

GST NEWSLETTER

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INDEX



1. Article [pg 2-6]
a. Internal Circular 2A from Maharashtra Government



2. Case Laws [pg 7-9]
a. Validity of blocking ITC in Electronic Credit Ledger without proper reason in writing
b. GST implications on renting residential property for hostel facilities



3. Notifications and Circulars [pg 10]



4. Due Dates [pg 10]

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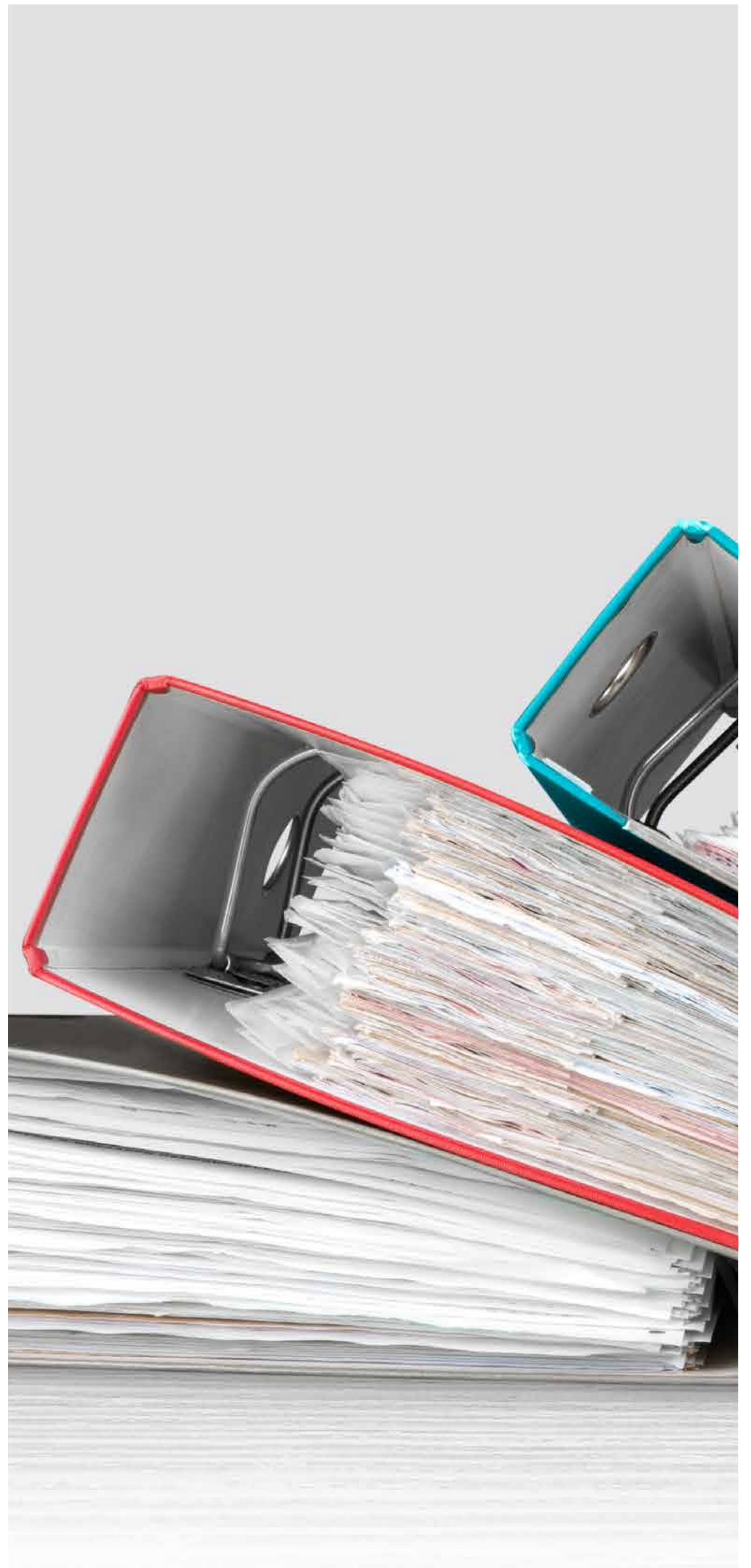
ARTICLE

Welcome Internal Circular 2A from Maharashtra Government

GST was introduced on 1st July 2017 thereby subsuming a host of indirect taxes. One of the reasons for the introduction of GST was to create a uniform system of indirect taxation across the country and to ensure that there is a seamless flow of credit in the entire supply chain to avoid the cascading effect. Thus, seamless flow of credit is the backbone of GST and any restriction placed on availment or utilization of input tax credit should have a strong rationale for the same.

Think of a scenario under GST, where a supplier has supplied taxable goods to a recipient and charged tax on the invoice. The supplier has shown the same in the Form GSTR-1 but either under the B2CS category or with a different GSTIN due to inadvertent errors in his GSTR-1 returns. Further such errors were not rectified by the supplier in his Form GSTR-1, whereby invoices are not reflected in GSTR-2A of the recipient. Now the recipient is getting notices in Form ASMT-10 or as an audit query informing him of such discrepancy and asking the recipient to reverse such mis-matched input tax credit claimed by him along with interest. Further notices in Form ASMT-10 are issued for mismatch in return data between GSTR-1, GSTR 3B, and GSTR 9.

The invoice matching system for FY 2017-18 and 2018-19 was never implemented as envisaged at the time of introduction of GST. The purchasers did not upload the bill-wise details for the said period due to the postponement of the GSTR 2 return. It has been observed that the suppliers have done mistakes in uploading the invoice details in GSTR 1 return resulting in mismatches



between GSTR 2A (auto-drafted form) and actual ITC availed by purchasers in GSTR 3B.

Now in order to reduce litigation and bring uniformity in the implementation of GST laws, the Maharashtra government has issued an internal circular to give guidelines for legal issues pertaining to return scrutiny for tax periods 2017-18 and 18-19. In this circular, the action to be taken by departmental officers has been explained for bonafide errors committed by taxpayers in their compliances.

In this article, we list down the issues being faced by taxpayers and the resolution provided by the Maharashtra government. It is to be noted that the benefit of this internal circular is applicable only for taxpayers registered in Maharashtra having State jurisdictions.

Sr	Issues	Resolution
1.	In GSTR-1, the taxpayer under scrutiny has mistakenly reported B2B outward supply transactions in Table 7 as B2C transactions. Upon request from their recipients, said taxpayer has re-reported such B2C transactions as B2B transactions in later period GSTR-1. However, while re-reporting, they have not reduced B2C supply. This mistake led to excess liability in GSTR-1 as compared to GSTR-3B. How to deal with this issue?	<p>The proper officers may-</p> <ul style="list-style-type: none">• Obtain the transaction-wise details of outward supplies from the taxpayer for the period under scrutiny and reconcile it with category-wise outward supplies reported in GSTR-1 of the corresponding period.• Identify the transactions reported in B2B and B2C categories.• Figure out the transactions which have been shifted to B2B from its original B2C. Take on record the details of GSTR-1 in which such shifting had been done.

2. Some of the taxpayers while furnishing details of outward supplies had committed typographical errors in reporting details of outward supplies in Table 4, 5, 6, 7 or 11 of GSTR-1. The figures reported are more than actual supply figures. These errors led to excess liability in GSTR-1 as compared to GSTR-3B. How to deal with this issue?

The proper officers may-

- Obtain the transaction-wise details of outward supplies from the taxpayer for the period under scrutiny and reconcile it with category-wise outward supplies reported in GSTR-1 of the corresponding period.
- Identify the category of difference eg. B2B, B2C, Exports, or adjustment to advances.
- In the case of B2B transactions, take the undertaking of the recipient that he had not availed excess ITC on account of said errors committed by the supplier.
- In the case of export, verify it with the turnover of export considered while granting the refund.

3. The difference in ITC claim of GSTR-3B and ITC available in GSTR-2A of the taxpayer under scrutiny on account of:

(a) Supplier has reported B2B supplies as B2C supplies in GSTR-1 and they could not amend it till the expiry of the time limit. So, these transactions have not appeared in GSTR-2A of the actual recipients to whom notices served.

(b) Few suppliers have reported B2B supplies against the GSTIN of some other taxpayer instead of the actual recipient.

The proper officers may-

- In cases where the difference in ITC claim (CGST+SGST or IGST) per supplier is 2.5 lakh or more, ask the claimant to obtain certification from the Chartered accountant of the said supplier certifying the output transactions and tax paid thereon to comply with the provisions of section 16.
- In cases where the difference in ITC claim (CGST+SGST or IGST) per supplier is below 2.5 lakh,



(c) The supplier had missed reporting of B2B transactions in his GSTR-1.

(d) The supplier had reported B2B transactions taxable under forwarding charge in Table 4B of his GSTR-1 instead of Table 4A.

However, in the above scenarios ITC conditions u/s 16 are met. How to deal with this issue?

ask the claimant to obtain ledger confirmation of the concerned supplier along with their certification.

- Difference in ITC claim may be allowed based on the above.

4.

The proviso to section 16(4) inserted vide RoD dated 31/12/2018 for FY 2017-18. In most cases, recipients refer to strict interpretation and contending that this pre-requisite applies to recipients who have claimed ITC (by the filing of GSTR-3B) after the specified date (after due date of September, 2018 return till due date of March, 2019 return). How to deal with this issue?

The pre-condition that the GSTR-1 should have been filed by the supplier till the due date of filing of GSTR-1 of March 2019 is only applicable to taxpayers who have claimed ITC during the extended period i.e., after the due date of September 2018 return till the due date of March 2019 return

5.

B2B transactions in GSTR-1, mistakenly reported as transactions liable to tax under RCM i.e., they were reported by the supplier in Table 4B instead of Table 4A. This data entry error is the sole cause of mis-match of liability of the recipient taxpayer under scrutiny. How to deal with this issue?

- Both types of transactions (forward charge and reverse charge) reported by the supplier in GSTR-1 are being auto-populated in the same table of GSTR-2A of the recipient with flagging as to whether it attracts reverse charge or not.
- The proper officer upon receipt of reply from the taxpayer under scrutiny may verify whether the supplier has paid the due tax on such transactions which have been wrongly reported in Table





		4B of GSTR-I.
6.	In some of the cases replies are received that the ineligible ITC, which has been pointed out in ASMT-10 was already reversed by the taxpayer in the return of subsequent period. However, the format of GSTR-3B is not so exhaustive and no separate column is provided for such reversal. Hence the amount of ITC reversed for the previous period is not legible from the return form itself. How to deal with this issue?	<ul style="list-style-type: none">• In case the taxpayer replies about a specific return period, then the calculation of reversal in table 4 (B) (2) of that specified return period along with transaction list should be obtained from the tax payers and verified with ITC claim, reversal, other reversal, etc.• Alternatively, it can be verified from DRC-03 filed by the tax payer, if any.

Conclusion

Such internal circulars are helpful to assessing officers to decide the issues; however, there is a need to give relief to the genuine taxpayer from the unwanted mismatch issues. The Central GST department should also issue the clarification issued by the Maharashtra state department for the benefit of all taxpayers.



CASE LAWS

M/s. Dee Vee Projects Ltd Vs. Government of Maharashtra (W.P. 2693 OF 2021)

Facts Of The Case

- The Petitioner is a public limited company, involved in the construction of Highways, Expressways, Bridges, Buildings, Railways, Electrification, and other infrastructure development Work.
- On 1st July 2021, the company officials noticed that Electronic Credit Ledger ('ECrL') was not operational and blocked by the Deputy Commissioner, State Sales Tax, MIDC, Nagpur under rule 86-A.
- It appeared that the commissioner was under the view that Petitioner had wrongfully and fraudulently availed credit in the ECrL as the address mentioned in the additional place of business in the registration certificate was not found to be in existence in Maharashtra and was not carrying out any business in the State.
- The Petitioner filed this Writ petition questioning the legality and validity of blocking the ECrL, contending that it amounts to illegal provisional attachment of the property under section 83 of the CGST Act.

Provision Of Law

- Section 83 of CGST Act, 2017 states that provisional attachment of property to protect the interest of the revenue during the pendency of any proceeding under section 62 (non-filing of returns) or section 63 (un-registered persons) or section 64 (assessment in special cases) or section 67 (inspection, search & seizure) or section 73 (non-payment of tax) or section 74 (non-payment of tax for fraud, will-full misstatement or suppression) of the CGST Act.
- As per Notification No. 75/2019 dated 26.12.2019, Rule 86A was introduced to block ineligible or fraudulently availed ITC by the taxpayers. It states that a commissioner or an officer not below the rank of assistant commissioner has the power to debit the input tax credit in the electronic credit ledger if he has reasons to believe that he has fraudulently availed ITC.




High Court Judgment

- The Bombay High Court set aside the impugned order of blocking credit and partly allowed the writ petition for the following reasons:
- The power under section 83 is distinct from power under rule 86A and therefore any order passed under section 86A cannot be treated as an order amounting to the provisional attachment of property.
- The power under rule 86-A does not enable the authority to impose a Blanket ban on the utilization of input tax credit in ECrL. Therefore, an order blocking the ECrL is illegal as it does not specify the amount to the extent the ECrL is to be blocked. Rule 86A permits disallowance only to the extent of fraudulent or wrong availment of credit in ECL.
- It is the mandatory duty of the competent authority to record reasons in writing.

Taghar Vasudeva Ambrish V/s Appellate Authority for Advance Ruling Karnataka [W.P.No.14891 of 2020 – Karnataka High Court

Facts Of The Case

- The applicant M/s. Taghar Vasudeva Ambrish is the owner of the residential property which is leased out to a company named M/s. D Twelve Spaces Private Limited. The company has leased out the residential property as a hostel for providing long-term accommodation to students and working professionals with the duration of stay ranging from 3 months to 12 months.
 - The owner had applied for an advance ruling on whether an exemption can be availed on the rent received for letting out the property by him to the company. The AAR Karnataka held that renting of residential dwelling for use as a residence does not fall under entry 13 of the exemption notification. It also held that the company themselves were not using the property for their accommodation. Therefore, the owner must charge GST while issuing the invoice to the lessee.
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- The owner then filed an appeal before the Appellate Authority of Advance Ruling (AAAR), challenging the order of AAR. However, the AAAR upheld the view taken by AAR.
 - Hence, the owner preferred a Writ Petition before the Hon'ble Karnataka High Court.

Provision Of Law

- Entry 13 of the Exemption Notification provides an exemption of Integrated Goods and Services Tax ("IGST") in respect of 'services' by way of renting of residential dwelling for use as a 'residence'.

High Court Judgment

- The Hon'ble High Court observed that the residential dwelling is being rented as a hostel to the students and working women will fall within the purview of residential dwelling as the same is for the purposes of residence. The benefit of exemption notification cannot be denied on the ground that the lessee is not using the premises as there is no requirement that the lessee should use the premises themselves.
- The Karnataka High Court relied on the judgment of the Supreme Court in **Kishore Chandra Singh v. Babu Ganesh Prasad Bhagat AIR 1954 SC 316** wherein it was held that 'residence' implies that a person eats, drinks and, sleeps at that place and not necessarily to own it.
- Hence, the Hon'ble High Court quashed the impugned order and held that service provided by the Petitioner is covered under entry 13 of the exemption notification and is entitled to avail the benefit of exemption.

NOTIFICATIONS AND CIRCULARS FOR THE MONTH OF FEBRUARY 2022

✔ One Central Tax Notification. - [Click here](#)

Sl. No	Subject	Notifications/Circulars No. Date of Issue
1.	Seeks to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 20 Cr from 01st April 2022.	24-Feb-2022, 01/2022-Central Tax

DUE DATES OF GST FOR THE MONTH OF MARCH 2022

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
6	7	8	9	GSTR-7, GSTR-8 10	* GSTR-1 11	12
* IFF (QRMP), GSTR-6 13	Form GSTR 2B generation 14	15	16	17	18	19
* GSTR-3B, GSTR-5, 5A 20	21	22	23	24	* PMT-06 25	26
27	28	29	30	* CMP-02 (2022-23), RFD-11 (2022-23) 31		

* Monthly returns for taxpayers with Annual Turnover more than Rs. 5 Crores or Taxpayer who has opted Monthly return option.

* Quarterly returns for taxpayers with Annual Turnover less than Rs. 5 Crores and opted for quarterly return option (QRMP);

* Opting in for Composition scheme (CMP 02) for FY 2022-23 and applying for Letter of Undertaking (RFD-11) by taxpayers opting to make zero rated supplies without payment of tax in FY 2022-23.



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