

## **GST- WHETHER TIME LIMIT FOR AVAILING INPUT TAX CREDIT (ITC) UNDER SECTION 16(4) IS EXHAUSTIVE?**

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The very objective of the Government to introduce GST is to remove the cascading effect of taxes by facilitating a seamless flow of Input Tax Credit. Section 16 (1) of the CGST Act, provides that every registered person shall, subject to such conditions, restrictions and in the manner specified in Section 49 of the CGST Act, be entitled to take credit of input tax charged on any supply of goods or services which are used or intended to be used in the course or furtherance of his business. Ramesh Chandra Jena

It is further stated that ITC shall be credited to the electronic credit ledger of registered person u/s 41 as provisional credit and furnishing return u/s 39. Section 16 (2) of the CGST Act, prescribes the eligibility conditions for taking input tax credit and once the registered person satisfy the four conditions such as :

- (i) Possession of Tax invoice or debit note-Section 16(2)(a)
- (ii) Supplier furnished details of GSTR-1 return & auto populated in GSTR-2B-16(2)(aa)
- (iii) Actually goods or services received or deemed to be received by the recipient- 16(2)(b)
- (iv) Reclaim of ITC subsequent matching -16(2)(ba)-operating rules has not been notified
- (v) Tax paid to the Government by the supplier – 16(2)(c)
- (vi) Recipient has filed GSTR-3B u/s 39 – 16(2)(d)
- (vii) Recipient has paid value of supplies to the supplier within 180 days – proviso to 16(2) of the Act.

It is to be mentioned that after compliances of the cited provisions the registered person or purchase is eligible to avail ITC but section 16(4) of the Act impose obstacle and overriding effect on 16(2) of the Act that unless taxpayers or purchaser avail ITC within time limit of taking ITC then he will not permitted to avail ITC in the later period of statutory limit.

**Time Limit of taking ITC:** Section 16 (4) of the CGST Act, 2017 prescribes the time limit for taking input tax credit. For ready reference an extract of the relevant portion is reproduced as under:

“16(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day of November following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.”

The cited provision of section 16(4) prescribed that a registered person cannot take ITC in respect of invoice or a debit note pertaining to a financial year after the due date for furnishing the return under section 39 for the month of November from the end of financial year or furnishing of Annual return, whichever is earlier.

**Time limit to take ITC against self-invoice / Bill of entry:**

In order to discuss the time limit for taking ITC in case of self-invoice or bill of entry, before that it is better to know the provisions of documentary requirements for claiming input tax credit. Rule 36 (1) prescribed that input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,-

- (a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;
- (b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;
- (c) a debit note issued by a supplier in accordance with the provisions of section 34;
- (d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;
- (e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

Rule 36(1) (b) prescribed an invoice issued in accordance with the provision of clause (f) of sub-section (3) of section 31. As per section 31(3)(f) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both.

Thus, recipient of goods or services liable to pay GST under Section 9(3) of the CGST Act, 2017 (under Reverse Charge Mechanism) have to issue self-invoice. The relevant portion of Section 9(3) of the CGST Act, 2017 is reproduced as under:

“9(3) The Government may, on the recommendations of the Council, by notification, specify the categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.”

The above provision has been notified vide Notification No. 13/2017-Central Tax, dated 28.06.2017 as amended.

With regard to reverse charge means a registered person or recipient of goods or services or both have to pay tax in place of supplier. Section 2 (98) defines “reverse charge “means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or sub- section (4) of section 5 of the Integrated Goods and Services Tax Act;”

A combined study of these provisions section 31(3) (f) and Rule 36(1) (b) makes it clear that the liability to pay GST under reverse charge lies on recipient of the goods or services, such a recipient does not become the supplier of such goods or services, though, such recipient would become the person liable to pay tax under section 9(3).

Therefore, the recipient who is required to pay GST under reverse charge and have to raise self-invoice under Rule 36(1) (b) cannot be treated as the supplier of such goods or services, despite that such recipient become liable to pay GST under RCM i.e. section 9(3) of the CGST Act, 2017.

Therefore, the time limit prescribed for availing ITC under section 16(4) would not apply to the GST paid by the recipient of the goods or services under reverse charge mechanism and wherein the recipient have to avail ITC on the strength of Self-invoice under section 31(3) (f) of the CGST Act, 2017 and read with Rule 36(1) (b) of the CGST Rule, 2017. It is to be mentioned that restriction of time limit is applicable only invoice issued by the supplier “for the supply” of goods or services under Section 31(a) of the CGST Act, 2017 whereas the self-invoice prepared by the recipient under section 31(3) (f) of the CGST Act, 2017 for discharging the tax liability under RCM [under section 9(3)] is an invoice prepared “for the receipt” of goods or services. It is to be contended that the restriction contained under section 16(4) of the CGST Act, 2017 even if applied would apply only *qua* the year in which the self-invoice is prepared and not *qua* the year in which the underlying supplies would have been received.

Further, Rule 36(1) (d) a bill of entry is one of the similar documents prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports. Thus, the time limit of prescribed for availing ITC under section 16(4) do not apply to the IGST paid by the importer of goods as the Bill of entry is not document prescribed under section 16(4) and Bill of entry is filed by the importer for the payment of IGST and Bill of entry is not supplier document.

Hence, the time limit as provided under section 16(4) of the CGST Act, 2017 do not apply to bill of entry or for imported goods. Thus, the restriction of time limit under section 16(4) do not apply to ITC of IGST paid on import of goods against Bill of entry as the said restriction only cover ITC related to the tax in respect of the invoice or debit note.

**Relevant Judicial decisions:**

The Hon'ble High Court of Andhrapradesh in the case of Thirumalakonda plywoods vs. Assistant Commissioner of State Tax, reported in (2023) 8 Centax 276 (A.P.), held that "since Form GSTR-3B return of March, 2020 filed on 27-11-2020 by the petitioner was accepted with a late fee of Rs. 10,000/-, such acceptance will exonerate the delay in filing return u/s 16(4) and therefore along with his return, the ITC claim shall also be considered. In our considered view this argument holds no much force for the reason that the conditions stipulated in section 16(2) and (4) are mutually different and both will operate independently. Therefore, mere filing of the return with a delay fee will not act as a springboard for claiming ITC. As rightly argued by learned Advocate General, collection of late fee is only for the purpose of admitting the returns for verification of taxable turnover of the petitioner but not for consideration of ITC. Such a statutory limitation cannot be stifled by collecting late fee. ITC is a mere concession/rebate/benefit but not a statutory or constitutional right and therefore imposing conditions including time limitation for availing the said concession will not amount to violation of constitution or any statute and secondly, as rightly argued by learned Advocate General, the operative spheres of Section (16) and constitutional provisions under article 14, 19(1)(g) and 300-A are different and hence infringement does not arise. That, by nature ITC is a concession/rebate/benefit but not a statutory right has been reiterated in a thicket of decisions."

The Hon'ble High Court of Madras in the case of TVL. Kavin HP Gas Gramin Vitrak vs. Commissioner of Commercial Taxes, reported in (2024) 14 Centax 90 (Mad.), held that "Hence if the GSTN provided option for filing GSTN without payment of tax or incomplete GSTR-3B, the dealer would be eligible for claiming of input tax credit. The same was not provided in GSTN network hence, the dealers are restricted to claim ITC on the ground of non-filing of GSTR-3B within prescribed time. if the option of filing incomplete filing of GSTR-3B are provided in the GSTN network the dealers would avail the claim and determine self-assessed ITC in online. The petitioner had expressed real practical difficulty. The GST Council may be the appropriate authority but the respondents ought to take steps to rectify the same. Until then the respondents ought to allow the dealers to file returns manually. This Court is inclined

to quash the impugned orders and accordingly the impugned orders are quashed. The respondents shall permit the petitioner to file manual returns whenever the petitioner is claiming ITC on the outward supply/sales without paying taxes. Further the respondents are directed accept the belated returns and if the returns are otherwise in order and accordance to law, the claim of ITC may be allowed. Hence, the matter is remitted back to the authorities for reconsideration.

The Hon'ble High Court of Calcutta in the case of BBA Infrastructure Ltd, vs. Senior Joint Commissioner of State Tax, reported in (2023) 3 Centax 181 (Cal.), held that "in our view rightly on the ground that Section 16(2) prescribes, the eligibility criteria which is mandatory and in the absence of fulfillment of the eligibility criteria the dealer will not be entitled to claim ITC. We are in the respectful agreement with the view expressed. The contention that *non obstante* clause in the Sub Section(2) of Section 16 overrides the other provisions namely Section 16(4) was canvassed before the court which was also rightly rejected after taking note of the various decisions as to how the *non obstante* clause should be interpreted and rightly held that Section 16(2) does not appear to be a provision which allows Input Tax Credit, rather Section 16(1) is the enabling provision and Section 16(2) restricts the credit which is otherwise allowed to the dealers who satisfied the condition prescribed the interpretation given by the court that the stipulation in Section 16(2) is the restrictive provision is the correct interpretation given to the said provision. A similar challenge was made to Section 16(4) of the Bihar Goods and Services Taxes Act, 2017 in the case of a Gobinda Construction wherein the court held that in the language of Section 16 does not suffer from any ambiguity and clearly stipulates grants of ITC subject to the condition and restriction put therein. Further it was held that the right of registered person to take ITC under section 16(1) becomes a vested right only if the conditions to take it are fulfilled, free of restriction prescribe under Sub Section (2) thereof. Further the court held that the provision under Sub Section (4) of Section 16 is one of the conditions which makes a registered person entitled to ITC and by no means Sub Section (4) can be said to be violative of Article 300A of the Constitution of India."

The Hon'ble High Court of Chhattisgarh in the case of Jain Brothers vs. Union of India, reported in (2023) 13 Centax 212 ( Chhattisgarh) , held that "we are of the considered opinion that the provision contained in section 16(4) of the CGST Act is violative of neither article 14 of the Constitution nor articles 19(1)(g) & 300A of the Constitution, however, the ground under article 19(1)(g) is not available to the petitioner, as the petitioner, in the instant case, is not a citizen and therefore article 19(1)(g) is not available to the petitioner herein. Concluding, the petitioner has failed to make out a case to question the constitutional validity of Section 16(4) of the CGST Act as it is a constitutionally valid piece of legislation. We hereby decline to entertain the writ petition. However, the petitioner is free to pursue the show cause notice issued to him on 20-5-2022. We have not commented upon the correctness of the said notice and the competent authority would consider the objection of the petitioner, if filed in accordance with law, expeditiously."

The Hon'ble High Court of Patna in the case of Gobinda Construction vs. Union of India, reported in (2023) 10 Centax 196 (Patna), held that "we are of the considered opinion that sub-section (4) of section 16 of the CGST/BGST Act are constitutionally valid and are not violative of articles 19(1)(g) and Article 300-A of the Constitution of India. The said provision is not inconsistent with or in derogation of any of the fundamental right guaranteed under the Constitution of India." It is be mentioned that SLP filed before the Hon'ble Supreme Court against the Patna High Court Order.

### **Whether time limit under Section 16(4) is legally valid?**

The basic parameter for time restriction is linked to Section 16(4), that a registered person shall not be entitled to take ITC in respect of invoice or debit note after the due date of furnishing return under section 39 for the month of November following the end of financial year.

It is pertinent to mention that by this restriction of time- limit under section 16(4), the vested right of ITC cannot be taken away from the taxpayer. The very purpose of credit is to give benefit to the assessee and a right accrued to the assessee on the date when they paid the tax on the raw materials or the inputs should be available to the taxpayers. Support

for the proposition can be referred to the Hon'ble Supreme Court decision in the case of *Eicher Motors Ltd. v. Union of India- 1999(106) E.L.T.3 (S.C.)*.

Further, Section 41 of the CGST Act, 2017 prescribed that every registered person, shall subject to such conditions and restrictions as may be prescribed, be entitled to take credit eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger and the registered person shall be utilised only for payment of self-assessed output tax. Therefore, ITC is a property or cash in hand and said property cannot be denied by way of not allowing the credit merely due to time-related procedural limitations. It is to be mentioned that Article 300A of the Constitution provides that no person shall be deprived of his property save by the authority of law. It is rightly held by the Hon'ble Supreme Court in the case of *Collector of Central Excise, Pune v. Dai Ichi Karkaria Ltd., reported in 1999(112) E.L.T. 353 (S.C.)*, that

“We are here really concerned with credit that has been validly taken, and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is, therefore, indefeasible. It should also be noted that there is no co-relation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available.”

**Conclusion:** To summarize, Section 16(1) provides that a registered person is “entitled to take” credit of the tax paid on any supply of goods or services or both which are used or intended to be used in the course or furtherance of business and the said amount of ITC shall be credited to the electronic credit ledger of the registered person. Section 16(2) prescribed that a registered person have to satisfy four eligibility



conditions for taking input tax credit (such as possession of duty paying documents under Rule 36(1), receipt of goods or services, tax paid by the supplier to the Government and return furnished by the registered person under section 39 i.e. GSTR-3B) and once the registered person satisfy the said conditions, he is entitled to take credit in the electronic credit ledger in respect of supply of goods or services or both. By this provision, Section 16(2) overrides Section 16(4). Thus, in the absence of time limit as one of the conditions in Section 16(2) ITC should be available to registered person even beyond time limit. With regard to non-furnishing of details of invoices / debit notes after due date furnishing of returns under Section 39 for the month of November from the end of financial year to which invoices pertains is the only procedural lapse. For which a registered person should not be denied substantial benefit , hence ITC should be available even if the same is claimed beyond the stipulated limit prescribed under Section 16(4) of the CGST Act, 2017. Now, the provision of section 16(4) of the Act has been challenged before the Hon'ble Supreme Court in the Case of Gobinda Construction vs. Union of India, against Patna High Court Order and till such time taxpayers have to wait to get benefit from the outcome of decisions of the Apex Court.

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