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ARTICLES 2019



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# TREADING THE GST PATH – XLIX - ITC ALARM.



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In terms of Section 16(4) of CGST Act, 2017, Input tax credit on supply of goods and services received during a financial year has to be taken on or before the due date of filing the return under Section 39 for the month of September 2018 or filing of annual return, whichever is earlier. For ready reference, Section 16 (4) is reproduced below.

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 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.

It may be noted that the return under Section 39 is the monthly return in form GSTR 3. The due date for filing GSTR 3 for every month is 20th of the succeeding month. The due date for filing annual return for a financial year is 31st December of the succeeding financial year as per Section 44 of the Act.

It may be observed from section 16 (4) above, that ITC pertaining to the invoices issued in 2017-18 and the debit notes / supplementary invoices raised in respect of the invoices issued in 2017-18 cannot be availed after 20.10.2018 (the due date for filing GSTR 3 for Sep 2018) or the actual date of filing of annual return for 2017-18 (if the same is filed earlier to 20.10.2018), whichever is earlier.

But it may be noted that GSTR 3 has not yet come into effect and as per Notification 71 & 72/2017 CT Dt. 29.12.2017 the due dates for filing GSTR 3 for the period July 2017 to March 2018 would be notified later; as per Notification 17 & 18/2018 CT Dt. 28.03.2018 the due dates for filing GSTR 3 for the period April 2018 to June 2018 would be notified later; and as per Notification 32 & 33/2018 CT Dt.10.08.2018 the due dates for filing GSTR 3 for the period July 2018 to March 2019 would be notified later. Does it mean that the time limit for availing ITC in respect of invoices / debit notes pertaining to 2017-18 would also get extended?

In this connection attention is invited to Rule 61 of the CGST Rules, 2017, which has prescribed the format of GSTR 3. As per sub rule (3) of Rule 61, where the due dates for filing of GSTR 1 / GSTR 2 are extended as a result of which GSTR 3 also could not be filed, a return in form GSTR 3 B should be filed. Hence, it can be concluded that GSTR 3 B is also a return envisaged under Section 39.

Thus any ITC pertaining to the year 2017-18, shall be taken by all assesses, on or before 20.10.2018 (the due date for filing GSTR 3 B for Sep 2018). But if the assessee files their annual return for 2017-18 before 20.10.2018, no credits for the year 2017-18 could be taken after filing of such annual return.

All assesses should be aware of the above restrictions. It may be noted that in many industry, price finalization and settlement of claims for price escalations are delayed for several years. It may be noted that the liability to pay additional GST on such upward price revision, which is cast under sub sections (3) and (4) Section 54, is without any time limit.

(3) Where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient a debit note containing such particulars as may be prescribed.

(4) Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.

Explanation. – For the purposes of this Act, the expression “debit note” shall include a supplementary invoice.

But, availing ITC on the basis of such debit notes is subject to the time limits prescribed under Section 16 (4). For example, for the supplies made during 2017-18, if a Debit Note / Supplementary invoice is raised after 20.10.2018, ITC of additional duty on such upward price revision cannot at all be taken by the recipient. What is the relevant is the date of invoice in respect of which the debit note is raised and not the date of debit note.

Similarly, in case of downward price revision, credit notes have to be issued as per sub sections (1) and (2) of Section 34. If the recipient of the supply, reverses proportionate ITC for the downward price revision, the supplier can claim reduction in his output tax liability to that extent. But this is also subject to the time limit prescribed in Section 34 (2), according to which such credits notes have to be raised not later than the month of September in the next financial year or the date of filing of annual return whichever is earlier.

To summarise, the following precautions have to be taken by all.

- (i) As a recipient of supply, review the ITC being availed by you and if ITC is not availed for any invoices for inward supplies received by you during 2017-18, efforts may be taken to avail such ITC on or before 20.10.2018, i.e in the September 2018 return.
- (ii) As a recipient of supply, if your suppliers are contemplating to claim any upward price revision, insist them to issue Debit Note / Supplementary invoices well before 30.09.2018, for the supplies made during 2017-18, so that you can avail ITC of the GST paid on such upward price revision, latest in September 2018 return.
- (iii) As a supplier, if you have to effect any downward price revision, issue credits to the recipients in this regard well before 30.09.2018, so that you can reduce your GST liability, to an extent of GST already paid on the higher price, consequent to price reduction.

Further, as per Section 142 (2) (a) of the CGST Act, if any upward price revision is made for pre GST supplies, then GST is payable for the said price difference. The relevant section is reproduced below.

142 (2)(a) where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised upwards on or after the appointed day, the registered person who had removed or provided such goods or services or both shall issue to the recipient a supplementary invoice or debit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under this Act.

The debit notes thus raised for pre GST supplies, which attracts GST liability are also governed by Section 16 (4) where no distinction has been provided for such Debit notes. For example, for the goods / services received during 2015-16 / 2016-17, if an upward price revision is finalized now and if a Debit note is raised for such upward price revision for the supplies made in 2016-17, GST is payable by the supplier and a debit note has to be raised for that purpose. Let us assume that such Debit note is raised during September 2018. But these debit notes are for the invoices raised during 2016-17. The time within which ITC can be claimed is laid down in Section 16 (4), with reference to the date of parent invoices, for which the Debit notes are being raised, according to which ITC has to be availed before the due date for filing September 2017 return (i.e. 20.10.2017). Hence, no ITC could be claimed in this case now.

(Published in [www.taxindiaonline.com](http://www.taxindiaonline.com))

