
Common Credit on Which Proportionate Reversal can be made	C2	C2 Stands for - C1 Less T4	0	0	0	0
	E	Aggregate value of exempt supplies during the tax period				
	F	Total turnover in the State of the registered person during the tax period				
	D1 = C2*E/F	Amount of input tax credit [Out of Common Credit] attributable towards exempt supplies	C2*E/F	C2*E/F	C2*E/F	C2*E/F
	D2 = C2*.05	Amount of credit attributable to non-business purposes [Only of C2, The Common Credit is also used partly for non-business purposes. If C2 is fully used for business purposes, then it's not Required to make reversal of the D2]	0	0	0	0
	C3 = C2-(D1+D2)	Eligible Credit out of Common Credit C2	C2-(D1+D2)	C2-(D1+D2)	C2-(D1+D2)	C2-(D1+D2)
	TOTAL Eligible Credit = C3+T4	Total Eligible Credit is the summation of Purely credit available towards Taxable Sales (T4) + Common Credit available after reversing the respective credits (C3)	C3+T4	C3+T4	C3+T4	C3+T4

Cement, Steel, Sand, Granite etc's ITC's Reversal - ILLUSTRATIVE NOTICE

• **Under declaration of Ineligible ITC:**

Under Sec 17(5) of the SGST Act, 2017 input tax credit shall not be available in respect of the list of commodities & services mentioned therein subject to certain conditions.

It is seen from GSTR-09 and other information that they have claimed ITC on these commodities and therefore the ITC claimed on these commodities or services is proposed to be recovered.

S.No	Commodity/Service	HSN code	SGST	CGST	Total
1	2	3	4	5	6
1	Motor Vehicles	8702; 8703; 8711	3023	3023	6046
2	Cement	2523	190788	190788	381576
3	Iron & Steel	7214; 7227; 7228	79484	79484	158968

Cement, Steel, Sand, Granite etc's ITC's Reversal

- Section 17(5)(d) deals with the situation
- ITC Is ineligible, Only when:
 - Such Items are received for Construction of “Immovable Property” &
 - Such Items are used in Other than Plant and Machinery &
 - Such Expenses are capitalized to such Immovable Property &
 - Such Expenses are not for Foundation of Any Plant and Machinery
- So, For an example:
 - If Cement etc. is received and repair carried out, expensed off to P&L – ITC ELIGIBLE
 - If Cement etc. is received and used for foundation of any Plant & Machinery - ITC ELIGIBLE
 - If Cement etc. is received and Trading business done out of it – ITC ELIGIBLE
 - If Cement etc. is received and Such cement is used in making of any Plant and Machinery – ITC ELIGIBLE
- Notice's data fetched from EWB based on HSN, that doesn't mean it has been claimed by the Tax payer. Actual books and ITC Register has to be checked if such ITC has been claimed or not

Motor Vehicle's ITC Reversal

- Section 17(5)(a) [before the amendment] deals with the situation

"(a) motor vehicles and other conveyances except when they are used—

(i) for making the following taxable supplies, namely:—

(A) further supply of such vehicles or conveyances; or

(B) transportation of passengers; or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods;

- For an Example:

- If Truck, Trailer, Dumper etc. Goods Transport Vehicle is purchased – ITC ELIGIBLE
- If Passenger Transport vehicle Purchased and Trading business of such vehicle is done – ITC ELIGIBLE
- If Passenger Transport vehicle Purchased and Leasing or Renting of such vehicle / Training of such vehicle has been done – ITC ELIGIBLE
- Parts of such Truck, Trailer, Dumber Purchased or Repairs & Maintenance done – ITC ELIGIBLE
- Parts of such Passenger Transport Vehicle Purchased or Repairs & Maintenance done – ITC ELIGIBLE [for FY 2017-18, as of today, law has been amended]

ITC Reversal due to Cancelled dealers, return defaulters & Tax non Payers - ILLUSTRATIVE NOTICE

• ITC claimed from cancelled dealers, return defaulters & tax non payers:

Under Sec 16(2)(c) every registered person shall be entitled to take credit of ITC on supply of goods or services to him subject to the condition that the tax charged in respect of such supply has been actually paid to the Government either in cash or through utilization of ITC admissible in respect of such supply.

However as seen from the office records, it is observed that you have taken ITC from the tax payers who have not paid tax on their outward supplies to you.

S.No	Issue	SGST	CGST	Total
1	2	3	4	5
1	Supplier registration cancelled before date of invoice	2160	2160	4320
2	Supplier failed to file GSTR-3B and did not pay tax on the invoices declared in GSTR-01	0	0	0
3	Supplier filed GSTR-3B with Nil turnover and did not declare or pay tax corresponding to the invoices declared in GSTR-01	0	0	0
4	Total(S.NO. 1+2+3)	2160	2160	4320

The above amount of ITC is proposed to be recovered.

ITC Reversal due to Cancelled dealers, return defaulters & Tax non Payers

- In Entire law or Rules, there is no such provision of Ineligibility of ITC due to Cancellation of Registration of the Supplier Retrospectively, ab-initio
- However, if such supplier is of alleged bogus supplier, ITC may be demanded for reversal.
- Documentation as per Section 16(2) (a) to (d) has to be produced, along with Ewaybills, Transporter Invoice, Bilty, Waybridge Silps, Toll Receipts / FastTag Data
- If 3B filled by supplier with NIL Tax, there is no mechanism to check the same. Law can't mandate the impossible things
- D Y Beathel Enterprises (Madras HC), Gargo Traders - CALCUTTA HIGHCOURT

Reference may be Taken from the Judgement of Gargo Traders (Calcutta HC), WHEN

- Buyer must verify Registration and Supporting Docs
- Registration was active at the time of Purchase
- Amount of Purchase Articles and Tax has been paid by Bank
- Authority should established collusion before denial of ITC
- Retrospective Cancellation cant be only basis of denial

GSTR-1 Vs GSTR-3B Difference - ILLUSTRATIVE NOTICE

1. Under declaration of output tax:
• The tax on outward supplies under declared on reconciliation of data in GSTR-09:

It is observed that the tax payer has not correctly declared tax on his outward supplies on reconciliation of turnovers in GSTR-09.

S.No	Issue	Table No. in GSTR-09	SGST	CGST	Total
1	2	3	4	5	6
1	Tax on taxable supplies as declared in GSTR-09	4N	2409281	2409281	4818562
2	Add net increase due to amendments (Increase in amendments (-) decrease in amendments)	10 (-) 11	246598	246598	493196
3	Add tax on deemed supplies	16B	0	0	0
4	Add tax on unreturned goods	16C	0	0	0
5	Pending demands	15G	0	0	0
6	Total output tax liability as per the above in GSTR-09(S.NO 1+2+3+4+5)		2655879	2655879	5311758
7	Less Total tax paid in cash	9	1895150	1895150	3790300
8	Less Tax paid by adjustment of ITC	9	512253	512253	1024506
9	Less differential tax paid on amendments	14	0	0	0
10	Add differential tax paid on amendments related to previous year in current year	(14) of previous FY GSTR-09	0	0	0
11	Net tax payable (S.NO 6-7-8-9+10)		248476	248476	496952

GSTR-1 Vs GSTR-3B Difference

- Invoice Reported In GSTR-1 but Paid in next year, use Table 10 & 11 of GSTR-9
- Amount paid in next year, shown in Table 10 & 11, but forgot to mention in Table 14 of GSTR-9, reply with clerical error in GSTR-9 being 1st year.
- Invoice Reported In GSTR-1 and in 3B, Only Turnover figure shown 1 digit excess by mistake – Explain with no difference in Tax, Matching with Audited Books
- CN Passed in GSTR-1 but Negative Figure Not allowed in 3B – Explain using Circular 26-2017 Dated 29-12-2017

Miscellaneous, BUT IMPORTANT (Safe-Guards)!

- Opportunity of being heard is granted only when request is made in Writing [Sec. 75(4)]
- Max 3 adjournment for OBH [Sec. 75(4)]
- Order Should be “Speaking Order” [Sec. 75(6)]
- No New Grounds after issuance of SCN. Order can’t travel beyond the Notice [Grounds as well as Amount] [Sec. 75(7)]
- Adjudicating process is deemed to be completed if order not issued within time [Sec. 75(10)]
- If anything is self-assessed in return, direct recovery [Sec. 75(12)]
- If Penalty imposed under 73/74, no other penalty (eg. under 122 / 125) [Sec. 75(13)]
- Max Interest @18% WEF 01-07-2017

Miscellaneous, BUT IMPORTANT (Safe-Guards)!

- If Fraud / Wilful misstatement / Suppression Not found, adjudication proceedings will be automatically converted to Section 73. [Sec. 75(2)]
- REPLY to Time barred / Bad Notices in Technical grounds will prove it RIGHT. Question the Notice before Answering it [Sec. 160(2)]
- Burden of Proof for “Eligibility of ITC” is on “Tax Payer” [Sec. 155]
- Rectification of Errors apparent on the Face of Order can be done, within 3 months [Sec. 161]
- PH Cant be before submitting the reply – H T Media Ltd. V Union Of India [2023] 153 taxmann.com 339 (Delhi)
- 30 Days minimum time between SCN and Order (Scheme suggest lower penalty if paid within 30 days)
- Notice to be dropped for already closed matter in past in ASMT-12 or DRC-05
- Provisional Attachment Notice during SCN? [Sec. 83]

Advisory and Notices for Alleged Bogus Purchases

Advisory and Notices for Alleged Bogus Purchases

- What is Bogus Purchases / Fake Invoice?
- How to attend such Advisory, Summon, Investigation, DRC-01A, SCNs and Orders?
- Decision Making Process
 - Partial Payment, Proportionately
 - Part Payment In DRC-03 Voluntarily or Against SCN Number?
 - Accept or Litigate?
- Income Tax vis-à-vis GST
- Circular 171-2022 Dated 06-07-2022 for Proceedings u/s 74 vis-à-vis Penalty u/s 122
- Prosecution and Arrest

Possible Adverse Outcome:

What Possibly Can be Done	Suspend or cancel registration (section 29)	Block credit (rule 86A) without giving any notice or hearing *by Commissioner	Issue notice (section 74)	Provisional Attachment (Sec 83)
Steps by taxpayer	Apply for revocation of cancellation (Form REG21) within thirty (30) days	File letter of objections and demand written reply for blocking credit	Accept and pay or dispute and litigate demand *	File letter of objections
Business of taxpayer	Comes to stop on cancellation of registration	Continues even if some credits are blocked	Continues (until adjudication and final disposal in appeal)	Debit side of Bank account will be freezed

**The Magic You are
Looking for, is in the Work
you are Avoiding!!**

Thank You!