

**GOVERNMENT OF TAMIL NADU
COMMERCIAL TAXES DEPARTMENT
OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES
EZHILAGAM, CHENNAI- 600 005**

**PRESENT: THIRU DHEERAJ KUMAR I.A.S.,
PRINCIPAL SECRETARY/ COMMISSIONER OF STATE TAX**

**Circular No. 9/2023
(PP6/GST/82/2023)**

Dated 14.08.2023

Sub: Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period 01.04.2019 to 31.12.2021 – Regarding.

Ref: Circular No. 193/05/2023-GST, dated 17.07.2023, issued by Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes & Customs.

In the reference cited, the Central Board of Indirect Taxes & Customs, Department of Revenue, Ministry of Finance, Government of India, New Delhi, has issued Circular No 193/05/2023-GST, dated 17.07.2023 on the recommendations of the GST Council. Hence, following *pari-materia* circular is issued.

2. Attention is invited to Circular No. 1/2023-TNGST dated 04.01.2023, vide which clarification was issued for dealing with the difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19, subject to certain terms and conditions.

3. Even though the availability of ITC was subjected to restrictions and conditions specified in Section 16 of Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred to as "TNGST Act") from 1st July, 2017 itself, restrictions regarding availment of ITC by the registered persons up to certain specified limit beyond the ITC available as per FORM GSTR-2A were provided under rule 36(4) of Tamil Nadu Goods and Services Tax Rules, 2017 (hereinafter referred to as "TNGST Rules") only with effect from 9th October 2019. W.e.f. 09.10.2019, the said rule allowed availment of Input tax credit by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using the invoice furnishing facility (IFF), to the extent not

exceeding 20 per cent of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 of TNGST Act in FORM GSTR-1 or using the IFF. The said limit was brought down to 10% w.e.f. 01.01.2020 and further reduced to 5% w.e.f. 01.01.2021. The said rule was intended to allow availment of due credit in cases where the suppliers may have delayed in furnishing the details of outward supplies. Further, w.e.f. 01.01.2022, consequent to insertion of clause (aa) to sub-section (2) of section 16 of the TNGST Act, ITC can be availed only up to the extent communicated in FORM GSTR-2B.

4.1 As discussed above, rule 36(4) of TNGST Rules allowed additional credit to the tune of 20%, 10% and 5%, as the case may be, during the period from 09.10.2019 to 31.12.2019, 01.01.2020 to 31.12.2020 and 01.01.2021 to 31.12.2021 respectively, subject to certain terms and conditions, in respect of invoices/supplies that were not reported by the concerned suppliers in their FORM GSTR-1 or IFF, leading to discrepancies between the amount of ITC availed by the registered persons in their returns in FORM GSTR-3B and the amount as available in their FORM GSTR-2A. It may, however, be noted that such availment of input tax credit was subject to the provisions of clause (c) of sub-section (2) of section 16 of the TNGST Act which provides that ITC cannot be availed unless tax on the said supply has been paid by the supplier. In this context, it is mentioned that rule 36(4) of TNGST Rules was a facilitative measure and availment of ITC in accordance with rule 36(4) was subject to fulfilment of conditions of section 16 of TNGST Act including those of clause (c) of sub-section (2) thereof regarding payment of tax by the supplier on the said supply.

4.2. Though the matter of dealing with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A has been clarified for FY 2017-18 and 2018-19 vide Circular No. 1/2023-TNGST dated 04.01.2023, various representations have been received seeking clarification regarding the manner of dealing with such discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A during the period from 01.04.2019 to 31.12.2021.

5. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Commissioner, in exercise of powers conferred under section 168 of the TNGST Act, hereby clarifies as follows:

(i) Since rule 36(4) came into effect from 09.10.2019 only, the guidelines provided by Circular No. 1/2023-TNGST dated 04.01.2023 shall be applicable, in toto, for the period from 01.04.2019 to 08.10.2019.

(ii) In respect of period from 09.10.2019 to 31.12.2019, rule 36(4) of TNGST Rules permitted availment of Input tax credit by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using IFF to the extent not exceeding 20 per cent of the eligible credit available in respect of invoices or debit notes, the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using IFF. Accordingly, the guidelines provided by Circular No. 1/2023-TNGST dated 04.01.2023 shall be applicable for verification of the condition of clause (c) of sub-section (2) of Section 16 of TNGST Act for the said period, subject to the condition that availment of Input tax credit by the registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using IFF shall not exceed 20 per cent of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using IFF. This is clarified through an illustration below:

Illustration:

Consider a case where the total amount of ITC available as per FORM GSTR-2A of the registered person was Rs. 3,00,000, whereas, the amount of ITC availed in FORM GSTR-3B by the said registered person during the corresponding tax period was Rs. 5,00,000. However, as per rule 36(4) of TNGST Rules as applicable during the said period, the said registered person was not allowed to avail ITC in excess of an amount of $\text{Rs } 3,00,000 \times 1.2 = \text{Rs. } 3,60,000$.

In the above case, the ITC of Rs.1,40,000 which has been availed in excess of Rs. 3,60,000 shall not be admissible as per rule 36(4) of TNGST Rules as applicable during the said period even if the requisite certificate as prescribed in Circular No. 1/2023-TNGST dated 04.01.2023 is submitted by the registered person. Therefore, ITC availed in FORM GSTR-3B in excess of that available in FORM GSTR-2A up to an amount of Rs 60,000 only (i.e. $3,60,000 - 3,00,000$) can be allowed subject to production of the requisite certificates as per Circular No. 1/2023-TNGST dated 04.01.2023.

(iii) Similarly, for the period from 01.01.2020 to 31.12.2020, when rule 36(4) of TNGST Rules allowed additional credit to the tune of 10% in excess of that reported by the suppliers in their FORM GSTR-1 or IFF, the guidelines provided by Circular No. 1/2023-TNGST dated 04.01.2023 shall be applicable, for verification of the condition of clause (c) of sub-section (2) of Section 16 of TNGST Act for the said period, subject to the condition that availment of Input tax credit by the registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1)

of section 37, in FORM GSTR-1 or using the IFF shall not exceed 10 per cent of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the IFF.

(iv) Further, for the period from 01.01.2021 to 31.12.2021, when rule 36(4) of TNGST Rules allowed additional credit to the tune of 5% in excess of that reported by the suppliers in their FORM GSTR-1 or IFF, the guidelines provided by Circular No. 1/2023-TNGST dated 04.01.2023 shall be applicable, for verification of the condition of clause (c) of sub-section (2) of Section 16 of TNGST Act for the said period, subject to the condition that availment of Input tax credit by the registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using the IFF shall not exceed 5 per cent of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the IFF.

6. It is further clarified that consequent to insertion of clause (aa) to sub-section (2) of section 16 of the TNGST Act and amendment of rule 36(4) of TNGST Rules w.e.f. 01.01.2022, no ITC shall be allowed for the period 01.01.2022 onwards in respect of a supply unless the same is reported by his suppliers in their FORM GSTR-1 or using IFF and is communicated to the said registered person in FORM GSTR-2B.

7. Further, it may be noted that proviso to rule 36(4) of TNGST Rules was inserted vide G.O. (Ms) No.77, Commercial Taxes and Registration (B1) Department dated 13.4.2020 published in Tamil Nadu Extra ordinary Gazette Notification No. SRO A-17(b)/2020, dated 13.04.2020 [Issue No.157] and Erratum issued vide G.O. (Ms) No.122, Commercial Taxes and Registration (B1) Department dated 31.07.2020, published in Tamil Nadu Government Extra ordinary Gazette Notification No. SRO A/26(a-2)/2020, dated 31.07.2020 [Issue No.309], to provide that the condition of rule 36(4) shall be applicable cumulatively for the period February to August, 2020 and ITC shall be adjusted on cumulative basis for the said months in the return for the tax period of September 2020. Similarly, second proviso to rule 36(4) of TNGST Rules was substituted vide G.O. (Ms) No.90, Commercial Taxes and Registration (B1) Department dated 02.06.2021, published in Tamil Nadu Government Extra ordinary Gazette Notification No.SRO A-11(c)/2021, dated 02.06.2021 [Issue No.265A] to provide that the condition of rule 36(4) shall be applicable cumulatively for the period April to June, 2021 and ITC shall be adjusted on cumulative basis for the said months in the return for the tax period of June 2021. The same may be taken into consideration while determining the amount of ITC eligibility for the said tax periods.

8. It may also be noted that these guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.

9. These instructions will apply only to the ongoing proceedings in scrutiny/ audit/ investigation, etc. for the period 01.04.2019 to 31.12.2021 and not to the completed proceedings. However, these instructions will apply in those cases during the period 01.04.2019 to 31.12.2021 where any adjudication or appeal proceedings are still pending.

Sd/- Dheeraj Kumar
Principal Secretary/
Commissioner of State Tax

To

All the Joint Commissioners (Territorial) and (LTU)
All the Head of Assessment Circles in the State

Copy to

1. All the Additional Commissioners, including Service Tax cell in the Office of the PS/CCT, Chennai-5
2. All the Joint Commissioners (Intelligence)
3. Director, Commercial Taxes Staff Training Institute, Chennai -35.
4. Appellate Joint Commissioner (GST) Chennai.
5. All the Deputy Commissioners (Territorial and Intelligence)
6. All the Appellate Deputy Commissioner (GST) in the State.
7. The Joint Commissioner (CS), Chennai 35, to upload the same in the internet website.
8. Stock file / Spare.

/forwarded by order/

[Signature]
Deputy Commissioner (P&P)

[Signature]
16/12/23