

Time limit for re-availing Input Tax Credit in case of non-payment to the supplier

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Basic

The Goods and Services Tax Law imposes number of conditions for availing Input Tax Credit (ITC) of tax paid on supplies used or intended to be used in the course or furtherance of business. Primarily, such conditions have been specified under Section 16 of the Central Goods and Services Tax Act, 2017 (the Act).

Legal provisions

One such condition specified under second proviso to Section 16(2)(d) of the Act reads as under:

"Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:"

Further, third proviso to Section 16(2)(d) of the Act reads as under:

"Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon."

Section 16(4) of the Act 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."

Explanation

As per second proviso mentioned above, a person has to **increase his output liability of tax by the amount of ITC** taken on supply of goods or services or both if **payment** for such supply **has not been made within 180 days from the date of issue of invoice**. As per third proviso mentioned above, such person can **re-avail ITC upon making payment** of the amount towards the value of such supply and tax thereon. However, Section 16(4) mentions that ITC **can be availed** in respect of any invoice or debit note **before the due date of furnishing of 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**.

Now, the combined reading of provisos to Section 16(2)(d) and of Section 16(4) may pose any taxpayer in a position of doubt that whether he would be able to re-avail the credit of supply in above case, after

return for the month of September of financial year next to the year to which such invoice relates or furnishing of annual return for relevant financial year, whichever is earlier? This confusion prevails widely that this time limit is also applies to re-availing of ITC in above case. However, the same does not hold true.

Rule 37(4) of Central Goods and Services Tax (CGST) Rules, 2017, clears this paradox by stating that the **time limit** specified under Section 16(4) shall **not apply** to a claim for re-availing of any credit that had been reversed earlier **on account of non-payment to vendor**.

Conclusion

Thus, in accordance with above explanation there is no time limit for re-availing ITC if same has been foregone because of condition specified above. It can be re-availed as and when payment of supply along with tax thereon is made to supplier.