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TIME LIMIT FOR AVAILING ITC

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QUESTION: We are a multi-locational unit and have GST registrations in several States. We have not done any cross charge invoices since July 2017 for the common services provided by the Head Office / Registered office to all units. If we raise the invoice now (2020-21) and pay GST along with interest, can all the receiving units avail ITC now?

Attention in this regard is invited to Section 16 (4) of the CGST Act.

Sec. 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.

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.

An immediate reply to the above question, based on the bare reading of the provisions of Section 16 (4) would be in the negative, inasmuch as no ITC can be taken for any invoice raised for the supplies made in 2017-18, 2018-19 and 2019-20, after the due date for filing the GSTR 3 B return for the month of September next year [except 2017-18, where the above said due date was extended to 31.03.2019 vide proviso to Section 16 (4)].

Let us examine the issue in detail.

It has to be decided that if an invoice is raised in 2020-21, for a supply made in earlier years (belated raising of invoice and tax would be paid along with applicable interest for the delay), **whether such invoice pertains to the year of its issue or the year in which the supply is made.**

In other words, in the given example, if the invoice raised in 2020-21 for the supplies made in 2017-18, 2018-19 and 2019-20 is considered as an invoice pertaining to the years 2017-18, 2018-19 and 2019-20 (in which the supply is made), then ITC cannot be taken in 2020-21. But, if the invoice raised in 2020-21 for the supplies made in 2017-18, 2018-19 and 2019-20 is considered as an invoice pertaining to the year 2020-21 (year in which the invoice is raised), then ITC can be taken up to 20.10.2021 (due date for filing GSTR 3B for September 2021).

At the outset, it may be noted that the provisions of Section 16 (4) prescribing the time limit is worded as below -

Sec. 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.

The relevant phrase used in the section is "end of financial year to which such invoice pertains" and not "the end of the financial year in which the goods or services or both covered by the invoice were supplied". Had it been the intention of the legislature to go back to the period in which the supply was received, in order to determine the time limit upto which ITC can be availed for such supplies, the above provision could have been worded differently, signifying such intention. Rather the provision only refers to "end of financial year to which such invoice pertain".

As per Section 34 of the CGST Act, if the taxable value or tax charged in the invoice is lesser than what it should be, a Debit Note could be issued and the tax charged in such Debit Note could be availed as ITC. Prior to its amendment, such ITC based on Debit Notes, had to be taken, before 20th October of the year succeeding the year, in which the invoice was issued. For example, for an invoice raised in 2018-19, if a Debit Note for price escalation was raised in 2020-21, no ITC can be taken for the tax charged in the Debit note as the time limit has already expired on 20.10.2019.

The phrase "invoice relating to such" in the above provision was omitted vide Section 120 of the Finance Act, 2020 and this omission has taken effect from 01.01.2021 vide Notification **92/2020-Central Tax** Dt. 22.12.2020. The Statement of Objects and Reasons for the above amendment stated as below.

Clause 118¹ of the Bill seeks to amend sub-section (4) of section 16 of the Central Goods and Services Tax Act so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit.

Let us try to understand the true meaning of the expression "pertains to".

Prior to omission of the phrase "invoice relating to" in the above provision, availment of ITC based on Debit notes is linked to the parent invoices, for which such debit notes are raised (for price escalation, etc). So, for an invoice raised in 2018-19, if an upward price revision is agreed and a debit note for that purpose is raised in 2020-21, no ITC could be taken for such Debit Note, as the invoice relating to such debit note pertains to the year 2018-19 and the time limit for availing ITC for the year 2018-19 has already expired.

If a view is taken that "pertains to" used in Section 16(4) with reference to the invoices and debit notes, would refer to the underlying supply, then the above conscious amendment would be rendered meaningless. It is clear from the above amendment, that the phrase "debit note pertains to" would refer only to the year in which the debit note is raised, irrespective of the year in which the supply covered under that debit note has been made. Hence, the phrase "invoice pertains to" should also refer only to the year in which the invoice has been raised, and not the year in which the supply covered by that invoice has been made.

Accordingly, for the question posed in the beginning, the answer would be in affirmative. In other words, for any tax liability pertaining to earlier years, if the tax was not paid and no invoice was raised at the time of supply, but the invoice is raised later and tax is also paid with interest, ITC in respect of such invoice can be taken on or before 20th October of the year, succeeding the financial year in which such invoice is raised, subject to other restrictions contained in Section 16 and 17 of the CGST **Act, 2017.**

[The views expressed are strictly personal.]

¹Clause 118 of the Finance **Bill, 2020** has become Section 120 of the Finance Act 2020



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