

PART-I

AVAIL ITC IN GST AS PER SECTION 16(2)(aa)

The Finance Act, 2021, amongst other amendments, had specifically inserted the clause (aa) to Section 16(2) CGST Act to be enacted w.e.f. from the date to be notified. The said insertion was made effective from 1-1-2022 vide ***Notification No. 39/2021-Central Tax dated 21-12-2021.***

Clause (aa) to Section 16(2) of the CGST Act, prescribes the condition that a registered person would not be eligible to ITC (Input Tax Credit) of goods or services unless the details of the invoice issued by the GST registered supplier is reported by the “supplier” in his/her outward return and such details have been communicated to the “recipient” (registered person) in the manner specified under Section 37 of the CGST Act. In other words, a registered person would not be eligible to avail the ITC on an invoice unless the same is reflecting in Form GSTR-2B of the registered person.

In an ideal scenario where a registered supplier is making a supply, the supplier would be required to report the said supply in his outward tax return and pay the applicable GST while filing the monthly return in Form GSTR-3B. It seems that the intention of the legislature is to ensure that the supplier should report the outward supplies and discharge the tax liability on the said outward supplies in a timely manner, based on which the registered recipient would be eligible to take/avail the ITC.

The GST law has prescribed certain exceptional situations for payment of tax, one of which is where the recipient pays the tax under reverse charge basis as opposed to the supplier. Hence, even if the supplier is registered under GST, then said supplier is released from the liability to discharge the GST in the return. However, the supplier would not be freed from the liability to generate and report the invoice for the said supply if registered under GST. Consequently, the registered supplier would be required to issue a GST invoice to the recipient with the declaration that tax is payable under RCM and report the said GST tax invoice in the Form GSTR-

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1 of the tax period. The recipient would be required to pay the tax under RCM in his/her Form GSTR-3B based on the invoice issued by the supplier and reflecting in the Form GSTR-2B of the recipient.

In a real-world situation, where a registered supplier is providing supplies on which tax is payable under Reverse Charge Mechanism ('RCM') by the recipient (say sponsorship), there could be a negligence in the hand of the supplier in reporting of the GST invoices issued, since no tax is payable by the supplier and the late filing of returns would only invite some late fees.

However, the negligence in filing the GST return in the hands of the recipient would have major implications for the "recipient". Since, w.e.f. 1-1-2022 on account of clause (aa) of Section 16(2) of the CGST Act, the recipient is not eligible to avail the ITC of the tax paid under RCM on an invoice which is in the recipient's possession. Hence, a registered recipient who fulfils all the conditions under Section 16(2) of the CGST Act, except the condition prescribed in clause (aa) i.e., the requirement for the supply to reflect in the GSTR-2B of the recipient, on account of the procedural lapse on part of the supplier, the recipient would be disentitled from availing of the rightful ITC.

Attention is also invited to the provisions of Section 41 of the CGST Act, which governs the availment of ITC, have been amended w.e.f. 1-10-2022 vide **Notification No. 18/2022-Central Tax**. Section 41(1) of the CGST Act stipulates that a registered person shall be entitled to avail the credit of eligible input tax credit on "self-assessment basis" in the return and the said credit claimed would be credited to the electronic credit ledger. Sub-section (2) to Section 41 of the CGST Act stipulates that the registered person who has claimed credit under sub-section (1) would be required to reverse the ITC with interest where the supplier has not paid the tax.

It can be argued that if a registered recipient avails the ITC as per Section 41 of the CGST Act, on self-assessment basis, there is no provision for ITC reversal in case of violation of the conditions of Section 16(2) of the CGST Act, where the tax is

payable under RCM and not by the supplier under forward charge. However, the said argument may not be sustainable since, Section 41(1) of the CGST Act, only entitles a registered person to avail ITC which is an eligible credit. In case the condition of Section 16(2) (aa) of the CGST Act is not fulfilled, the ITC would not be an eligible credit and could be recoverable under Section 73 or Section 74 of the CGST Act.

Hence, the clause (aa) of Section 16(2) of the CGST Act, involves an unfair punishment for a law-abiding registered person who receives supplies from a registered supplier on which tax is payable under RCM, if the supplier shows negligence in reporting of the supplies. The recipient having paid tax under RCM only on account of a reporting lapse which is procedural in nature, would stand to be punished even where the revenue is not prejudiced.

Consequently, a registered person receiving supplies on which tax is payable under RCM from a registered supplier, need to be mindful and ensure that the “supplier” has reported the said supplies in the Form GSTR-1 in a timely manner, in absence of which the rightful ITC could stand denied.

Without prejudice to the recipient’s duty, the legislature should take cognizance of the possible hardship which would be faced by a law-abiding recipient in the current situation where the revenue in no way is prejudiced, and make appropriate amendment/insertions in the law to exclude the supplies under RCM from the ambit of clause (aa) of Section 16(2) of the CGST Act.

Conclusion

Due to the implementation of the Amendment, a registered taxpayer can claim ITC only if the corresponding supplier or vendor has uploaded such an invoice in his GSTR-1, and the same is communicated to the recipient through GSTR-2B.

No provisional ITC - the recipients to claim a certain percentage of eligible ITC, even if the supplier has not uploaded certain invoices, is no longer applicable

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Additional Responsibilities on Recipients - recipients who will have to ensure that their respective vendors also comply with these newly introduced rules and regulations in order for them to be able to obtain ITC. They will have to constantly ensure that their counterparts comply as well; otherwise, failure on their part to comply might lead to adverse consequences for the recipients.

Difficulty in furnishing correct data - Correct and accurate compliance is going to be necessary, as incorrect ITC Claims will result in pecuniary penalties.

Difficulty in communication - Taxpayers who would earlier rely on the last minute communication will now have to ensure the reconciliations

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PART-II

FREQUENTLY ASKED QUESTIONS

1. What is the newly inserted clause (aa) to Section 16(2) of the CGST Act?

Clause (aa) of Section 16(2) of the CGST Act mandates that ITC can be claimed only if the details of the invoice or debit note are furnished by the supplier in their GSTR-1 and the same is communicated to the recipient through GSTR-2B.

2. When did clause (aa) to Section 16(2) become effective?

Clause (aa) to Section 16(2) became effective from 1st January 2022, as per Notification No. 39/2021-Central Tax dated 21-12-2021.

3. What is the purpose of clause (aa) to Section 16(2)?

The clause aims to ensure that ITC is claimed only when the supplier reports the invoice and discharges the tax liability, thereby reducing fraudulent ITC claims and ensuring better compliance.

4. How does clause (aa) impact ITC eligibility?

A registered recipient cannot claim ITC unless the invoice is reflected in their GSTR-2B, which happens only when the supplier reports the invoice in their GSTR-1.

5. What is GSTR-2B?

GSTR-2B is an auto-drafted ITC statement generated monthly for recipients, summarizing eligible and ineligible ITC based on the supplier's GSTR-1.

6. What happens if a supplier does not upload the invoice in GSTR-1?

If the supplier does not upload the invoice in GSTR-1, it will not reflect in the recipient's GSTR-2B, and the recipient will not be eligible to claim ITC on that invoice.

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7. Are supplies under Reverse Charge Mechanism (RCM) also covered under clause (aa)?

Yes, clause (aa) applies to RCM supplies. The supplier must report the RCM invoice in GSTR-1, even though the tax is payable by the recipient.

8. Can ITC be claimed if the supplier files GSTR-1 late?

No, ITC can be claimed only after the invoice is uploaded in the supplier's GSTR-1 and reflects in the recipient's GSTR-2B.

9. Does clause (aa) apply to all types of ITC claims?

Yes, clause (aa) applies to all ITC claims except for cases explicitly excluded by such law, such as imports or other specific scenarios.

10. How does clause (aa) affect provisional ITC claims?

Provisional ITC claims are no longer allowed. Recipients can claim ITC only for invoices uploaded by the supplier in GSTR-1 and reflected in GSTR-2B.

11. What additional responsibilities does clause (aa) impose on recipients?

Recipients must now ensure:

Their suppliers file GSTR-1 on time. Regular reconciliation of their GSTR-2B with purchase records to claim ITC accurately.

12. What are the consequences of claiming ITC for invoices not in GSTR-2B?

Claiming ITC for invoices not reflected in GSTR-2B could result in denial of ITC, recovery proceedings, interest, and penalties under Sections 73 or 74 of the CGST Act.

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13. How can recipients ensure compliance with clause (aa)?

Recipients should:

Verify supplier compliance with GST filings.

Perform periodic reconciliation of GSTR-2B with purchase invoices.

Communicate with suppliers for timely GSTR-1 filings.

14. Can ITC be claimed if the supplier has filed GSTR-1 but the invoice is not in GSTR-2B due to technical glitches?

In such cases, the taxpayer should raise a grievance on the GST portal and maintain strong documentation and audit trail.

15. What are the penalties for incorrect ITC claims under clause (aa)?

Incorrect ITC claims can lead to penalties, interest on ITC reversal, and potential prosecution under Sections 73 or 74 of the CGST Act.

16. Is the revenue prejudiced in cases where the recipient pays tax under RCM but the supplier fails to report the invoice?

No, the revenue is not prejudiced in such cases as the recipient pays the tax. However, clause (aa) may still deny ITC due to the supplier's procedural lapse.

17. How does clause (aa) affect recipients with non-compliant suppliers?

Recipients dealing with non-compliant suppliers risk losing ITC if invoices are not uploaded in GSTR-1, creating additional compliance burdens.

18. Are there any exceptions to clause (aa) for claiming ITC?

Currently, there are no exceptions specifically excluding certain supplies or scenarios from the ambit of clause (aa), except for imports or certain deemed supplies.

19. How does Section 41 relate to clause (aa) of Section 16(2)?

Section 41 allows ITC on a self-assessment basis but requires reversal if conditions under Section 16(2), including clause (aa), are not met.

20. What happens if a supplier defaults on tax payment after uploading the invoice?

If the supplier uploads the invoice in GSTR-1 but does not pay the tax, the recipient may still need to reverse the ITC along with interest under Section 41(2).

21. How does clause (aa) impact businesses operationally?

Businesses face increased operational challenges, including:

Regular reconciliation of GSTR-2B.

Proactive follow-ups with suppliers.

Stricter internal controls to avoid ITC loss.

22. Can ITC be reclaimed if the supplier uploads the invoice later?

Yes, ITC can be reclaimed in the month the supplier uploads the invoice in GSTR-1 and it reflects in the recipient's GSTR-2B.

23. What issues arise with late communication between suppliers and recipients?

Late communication can lead to mismatches in GSTR-2B, delayed ITC claims, and disruptions in cash flow for recipients.

24. Is the government considering amendments for RCM-related ITC issues?

As of now, no amendments have been made, but stakeholders have suggested excluding RCM supplies from clause (aa) due to procedural hardships for recipients.

25. What should recipients do to mitigate risks under clause (aa)?

Recipients should:

- Engage with compliant suppliers.
- Conduct monthly reconciliations.
- Educate suppliers about the importance of timely GSTR-1 filings.
- Use automated tools for GST compliance tracking.

PART-III

RELATED CIRCULAR/NOTIFICATIONS/CASE LAWS

CIRCULAR NO. 193/05/2023-GST

1. Background on Section 16 of the CGST Act, 2017

Section 16 of the Central Goods and Services Tax (CGST) Act, 2017, lays down the eligibility and conditions for availing Input Tax Credit (ITC).

Before the amendment, taxpayers were eligible to claim ITC if:

- 1) They possessed a valid tax invoice or debit note.
- 2) The goods or services had been received.
- 3) The tax charged on such supply had been paid to the government.
- 4) The return was furnished under section 39.

However, there was no clear mechanism to ensure that ITC was claimed only on tax-paid invoices that were correctly reported by suppliers.

2. Introduction of Clause (aa) to Section 16(2)

With effect from January 1, 2022, clause (aa) was inserted in Section 16(2) to further restrict ITC claims. The newly added clause (aa) states that:

"ITC in respect of an invoice or debit note may be availed only if the details of such invoice or debit note have been furnished by the supplier in FORM GSTR-1 or using the Invoice Furnishing Facility (IFF), and such details have been communicated to the recipient in FORM GSTR-2B."

This means ITC can only be availed if:

The supplier has filed GSTR-1 or reported the invoice through IFF.

The invoice details have been reflected in GSTR-2B of the recipient.

3. Implications of Clause (aa)

ITC cannot be claimed if the invoice does not appear in GSTR-2B, even if all other conditions of Section 16 are satisfied.

It eliminates the earlier practice of claiming ITC based on invoices not uploaded by suppliers.

It shifts responsibility to the recipient to ensure suppliers file GSTR-1 correctly.

4. Circular No. 193/05/2023-GST and Its Relevance to Section 16(2)(aa)

The circular provides clarification on ITC discrepancies between GSTR-3B (self-declared ITC) and GSTR-2A (auto-populated ITC) for the period 01.04.2019 to 31.12.2021, before clause (aa) became effective.

Key Highlights of the Circular

Prior to 09.10.2019: No restrictions existed under Rule 36(4), so ITC claims were examined as per **Circular No. 183/15/2022-GST**.

From 09.10.2019 to 31.12.2021:

ITC claims were capped based on Rule 36(4), which allowed credit beyond GSTR-2A up to:

20% (from 09.10.2019 to 31.12.2019)

10% (from 01.01.2020 to 31.12.2020)

5% (from 01.01.2021 to 31.12.2021)

ITC beyond these limits was inadmissible even if tax was paid by the supplier.

From 01.01.2022 onwards (post-insertion of Section 16(2)(aa)): ITC can only be claimed if the invoice appears in GSTR-2B.

Illustration from the Circular

- **As per Rule 36(4) (before 2022):**

If GSTR-2A showed ITC of ₹3,00,000, but GSTR-3B claimed ₹5,00,000:

Max permissible ITC = ₹3,60,000 (i.e., 3,00,000 + 20% for the period 09.10.2019 - 31.12.2019).

Excess ₹1,40,000 is inadmissible.

- **As per Section 16(2)(aa) (from 2022 onwards):**

If GSTR-2B showed ITC of ₹3,00,000, but GSTR-3B claimed ₹5,00,000:

Max permissible ITC = ₹3,00,000

Excess ₹2,00,000 is inadmissible.

“ITC is entirely dependent on GSTR-2B. If the invoice is not reflected, ITC cannot be claimed”

5. Conclusion

The insertion of Section 16(2)(aa), effective 01.01.2022, marks a strict ITC restriction, aligning ITC claims directly with GSTR-2B. ***Circular No. 193/05/2023 clarifies that before this amendment, certain flexibilities existed (Rule 36(4)), but from 2022 onwards, no ITC is allowed unless it appears in GSTR-2B.***

Thanks and Regards

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