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# DENIAL OF ITC UNDER GST: A COMPREHENSIVE ANALYSIS

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## ABSTRACT

The present paper intends to deal with various issues under the Goods and Services Tax ("***GST***") regime wherein input tax credit (hereinafter referred to as "***ITC***") has been denied to registered persons. The paper also highlights the contradicting stand taken by the department as well as the judiciary on these issues. Consequently, it also highlights the need for clarity and uniformity for the benefit of taxpayers.

Firstly, the paper highlights the enabling provision under Central Goods and Services Tax Act, 2017 ("***CGST Act***"), that is, Section 16 of the CGST Act which provides for the eligibility of a registered person to avail ITC. It also speaks about the amendment by way of insertion of clause (aa) to sub-section (2) in the said section and its implications on the eligibility of *bona fide* taxpayers. Further, the paper delves into the various grounds the department uses in order to deny ITC one by one.The denial of ITC based on the mismatch between Form GSTR-2A and Form GSTR-3B is analysed, and the credibility of such denial is examined, given that a *bona fide* recipient has no way of ensuring that the supplier pays tax to the government. In this case also, the grounds on which such denial is erroneous are listed and the various contradicting judgements are highlighted. The paper concludes with calling attention to the need for clarity and uniformity in the stand taken by the department as well as the judiciary, and also the need to not deny credit to *bona fide* taxpayers on frivolous grounds denying their vested right of ITC.

**Key Words:**Denial of Input Tax Credit,Form GSTR-3B, Form GSTR-2A, Reverse Charge Mechanism.

## REVIEW OF LITERATURE

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**Shubham Sharma (2023)**[2] in the article titled "Denying Input Tax Credit to Bona Fide Recipients Where GST is Not Paid by the Supplier" states that GST proposes to eliminate the cascading effect of taxes. ITC is one of the main tools that helps achieve this objective. However, in accordance with Section 16(2)(c) of the CGST Act, only after the government has received payment for the tax on supply, will a claimant be eligible for the ITC. Because it is hard for a claimant to ascertain whether or not the supplier has deposited the tax with the government, placing such a responsibility on the claimant is unfair and unrealistic. The author states that such a provision clearly discriminates against a bona fide claimant. The article concludes thatin order to remove the difficulties recipients suffer while claiming ITC, the government must carefully study the aforementioned clause and revise the GST legislation..

**Shilpi Jain& Vikram Katariya (2023)**[3]in the article titled "Input tax credit - Burden of proof" have discussed the conditions for eligibility of ITC under Section 16 of the CGST Act. The article cites various decisions of different High Courts in India to state that Anyone who makes a fraud allegations must always provide evidence to support their claims. Nonetheless, the burden of demonstrating the validity of the transaction would transfer to the assessee if the department is successful in prima facie establishing its claim of fraud. The article concludes that the assessee may only be required to defend their claim of credit with additional records and evidence after the department has satisfied the requirements outlined in Section 16 of the CGST Act and has had a chance to prove fake or bogus ITC.

**Amol Dethe (2022)**[4] in the article titled "How issues with Input Tax Credit of GST are hurting India Inc?" has analysed one of the major issues under GST, that is, the process of matching and reconciliationof ITC claimed in Form GSTR-3B with data reflecting in the auto-generated Form GSTR-2A. A single mismatch also leads to the working capital of a business being stuck due to denial of ITC in such cases. Further, the reasons for mismatch could be clerical and procedural errors, therefore causing undue hardship to businesses. With

[2]Shubham Sharma, *"Denying Input Tax Credit to Bona Fide Recipients Where GST is Not Paid by the Supplier"*, INDIA CORP LAW (December 31, 2023, 09:40 AM), https://indiacorplaw.in/2023/04/denying-input-tax-credit-to-bona-fide-recipients-where-gst-is-not-paid-by-the-supplier.html.

[3]Shilpi Jain & Vikram Katariya, *"Input tax credit - Burden of proof"*,TAX INDIA ONLINE (December 30, 2023, 01:20 PM), https://taxindiaonline.com/RC2/inside2.php3?filename=bnews_detail.php3&newsid=45333.

[4]Amol Dethe, *"How issues with Input Tax Credit of GST are hurting India Inc?"*, CFO ECONOMIC TIMES (December 29, 2023, 10:10 AM), https://cfo.economictimes.indiatimes.com/news/how-issues-with-input-tax-credit-of-gst-are-hurting-india-inc/90531515.

the omission of Section 42, 43 and 43A of the CGST Act, the Government resolved to allow ITC based on mismatch up to a certain extent as provided for under Rule 36(4) of the CGST Rules as amended from time to time. However, the obligation on the buyer to ensure compliance by the supplier goes against several decision of the High Courts and the Supreme Court wherein it has been held that credit cannot be denied to the recipient before exhausting all remedies of recovery against the supplier. Section 16(2)(c) of the CGST Act also denies ITC to the buyer on default of supplier. Thus, there is a requirement of an amendment in order to ease the hardship of bona fide taxpayers.

**Ajith Sivadas (2020)**[5] in the article titled "Denial of ITC due to Mismatch Between GSTR 3B and 2A-An Analysis" has discussed the legal remedies for the assesses' actual suffering in relation to their demand for this discrepancy between Form GSTR-2A and Form GSTR-3Balongwith interest and penalty. Such a mismatch can occur due to various reasons including errors on behalf of the supplier. Unless it is fraudulent or the result of collaboration or connivance with the selling dealer, the purchaser dealer cannot be held liable for the selling dealer's failure to pay taxes to the government. Therefore, to the degree that the transaction is legitimate, it shouldn't be the buying dealer's obligation to make sure the selling dealer deposits the tax. The idea to refuse ITC on the grounds of a procedural error is against Article 300A of the Indian Constitution. The disparity has also gotten bigger due to the supplier's mistake while filing Form GSTR-1 and inputting the incorrect taxes. The article concludes by stating that ITC must not be denied to a bona fide purchaser for the fault of supplier or due to technical difficulties faced while following the due procedure.

**Tarun Jain (2017)**[6] in the article titled "Output Supplier Acting in 'Good Faith' Not to Be Penalized Even Where Input Supplier Violates Law: European Court of Justice" analyses the decision of European Court of Justice in the case of Litdana UAB (C-624/15dated 18.05.2017) which dealt with a crucial issue as to the position of the right of output supplier in the context of his compliance vis-à-vis the non-compliance on the part of input supplier. In this ruling, the European Court of Justice (ECJ) decided that an output supplier cannot be penalised even if the input supplier did not fully comply with the relevant legislation unless it

[5] Ajith Sivadas, *"Denial of ITC due to Mismatch Between GSTR 3B and 2A-An Analysis"*, 76 INSTITUTE OF COST ACCOUNTANTS OF INDIA TAX BULLETIN, 8-10 (2020).

[6] Tarun Jain, *"Output Supplier Acting in 'Good Faith' Not to Be Penalized Even Where Input Supplier Violates Law: European Court of Justice"*, 351 ECONOMIC LAW TIMES, A116-A120 (2017).

can be demonstrated that the output supplier did not act in "good faith". It has been decided that an output supplier's right to an input tax deduction cannot be withheld, even in cases where the supplier has broken the law, unless the supplier is directly responsible for the non-compliance. This is because denying the supplier this right would be a punishment for him. The article concludes that the Indian judgements fall short in declaring that a person that has acted in good faith will continue to have the right to avail input tax benefits under the GST law.

## CHAPTER 1: INTRODUCTION

Various issues have creeped up since the inception of the CGST Act, one of the major issues being denial of ITC to registered persons. The GST authorities as well as the courts have taken contradicting stands on this issue. Therefore, there is a clear need for clarity and uniformity for the benefit of taxpayers.

The enabling provision under CGST Act, that is, Section 16 of the CGST Act provides for the eligibility of a registered person to avail ITC. Section 16(1) provides as follows:

> *"(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person."*

However, Section 16(2) and Section 16(4) of the CGST Act place certain restrictions on the same, one of them being the tax charged in respect a supply should have been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply. Therefore, even if a buyer has paid tax to the supplier, but the supplier fails to pay the same to the Government, the *bona fide* buyer would not be allowed to avail ITC of the same.

The denial of ITC based on the mismatch between Form GSTR-2A and Form GSTR-3B is very common, wherein a *bona fide* recipient has no way of ensuring that the supplier pays tax to the government.

The present paper intends to examine the validity of this ground for denial of ITC under the CGST Act and examine the judicial decisions relating to denial of ITC.

# CHAPTER 2: OVERVIEW OF ITC UNDER THE CGST ACT

The GST is paid on inward supplies made by a registered person on purchase ofgoods or procurement of services. These goods or services, as the case may be, are usedin the course or furtherance of businessfor the production of outwardsupplies. GST is collected from the recipient of such outward taxable supplies. Subject to specific criteria, the entire amount of GST received on outward supplies is not deposited with the government. Instead, it will be reduced by way of an adjustment of the tax already paid on inwardsupplies. Therefore, ITC is a system that allows tax paid on inward supplies to be offset against tax paid on outward supplies.

The term 'input tax' is defined under Section 2(62) of the CGST Act[7]. It is meant to include any tax [i.e., CGST/ SGST/ IGST/ UTGST] which is charged on supply of goods or services or both. Further, 'input tax credit', as defined under Section 2(63) of the CGST Act[8]is defined as the credit of input tax.

### *2.1. Rationale for Introduction of ITC*

It is clear that the intent of introduction of ITC was to eliminate the cascading effect of tax, i.e., tax on tax. It provides for credit of GST paid on goods or services which are used as inputs in production of output goods or provision of output services. Even though this feature was available pre-GST (as mentioned above), this intent was not being practically achieved for the reason that various taxes and cess were levied at the central and state levels, all of which were not adjusted against each other. With the introduction of GST, all taxes were merged into one, which made it possible for ITC on goods and services to be available across the entire supply chain.

### *2.2.Relevant Legal Provisions relating to ITC*

For ease of reference and avoiding repetition, the paper discusses the provision of ITC under the CGST Actonly.

[7]Central Goods and Services Tax Act 2017 § 2(62).
[8]Central Goods and Services Tax Act 2017 § 2(63).

*Section 16 of the CGST Act*[9]

For this purpose, Section 16 of the CGST Actdeals with eligibility and conditions for taking input tax credit. Sub-section (1) of the said section provides that a registered person would be entitled to take ITC if the input goods or services on which tax is paid are utilised in the course and furtherance of business. Further, such ITC is credited to the electronic credit ledger of the registered person.

Sub-section (2) of Section 16 of the CGST Actprovides for restrictions to ITC. It states that "a registered person is eligible to ITC only when the conditions stipulated therein are fulfilled". These conditions include:

- The registered person is in possession of tax invoice or debit note [clause (a)].
- The details of such invoice are furnished by the supplier in its Form GSTR-1 and have been communicated to such registered person [clause (aa)].
- The registered person has received the goods or services. [clause (b)].
- The tax charged by the supplier has actually been paid to the government [clause (c)].
- The registered person has furnished the relevant return [clause (d)].

Sub-section (3)of Section 16 of the CGST Act provides for a specific restriction on availability of ITC in circumstances where "the registered person has claimed depreciation on capital goods and plant and machinery".

Lastly, sub-section (4)of Section 16 of the CGSST Actprovides for restriction by way of a time limit for claiming ITC, that is, "earlier of (i) on or before 30th November following the end of financial year to which an invoice or debit note pertains; or (ii) furnishing of the relevant annual return".

It is pertinent to note that all of the above conditions are conjunctive, that is, all of them must be fulfilled together.

## CHAPTER 3: THE DENIED CREDIT DIARIES: EXPLORING THE GSTR-3B GROUND FOR DENIAL OF ITC UNDER GST

[9]Central Goods and Services Tax Act 2017 § 16.

From a plain reading of the Sections mentioned above, it is clear that Section 16(2), (3) and (4) along with Section 17 of the CGST Act[10]provide for sufficient grounds for restricting ITC. In the present paper, out of uncountable grounds the department takes to deny ITC to a registered person, only one prominent ground for the same has been discussed, that is, denial of ITC on inputs procured from Form GSTR-3B non-filers. Further, the paper also discusses the potential arguments based on which it can be said that the said denial is unfair and unreasonable.

***Denial of ITC on inputs procured from Form GSTR-3B non-filers***

There may be instances where a recipient of goods or services, who is duly discharging GST wherever applicable and duly filing GST returns, is denied ITC on the grounds that the supplier of such goods or services has not filed Form GSTR-3B. The department denies ITC even when such a recipient has paid GST to the supplier, and such fact is clear from the invoice which includes CGST/ IGST/ SGST/ UTGST. Further, in such a case, ITC is denied even when the supplier has filed Form GSTR-1 and thus, such invoices are duly reflecting in the recipient's Form GSTR-2A.

Thus, the department denies ITConinputs, input services and capital goods which have been procured from Form GSTR-3Bnon-filers on the ground that ITCis inadmissible under Section 16(2)(c) of the CGST Act[11], that is, that the tax has not actually been deposited to the government.

However, it may be argued that such denial is unfair and unreasonable for a*bona fide* recipient, who has duly discharged GST and also filed appropriate returns.

## CHAPTER 4: FULFILMENT OF SUBSTANTIAL CONDITIONS UNDER SECTION 16 OF THE CGST ACT

From the above discussions, it is clear that Section 16 of the CGST Actprovides for the substantial conditions required to be fulfilled in order to avail ITC. All of the conditions are required to be fulfilled individually, and it is not sufficient if only one or more but not all conditions have been fulfilled.

[10]Central Goods and Services Tax Act 2017 § 17.
[11]Central Goods and Services Tax Act 2017 § 16(2)(c).

In a situation like the present (as explained above), the recipient fulfils the conditions under Section 16(2) of the CGST Act, as stipulated in the above chapters.

Further, as far as the condition stipulated under Section 16(2)(c) is concerned (that the tax must have actually been paid to the government), it must be understood that the recipient has already paid tax, and the same also reflects in its Form GSTR-2A. Thus, given that this is the sole mechanism under the CGST Actavailable with a *bona fide* recipient to ensure that the supplier has also duly filed its return, and that there is no other mechanism whatsoever provided under the law through which such a *bona fide* recipient can ascertain whetherthe supplier has actually paid the tax to the government or not, such a condition must be deemed to be fulfilled in the peculiar facts of a case like the present.

Thus, ITC should not be deniedtoa recipient who has fulfilled all the substantial conditions for availing ITC. The subsequent non-filing of GSTR-3B by the supplier or thecancellation of his registration certificate should not have any bearing on right of such recipient to avail ITC.

**Judicial Interpretation in this regard**

There are several cases that support the above interpretation, that is, that Section 16 does not deny ITC to a *bona fide* recipient who duly paid tax, filed relevant returnsand has no way of ensuring whether or not the supplier has paid tax to the government.

In the decision of the Hon'ble High Court of Punjab & Haryana in the case of "***Gheru Lal Bal Chand v. The State of Haryana***"[12], it was held that in the absence of a *mala fide* intention of the recipient, the law cannot hold it responsible for non-deposit of tax by the supplier of goods or services. The relevant portion of the judgement is as under:

> *"In legal jurisprudence, the liability can be fastened on a person who eitheracts fraudulently or has been a party to the collusion or connivance with theoffender. However, law nowhere envisages imposing any penalty eitherdirectly or vicariously where a person is not connected with any such event oran act.* ***Law cannot envisage an almost impossible eventuality. The onus upon the assessee gets discharged on production of Form VAT C-4 which is required to be genuine and not thereafter to substantiate its truthfulness by running from pillar to post to collect the material for its authenticity. In the absence of any mala fide intention, connivance or wrongful***

[12]2011 (9) TMI 492.

> ***association of the assessee with the selling dealer or any dealer earlier thereto, no liability can be imposed on the principle of vicarious liability. Law cannot put such onerous responsibility on the assessee otherwise, it would be difficult to hold the law to be valid on the touchstone of Articles 14 and 19 of the Constitution of India****. The ruleof interpretation requires that such meaning should be assigned to theprovision which would make the provision of the Act effective and advance thepurpose of the Act. This should be done wherever possible without doing anyviolence to the language of the provision. A statute has to be read in such amanner so as to do justice to the parties.* ***If it is held that the person who does not deposit or is required to deposit the tax would be put in an advantageous position and whereas the person who has paid the tax would be worse, the interpretation would give result to an absurdity****.Such a construction has to be avoided."*
>
> ***…Emphasis Supplied***

Apart from the cases cited above, there are numerous judgements by various High Courts that have held that provisions which do not distinguish between *bona fide* and *non-bona fide* dealers should be read down, and credit must be allowed to *bona fide* dealers. These include the case of ***Tarapore & Company v. The State of Jharkhand***[13], ***Shree Yarns v. Assistant Commissioner***[14], ***Lawrance Livingston v. Commercial Tax Officer***[15], and***Sethi Flour Mills Pvt. Ltd. v. Commissioner Commercial Taxes***[16].

Further, the decision of the Hon'ble High Court of Calcutta in the case of ***Sanchita Kundu &Anr. v. Assistant Commissioner of State Tax***[17]held that benefit of ITC cannot be denied whentransactions are genuine, supported by valid documents and made beforecancellation of registration of the supplier.

Thus, the sole ground for denial of ITC, being non-filing of GSTR-3B by the supplier, should not lead to denial of ITC to a *bona fide* recipient. Given that it is a settled principle and has been upheld by numerous courts in India, such dispute raised by the department only leads to unnecessary harassment of taxpayers and increase in litigation.

[13]2020 (74) GSTR 340.
[14]2017 SCC OnLine Mad 5730.
[15]2019 SCC OnLine Mad 10993.
[16]2019 SCC OnLine All 2761.
[17] 2022 (5) TMI 786.

## CHAPTER 5: LEX NON COGIT AD IMPOSSIBILIA/ DOCTRINE OF IMPOSSIBILITY

It is unreasonable and unjust to deny ITC to a recipient who has no control over the supplier's actions. It is unreasonable to compel the *bona fide*recipient toensure that the supplier files Form GSTR-3B and in fact deposits the tax collectedfrom such recipient to the government.

The ***Doctrine of Impossibility*** is a well settled principle along with the legal maxim of "***lex non cogitadimpossibilia***", both of which imply that a man cannot be forced by the authorities to carry out an act that is futile, impractical, or outside his ability to perform. Consequently, it is reasonable to assume that the recipient, as described in the above scenario, cannot be expected to monitor whether the supplier has deposited the tax that has been collected.

Section 16(2)(c) of the CGSST Act's requirement for claiming ITC was enacted with the fundamental intention of ensuring that the purchaser's ITC is inextricably linked to the supplier's payment of taxes through the previously planned GSTR-1, GSTR-2, and GSTR-3 return filing system.However, due to the suspension of GSTR-2 andGSTR-3 and the introduction of GSTR-3B, the purchasers now have no way ofknowing whether their suppliers have discharged the correct output tax liability ornot. Thus, the task envisaged under the said section is impossible to perform on part of the recipient

### Judicial Interpretation in this regard

The principle explained above is extremely well-settled, and therefore, there are a plethora of judgements in support of the same. Some of these judgements are highlighted in the following paragraphs.

In the case of "***Indian Seamless Steel and Alloys Ltd. v. Union of India***"[18], the Hon'ble High Court of Bombay stated that "it is a well settled principle of law that the law does not compela man to do that which he cannot possibly do and the said principle is wellexpressed in the legal maxim lex non cogitadimpossibilia." Thus, the above case provided validity to the said maxim and the said doctrine. This supports the fact that the recipient cannot be expected to do the impossible.

[18]2003 (156) E.L.T. 945 (Bom.).

Attention is also invited to the case of "***Quest Merchandising India Ltd. v. Government of NCT of Delhi***"[19], as well as ***Arise India Limited v. Commissioner of Trade and Taxes***[20], whereinthe Hon'ble Delhi High Court, while deciding upon the issue of validity of Section9(2)(g) of the Delhi VAT Act, stated that "a bona fide purchaser cannot be expected todo the impossible task of ensuring that the supplier deposits the tax collected to thedepartment, i.e., to anticipate theselling dealer who will not deposit with the Government the tax collected by himfrom the purchasing dealer and therefore avoid transacting with such sellingdealers." The relevant portion of the former is as under:

> *"…in the present case, the purchasing dealer is being asked to do theimpossible, i.e. to anticipate the selling dealer who will not deposit with theGovernment the tax collected by him from those purchasing dealer andtherefore avoid transacting with such selling dealers. Alternatively, whatSection 9(2)(g) of the DVAT Act requires the purchasing dealer to do is thatafter transacting with the selling dealer, somehow ensure that the sellingdealer does in fact deposit the tax collected from the purchasing dealer and ifthe selling dealer fails to do so, undergo the risk of being denied the ITC.Indeed Section 9(2)(g) of the DVAT Act places an onerous burden on a bonafide purchasing dealer."*

Thus, it is clear that the law cannot envisage an impossible task to be done by any person. Thus, the ground of non-filing of Form GSTR-3B by the supplier taken by the department in its notices defies the well-settled principle as discussed above. Therefore, such a denial becomes unreasonable and unfair for the recipient who duly discharges tax and filed proper returns.

## CHAPTER 6: ACTION AGAINST THE GSTR-3B NON-FILER

Section 76 of the CGST Act[21]provides that the supplier shallforthwith pay amount representing as tax (GST) collected by it and empowers the department to issue a show cause notice in case the supplier has not paid the saidamount to the government.

Further, under the scheme of GST, it is the liability of supplier to collect and discharge tax onsupplies made by it. CGST Act provides for registration by supplier, issuance of

[19]2018 (10) G.S.T.L. 182 (Del.).
[20]2018-VIL-544-Del.
[21]Central Goods and Services Tax Act 2017 § 76.

taxinvoice, collecting and depositing tax on monthly/quarterly basis. The framework ofCGST Act casts majority of the responsibility on the supplier with respect todischarging tax. In case where the supplier has collected the GST but not depositedwith Government, the provisions of Section 76 of the CGST Act are applicable and iftax is not paid, the department can issue a notice to the supplier.

Therefore, instead of casting an unreasonable responsibility upon the recipient to ensure deposit of tax by the supplier to the government, the department should exhaust remedy availableunder Section 76 of the CGST Act against the supplier for recovery of taxif the same is not paid,before proposing to deny ITC to the recipient.

Vide the ***Press ReleaseNo. 156/2018 dated 04.05.2018 on Return Simplification Process***[22], the Central Board of Indirect Taxes and Customs ("CBIC") had also clarified that "There shall not be any automaticreversal of input tax credit from buyer on non-payment of tax by the seller.In case of default in payment of tax by the seller, recovery shall be madefrom the seller however reversal of credit from buyer shall also be an optionavailable with the revenue authorities to address exceptional situations likemissing dealer, closure of business by supplier or supplier not havingadequate assets etc. In the present case, since there is a default in payment oftax by the vendor, recovery shall be made from the vendor first."

Therefore, it is clear that until and unless there are exceptional circumstances like missing dealer, closure of business by supplier or supplier not havingadequate assets, the department cannot deny ITC to the recipient and asking for reversal of the same is not an option.

**Judicial Interpretation in this regard**

The decision of the Hon'ble High Court of Calcuttain the case of "***Suncraft Energy Pvt. Ltd. v. Assistant Commissioner of State Tax***"[23] also clarifies such a stand, wherein while construing Section 16 of the CGST Actand WBGST Act, it was held that "before directing the recipient of goods orservices to reverse ITC the department ought to have recovered tax fromthe supplier and the recipient can be directed to reverse input tax credit only inexceptional circumstances."

[22]Press Release No. 156/2018, Return Simplification (May 5, 2018).
[23]2023 (8) TMI 174.

The Hon'ble High Court of Madras under theGST regime, in "***D. Y. Beathel Enterprises v. The State Tax Officer***"[24] held that "the omission on thepart of the seller to remit the tax should have been viewed very seriously and strictaction ought to have been initiated against the seller".

Therefore, it is clear that the substantiveliability to deposit GST collected from customers with the government is on thesupplier of goods or services. The reversal of credit in the hands of a*bona fide*recipient of goods or services can only be a protective measure adopted by the government.

## CHAPTER 7: GSTR-2A AND MATCHING MECHANISM

In a case where the supplier has not even filed GSTR-1, the said invoices would not appear in the recipient's GSTR-2A. However, denial of ITC to the recipient on this ground is unfair, since there is not matching mechanism available in the GST regime.

The matching mechanism i.e., matching of ITCaccrued as per GSTR-2A with ITC availed as per GSTR-3Bis not in consonance with the provisions of the CGST Act and is also notsupported by any provision of the GST law. Thus, such requirement of matching is legally not tenable. Further, matching of ITC, if any, could havebeen done only as per the provisions of Section 42 of the CGST Act[25], which was neverenforced and has now been omitted.

Section 42 of the CGST Act dealt with "matching, reversal andreclaim of ITC". Section 42 of the CGST Act required that "the details of every inwardsupply that are furnished by a registered person (i.e., the recipient) for a tax periodshall, in such manner and within such time as may be prescribed, be matched with thecorresponding details of outward supply furnished by the corresponding registeredperson (i.e., the supplier) in his valid return for the same tax period or any precedingtax period". Once the Parliament had provided and envisaged aparticular procedure to be followed before disallowing the ITC to a recipient ofsupply, any other method to carry out short-circuitedmatching should not be adopted.

As per Section 42 of the CGST Act, GSTR-2 filed by the recipienthad to be matched with GSTR-1 filed by the supplier and in case any excess ITC wasavailed by the recipient, the

[24]2021 (3) TMI 1020.
[25]Central Goods and Services Tax Act 2017 § 42.

same had to be added to the output tax liability ofrecipient which was liable to be paid along with interest thereon at the rate specifiedunder Section 50 of the CGST Act[26].

Further, the legislature under Section 42 of the CGST Act prescribed the manner andtime under Rule 69 to Rule 71 of the CGST Rules[27] for carrying out the above referredmatching, but such envisaged exercise was based on filing of GSTR-1, GSTR-2 andGSTR-3.

In terms of the proviso to Rule 69 of CGST Rules[28], where the time limit forfurnishing Form GSTR-1 specified under Section 37 of the CGST Act[29] and Form GSTR-2 specified under Section 38 of the CGST Act[30] had been extended, the date ofmatching relating to claim of ITC also stood extended accordingly.

Furthermore, ***Notification No. 43/2018-CT dated 10.9.2018***[31] and***Notification No. 44/2018-CT dated 10.9.2018***[32] issued by the government deferred thefiling of GSTR-2 and GSTR-3.

Thus, since the government itself had deferred Form GSTR-2 return and Form GSTR-3 returns through which sale, purchase and tax paid thereon could be reconciled under GST regime, the question of operation of Section 42 of the CGST Act does not arise at all.

The details in Form GSTR-2A are provided only to help the taxpayers in reconcilingtheir self-availed ITC but it cannot be used as a restriction on availment of ITC. Thus, the matching cannot be done on the basis of figures in GSTR-2A and GSTR-3B.

Since the requirement of filing of GSTR-2 and GSTR-3returns, in which the detail of ITC in respect of each supply were to be filed, has beendispensed with, therefore, the ad-hoc attempt to match total of ITC in GSTR-2A withtotal of ITC in GSTR-3B is not practical for a taxpayer.

In this regard, attention is invited to the Writ Petition filed before theHon'ble Andhra Pradesh High Court, in the matter of ***Royal Sundaram General Insurance Company Limited v. Assistant Commissioner (ST)***[33]. The writ petition hadbeen filed for quashing of a show cause notice that had been issued after a mismatchfound between figures mentioned in GSTR-2A

[26]Central Goods and Services Tax Act 2017 § 45.
[27]Central Goods and Services Tax Rules 2017, Rules 69-71.
[28]Central Goods and Services Tax Rules 2017, Rule 69.
[29]Central Goods and Services Tax Act 2017 § 37.
[30]Central Goods and Services Tax Act 2017 § 38.
[31]Notification No. 43/2018-CT dated 10.9.2018.
[32]Notification No. 44/2018-CT dated 10.9.2018.
[33]Writ Petition No. 11997/2019.

and GSTR-3B. The primary groundtaken was that the matching of figures was to be undertaken with respect to GSTR-2and GSTR-3, in terms of Section 42 of CGST Act, which had been indefinitelydeferred and thus, the show cause notice issued was premature and illegal. Afterhearing the submissions, the Hon'ble Andhra Pradesh High Court, vide its Orderdated 26.08.2019, passed an interim order staying the proceedings initiated vide thesaid show cause notice.

Thus, from the above, it isamply clear that there are no legal provisions for denying ITC on the ground ofmismatch between GSTR-2A and GSTR-3B. Thus, initiation of proceedings on this ground must be refrained from.

## CHAPTER 8: NEED FOR CLARITY AND CONCLUSION

It is clear from the discussion above that a number of issues relating to ITC creep up from time to time. The courts take different stands for different cases, and it becomes important to analyse and interpret the laws on a case-to-case basis. However, it is also clear that the department keeps raising issues even on well settled laws, creating unnecessary hardship for taxpayers and unnecessary burden on courts as well.

Thus, in the labyrinth of tax regulations, clarity stands as a beacon guiding both taxpayers and administrators alike. This need for lucidity becomes especially pronounced in the realm ofGST, where complexities often cloud understanding.

The introduction of GST in India had marked a significant shift in the country's tax landscape, unifying multiple indirect taxes under one umbrella. However, with this consolidation came a plethora of rules and provisions governing ITC, crucial for businesses to alleviate cascading effects and ensure fair taxation. The denial of ITC acts as a safeguard against misuse and fraud, however, its implementation necessitates a nuanced understanding to prevent unintended consequences.

This paper has dealt with only one ground on which ITC may be denied to a taxpayer, however, there are numerous issues that arise apart from the said specified grounds. A lot of ambiguity surrounds the issue of ITC. This is an expected outcome given that not a lot of time has passed since the introduction of GST, however, the judiciary (especially the Hon'ble Supreme Court) as well as the legislature need to step in to reduce unnecessary initiation of proceedings in well-settled and *bona fide* issues.

Lack of clarity in the interpretation and application of denial provisions can disrupt thebusiness operations and pose challenges for businesses, which would further hinder the growth of the economy.

Furthermore, the denial of ITC under GST raises questions regarding the principles of equity and fairness. While the intention behind denying certain credits may be to curb tax evasion, inadvertent restrictions can lead to hardships for genuine taxpayers. It is imperative to strike a balance between preventing misuse of credits and facilitating legitimate business activities through clear and judicious application of denial provisions.

Addressing the need for clarity in analysing the denial of ITC under GST requires a multifaceted approach. Firstly, there is a need for clear and unambiguous legislation, supplemented by interpretative guidelines and judicial precedents to elucidate the intent and scope of denial provisions.Furthermore, leveraging technology can enhance transparency and efficiency in ITC claim and verification processes, reducing the scope for disputes and errors.