

DRC-01 Notice in GST-A Comprehensive Analysis in India

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ABSTRACT

This research paper delves into the intricate –issue of input tax credit(ITC) mismatch against Demand and recovery Certificate-01(DRC-01) notice under the goods and services tax(GST) regime. The study aims to provide a comprehensive understanding of the problem, its causes, and potential solutions, while also shedding light of the legal implications and practical challenges faced by businesses. Through an in-depth analysis of relevant case studies, statutory provisions and expert opinions, this paper aims to guide taxpayers and tax practitioners in navigating this complex issue. The rationale behind the implementation of GST is to bring more transparency to the system and avoid cascading effect of taxes.

KEYWORDS: GST, DRC-01, GSTR-1, GSTR-3B, GSTR-2A, MISMATCH, ITC, NOTICES, DEMAND, REPLY

INTRODUCTION

DRC-01 Notice issue by the Proper officer in the provision of section 63 of GST Act in form show cause notice (SCN) to the Taxpayer for following reasons_

- a) When the taxpayer has not paid tax or paid short Tax.
- b) When the Taxpayer received wrong Refund.
- c) When the ITC of Taxpayer is Mismatch.
- d) When the Taxpayer claim excess ITC .
- e) When the Taxpayer used non-exist firm or GSTIN cancelled wef 01-07-2017.

The proper officer clearly maintained in DRC-01 notice summary of ITC Mismatch or any short payment or any dealer GSTIN cancelled .The proper has create demand in DRC-01 notice. The DRC-01 notice is lying under GST Act 2017. GST known as the Goods and Services Tax. The GST is an indirect Tax which has replaced the Excise Duty, Vat, Service Tax etc. in India. This Act (GST) was passed in the Parliament on 29th March 2017 and came into effect on 1st July 2017 whole of India.

In September 2023 many notices issue to many taxpayer for excess ITC claim by taxpayer under GST ACT 2017 in form of DRC-01 notice. This is very big problem to a taxpayer for how to reply that notice.

History of GST

1. Firstly Dr. Vijay L.Kelkar's Task Force in 2004 introduced the idea of National Goods and Services Tax. The Task Force strongly recommended fully integrated "GST" on national basis.

2. After 4 years of Kelker task Force Mr. P. Chidambaram, the Union Finance Minister, firstly introduced about GST in the Central Budget (2007-2008) announced that GST would be introduced from April 1, 2010. Since then GST start date several deadlines given by Finance Minister of India.
3. At last on 1st July 2017 implement the GST in India.
4. Internationally, GST was first introduced in France in 1954 and now more than 160 countries have introduced GST.

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LITERATURE REVIEW

1. **CMA AJITH SIVADAS(2020)** the authors in the paper have explored the concept of ITC mismatch. He tried to highlight the concept of ITC mismatch in that paper. (Tax Bulletin November, 2020 volume-76)
2. **KHURANA, A. and SHARMA, A(2016)**, in Their paper 'Goods and services tax and Current Taxation System- A positive reform for Indirect Tax highlighted the objectives of GST and reforms in indirect taxation system in India.
3. **CALCUTTA HC GSTR 2A and 3B MISMATCH CASE(19-10-2023) :-** In that case the High Court of Calcutta has ruled that buyers who adhere to the conditions specified in Section 16(2) of the Central Goods and Services Tax (CGST) Act and State Goods and Services Tax (SGST) Act of 2017 are entitled to claim Input Tax Credit (ITC) and are not responsible for discrepancies in the Goods and Services Tax Return (GSTR 2A and GSTR 3B due to the seller default. (B/W SUNCRAFT ENERGY PVT LTD AND ASSISTANT COMMISSIONER).
4. **KERLA HC ITC MISMATCH CASE(12-09-2023) :-** In that case the High Court of Kerala held that if the taxpayer is able to prove that Tax amount is paid to the seller and the input tax credit claim is bonafide so the input Tax Credit cannot be denied merely on non-reflection in GSTR-2A. (Diya Agencies v. The State Tax Officer (WPC) no.29769)

OBJECT:

The main object of that research / article to educate the businessman and Tax Return prepare person to how to manage ITC mismatch and also how to generate DRC-01 notice and how to reply that notice.

METHODOLOGY

This is a doctrine research paper, whose based on studies the concept and framework of GST past literature, books, journal, magazines, research papers and articles etc. The study is based on secondary sources of data or information to collect the data of mismatch ITC from about 100 Notices of DRC-01 reading and main ideas collect from GST office and officers for discussing about that topic and also discuss my friends.

RESEARCH FINDING:

ITC (Input Tax Credit) is claim when it reflected in GSTR -2A/2B of the Recipient/Buyer. In this research I am going to discuss when a taxpayer can avail the Input Tax credit when it not credit in GSTR 2A/2B.

Firstly we know about whose condition and who can avail ITC:

Who is eligible to avail ITC:- According to the provisions of section 16 of the Central Goods and Services Tax Act, 2017 following are eligible to avail ITC:-

1. Only registered person eligible to take ITC under Section 16(1)
2. Condition to be satisfied for taking ITC under Section 16(2).
3. ITC not admissible if depreciation claimed on tax component under Section 16(3)
4. Time limit for availing ITC under Section 16(4)

What is ITC mismatch:- ITC mismatch means the difference between the amount shown in GSTR-2A and GSTR-3B in form of Input tax Credit.

What condition for ITC mismatch:-

1. When the Taxpayer has not filed the GSTR-1 .
2. When the Tax payer filed the GSTR-1 and GSTR 3B but has failed to a particular supply in GSTR-1, due to the said supply does not show in GSTR2A.
3. When the Taxpayer generate a invoice as per rule 46 of CGST to a Registered person but at the time of submitted the GSTR-1 shows in B2C in place of B2B .
4. When the Taxpayer has declared the wrong GSTIN of the recipient in GSTR-1.

DRC-01 NOTICE:- When all above conditions raised than the proper officer issued a show cause notice in DRC-01 format to recover GST .In September 2023 month many DRC-01 notices issued by Proper officer under GST Rule 36(4) .

The above research based on DRC-01 notice for the year 2017-18 or 2018-19.

Procedure for claim mismatch ITC:

1. The Taxpayer should prepare the detail of all the invoices on which ITC has been claim when filed the proper return but not reflected in GSTR2A.
2. The Taxpayer show the conditions of Section 16 of GST Act (except condition Section 16(2) C), in respect of ITC claim on such invoices by the said registered person fulfilled:-
 - (a) That the invoice generate by supplier is possession .
 - (b) The he is received the Goods and Services.
 - (c) That he has made payment of above invoices.

After show and prepare above 2 points than the Taxpayer reply the DRC-01 notice in the following terms:-

If Excess ITC claimed:

According to circular no.183/15/2022 on dt.27-12-2022 for relaxation to taxpayer for the year 2017-18 or 2018-19 that the proper officer did not disallow the ITC if the purchase issued by supplier is in his possession and the Taxpayer make payment that invoice. Therefore you are requested to please consider the following transactions and allow the ITC to the Taxpayer as all the conditions of sections of Section 16 of the CGST/DGST act 2017 were duly complied.

The same view was also held by the **Hon'ble Supreme court** in the matter of **Ecom Gill Coffee Trading Pvt. Ltd.**

That in the matter of **Divya Agencies v. State Tax Officer** arising out of W.P.(C).29769 of 2023, the Hon'ble Kerla High Court held that ITC cannot be denied to the recipient solely on the ground that transaction are not reflected in GSTR-2A.

If Claimed for Non existent

That the Tax payer purchase the goods who has exist at the time of supply goods and actual movement of goods was taken place. Tax payer is in possession of valid invoice ,proof of payment of goods to the supplier. All the return of the supplier were also filed as per your GST Portal and are in record of the GST Portal. Therefore under Section 16 of the CGST/DGST Act ,2017 the Taxpayer complied all conditions.

The Calcutta High Court Held in matter of Gargo Traders V. Joint Commissioner of Commercial Taxes arising out of W.P.C.1009 of 2022 that a recipient of goods/ services cannot be denied ITC if supplier becomes non-existent or their registration was cancelled retrospectively and also other case

The Calcutta High Court held in the matter of LGW Industries Ltd V. Union of India. W.P.C. 23512 of 2019.

Therefore the above all facts and circumstances of the case, the Proper officer fully satisfied and co-operate with you.

RESEARCH VIEW ON DRC-01 NOTICE:

DRC-01 notices issued by proper officer are right when the notice issued

According to Law but in September 2023 month DRC-01 notices for the year 2017-18 about 60 % are wrong and against the Law due to ITC mismatch when

1. any seller GST Registration cancelled by Department w.e.f. 01-07-2017.
2. Item of goods purchase by party disallows.
3. The Proper officer has not proper check of Party ITC in 2A.
4. ITC reflected in 2A but not show in Compare ITC.
5. The Proper officer do not see the Circular no.183/15/2022 on dt.27-12-2022.

So reply the DRC-01 notice according to circular no.183/15/2022

The Circular says that:

1. If any selling dealer Failed to file Form GSTR-1 for a Tax Period but has filed return in GSTR-3B , ITC of Buying dealer shall not disallow.
2. If any Selling dealer filed the GSTR-1 and also filed the GSTR-3B but the Selling dealer has wrongly reported with wrong GSTIN , ITC of buying dealer shall not disallow.
3. If any selling dealer were made to a registered person and invoice is issued as per Rule 46 of CGST Rules containing GSTIN of the recipient , but supply has wrongly recorded in B2C Supply, ITC of buying dealer shall not disallow.

The dealer whose GSTIN has cancelled by department wef 01-07-2017 , ITC of these dealer did not disallow due to the dealer already paid the GST for that period.

When any dealer has a manufacturing dealer , who purchased many items for manufacturing and in GST registration description only 5 items are allowed than the dealer how apply more item in Registration.

CONCLUSION:

After a through analysis of the above literature it can be concluded that the Tax Deposit is necessary in GST. The supplier of goods is duty to filed proper return , upload proper bills in GSTR1 and filed timely GST in proper return GSTR-3B.

References:

1. CMA Ajith Sivadas(2020), Denial of ITC due to Mismatch between GSTR-3B and GSTR-2A-Tax Bullentin November 2020 volume-76-The Institute of Cost Accountants of India.
2. Taxman(2023)- Analyzing the Mismatch in ITC Claims Between GSTR-3B and GSTR-2A.
3. The Economic Times(2021), Notice on mismatch between GSTR 2A and GSTR=3B.
4. Khurana, A.& Sharma,A, Goods And Service Tax in India-a positive return for Indirect Tax system, internal Journal of Advance research.
5. Hand Book for certification for Difference between GSTR-2A and GSTR-3B- The Institute of Cost accountants of India.
6. Bharat's GST ITC Draft Replies & Internal Controls By Vishal Poddar, Nitin Sharma And Pooja Garg Edition 2023.
7. Taxmann's GST Input Tax Credit – A complete guide to GST Input Tax Credit 2023