



Time limit for availing credit – whether linked to invoice date or supply date

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Section 16(4)

Similar to the restriction under the CENVAT Credit Rules, 2004, availing input tax credit (hereinafter referred to as ITC) under GST also is time bound. The relevant provision in this regard is section 16(4) of the Central Goods and Services Tax, 2017 (hereinafter referred to as the Act) which reads as under:

*“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 due date of furnishing of the return **under section 39** for the month of September **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.”*

As per the above provision, credit in respect of **an invoice** pertaining to a particular F.Y will have to be availed by the due date of filing the **Form GSTR 3B**¹ for the month of Sep following the end of the FY to which such **invoice pertains** or filing of the annual return for the said year, whichever is earlier, .i.e. say for an **invoice issued** in FY 2018-19 the last date to avail the credit on the same would be the due date of filing the Form GSTR-3B for the month of Sep '19 or the date of furnishing the annual returns for F.Y 2018-19, whichever is earlier.

Thereby it is clear that the availing of ITC is linked to the time of issuance of invoice rather than the time when the supply is made, thereby meaning, if for a supply made during FY 2018-19, the invoice is issued by the supplier during Apr '19 then the time limit to avail credit w.r.t. such an invoice would be Sep '20 or the date of filing of the Annual Return for FY 2019-20, whichever is earlier. Hence the point when the supply is made is not relevant to determine the time limit for availing credit. Similar provisions existed under the CENVAT Credit Rules, 2004, where rule 4 provided that the credit could be availed within 1 year from the date of **issue of the invoice** i.e. under these rules also the time limit for availing CENVAT credit was linked to the invoice date and not the date of provision of service.

Proviso to section 16(4)

The above becomes clearer when we examine the proviso which was inserted to section 16(4) of the Act vide Order No.02/2018 – Central Tax dated 31.12.2018 for the purpose

¹ There was a retrospective amendment (effective from 01.07.2017) making Form GSTR 3B a valid return to be furnished under section 39(1) vide notification No. notification No.49/2019 – Central Tax dated 09.10.2019



of extending the time limit for availing ITC w.r.t. FY 2017-18, which reads as under:

*“Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under [section 39](#) for the month of September 2018 till the due date of furnishing of the return under the said section for the month of March 2019 in respect of **any invoice** or invoice relating to such debit note **for supply of goods or services or both made during the financial year 2017-18**, the details of which have been uploaded by the supplier under [sub-section \(1\) of section 37](#) till the due date for furnishing the details under sub-section (1) of said section for the month of March 2019”*

From the above, it can be seen that there is a striking difference between the words used in section 16(4) *ibid* and the above-referred proviso. The reference under this proviso is to the **date of supply** of goods and not the invoice date, whereby, if the supply is made in FY 2017-18 the due date for availing credit would be up to the due date of filing Form GSTR-3B for Mar '19, **irrespective of the date of the invoice**, subject to the condition that the details of the said invoice should be uploaded by the supplier in his Form GSTR-1 by the due date of furnishing the said form for the month of Mar '19.

Effect of the above proviso – time limit for credit pertaining to supplies made during FY 2017-18 reduced in some cases

The above conclusion implies that, say in case a supplier failed to issue GST invoice for a supply made during FY 2017-18 as he was not aware of his liability (due to which he was unregistered during such FY) and issues the same dated FY 2019-20, the recipient will not be eligible for credit of such invoice for the reason that the above referred proviso restricts the credit w.r.t such supply up to the due date of Mar '19 return, which has lapsed. Thereby, it can be seen that the insertion of the proviso to section 16(4) *ibid*, has led to a restriction of credit in the hands of the recipient and in case of the invoices issued after FY 2018-19 it is impossible to avail the credit.

What was the intention of the proviso and whether the same has been incorporated in the proviso?

This proviso was inserted in order to extend the due date for availing the credit w.r.t. the invoices pertaining to FY 2017-18 up to the due date of filing Form GSTR 3B for the month of Mar '19, as it was the first year of implementation of GST. This can be seen from the minutes of the 33rd GST Council meeting – as per Agenda 7(xviii)

*“Proposal to **extend the due date for availing ITC on the invoices** or debit notes relating to such invoices **issued during the FY 2017-18** under section 16(4) of CGST Act, 2017 till the due date for furnishing of return for the month up to March, 2019.*



Trade and industry were not able to reconcile their ITC as many of their suppliers had not furnished details of invoices/debit notes relating to such invoices in FORM GSTR-1 & therefore it did not reflect in FORM GSTR-2A. Hence, request was made to extend the due date for availment of ITC on invoices/debit notes for FY -2017-18."

As per para 17 of such minutes, the above-referred agenda item was approved.

AND

The press release dated 22.12.2018 in para 8 stated

*"ITC in relation to **invoices issued by the supplier during FY 2017-18** may be availed by the recipient till the due date for furnishing of FORM GSTR-3B for the month of March 2019, subject to specified conditions."*

Further the Order 2/2018 *ibid* issued u/s 172 of the Act, reads as below (relevant extract) giving the background of the amendment

*"AND WHEREAS, the **financial year 2017-18 was the first year of the implementation** of the Goods and Services Tax in India and the taxpayers were still in the process of familiarising themselves with the new taxation system and due to lack of said familiarity- (i) the registered persons eligible to avail input tax credit **could not claim the same in terms of provisions of section 16** because of missing invoices or debit notes referred to **sub-section (4)** within the stipulated time; (ii) the registered persons could not rectify the error or omission in terms of provisions of sub-section (3) of section 37 within the stipulated time, as a result whereof certain **difficulties have arisen in giving effects to the provisions of subsection (4) of section 16** and sub-section (3) of section 37; NOW, THEREFORE, in the exercise of the powers conferred by **section 172** of the Central Goods and Services Tax Act, 2017, **the Central Government, on recommendations of the Council**, hereby makes the following Order, to remove the difficulties, namely:"*

From all the above it can be seen that the recommendation of the GST Council and the intention of introducing this proviso was to remove difficulty for the taxpayer in availing credit for the **invoices of FY 2017-18**. Nowhere is there any reference to the **supply** made during the FY 2017-18. However, when the amendment was carried out, it was made in such a way that instead of extending the due date of availing the credit the time limit has been reduced in certain cases. Hence, it can be seen that the intention of introduction of the above referred proviso was different from what it has actually been implemented as.

It is further to be noted that the order is issued u/s 172 of the Act (under which the Order 2/2018 *ibid* was issued) which reads as below:



*If any difficulty arises in giving effect to any provisions of this Act, the Government may, **on the recommendations of the Council**, by a general or a special order published in the Official Gazette, make such provisions **not inconsistent with the provisions of this Act** or the rules or regulations made thereunder, as may be necessary or expedient **for the purpose of removing the said difficulty**.*

From the above, it can be seen that the order u/s 172 can be for removing the difficulty. Further, such order has to be consistent with the provisions of the Act and has to be issued on the recommendation of the Council. However, in the instant case, the order that is issued is neither in line with the recommendation of the Council (as discussed above) nor is it consistent with the provision contained in section 16(4) *ibid* and instead of removing the difficulty in availing the credit of the taxes relating to the invoices issued in FY 2017-18, it has acted as a provision restricting credit in certain cases for supplies of FY 2017-18 as discussed above. Hence, the said proviso to the extent it refers to '*the **supply** for FY 2017-18*' instead of '*invoice for FY 2017-18*', can be said to be inconsistent and invalid. This though would require challenging the said proviso in the Court of Law.

It can thus be seen that any amendment in the law requires a minute level examination to see if it has any side effects to it.

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