

**Amended Section 16(4) to de-link ITC on Debit Note with Invoice fails to get stamping of Gujarat AAR**

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Input tax credit is a beneficial piece of legislation but subject to various conditions and limitations prescribed under Section 16 and 17 of CGST Act, 2017. One of the conditions contained in [Section 16\(4\)](#) is that such right is not indefinite and can be availed upto a prescribed time limit. As per Section 16(4), the assessee cannot claim the input tax credit on supply of goods or services after the due date of furnishing of the return under [section 39](#) (i.e. GSTR-3B) for the month of September following the end of financial year or furnishing of the relevant annual return, whichever is earlier. After the introduction of GST, Section 16(4) reads as under:

*'(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The above Section as originally enacted links the time limit to claim the Input tax credit on the Debit Note with the Financial Year in which the corresponding Invoice is issued instead of Financial Year in which Debit Note is issued. For example, Invoice was issued in F.Y. 2018-19 and Debit Note corresponding to the Invoice was issued in F.Y. 2020-21. As per original Section 16(4), ITC on the Debit Note can be claimed latest upto September following the Financial year in which Invoice was issued. Since, Invoice was issued in F.Y. 2018-19, ITC can be claimed latest upto September 2019 whereas Debit Note itself is issued after September 2019. This is nothing but an anomaly in the Section 16(4) which seeks to do impossible. This was a big loss to the recipient of Debit Note without any revenue loss to the Government as the Supplier is required to pay GST charged on such Debit Notes, whenever issued

Unlike, Credit Notes, which seeks to reduce the output tax liability and its issuance to adjust the GST liability is barred by time limitation under [Section 34\(2\)](#) latest upto September month following the Financial Year to which supply

is made, there is no express time limits prescribed under GST law till when a Debit Note against corresponding Invoice should be issued. This is due to obvious reason that issuance of Debit Note increasing GST liability adds to the Govt. Exchequer's kitty.

However, by restricting the ITC on Debit Notes by linking it with the original corresponding Invoice, it is unfair and unjust for the recipient of goods or services which caught attention of lawmakers which led to amendment in Section 16(4) by Finance Act (No. 2), 2020 to rectify the anomaly and de-link the time limit to claim ITC on Debit Note with Original Invoice and hence, availability of ITC can be determined independently on the basis of Financial Year in which Debit Note has been issued. Amended Section 16(4) reads as under (which has been made effective w.e.f. 1st January 2021):

*'(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 effect of the aforesaid amendment is that time limit to claim ITC on Debit Note as prescribed under Section 16(4) can be applied independently irrespective of the fact in which Financial Year Invoice was issued. For example, Invoice was issued in F.Y. 2020-21 and Debit Note corresponding to the Invoice was issued in F.Y. 2021-22. As per amended Section 16(4), ITC on Debit Note can be claimed latest upto September 2022 as against earlier the same could be claimed upto September 2021 (as the same was linked with Financial Year in which corresponding Invoice was issued).

However, not so pleased by the aforesaid amendment, Recently, Hon'ble AAR in the case of *M/s I-TECH PLAST INDIA PVT. LTD.* - [2021-VIL-205-AAR](#) discussed the scope of amended Section 16(4) of CGST Act, 2017 and did not give any weightage to the amendment and held that change affected as a result of Finance Act, 2020 has not brought about any drastic or far-reaching change in the interpretation of sub-section(4) of Section 16, and even if a debit note issued by a supplier in connection with an invoice due to increase in price of a particular commodity, is issued in a different financial year than that of the financial year in which the original invoice was issued, the financial year to which the debit note pertains, will always be considered to be the year in which the original invoice was issued.

The Hon'ble AAR completely overlooked the intent of the amendment and opined that even after amendment in Section 16(4), ITC on Debit Note should be seen with respect to the Financial Year in which corresponding Invoice was issued instead of Financial Year in which Debit Note was issued. Such observation of the Ruling makes the amendment itself redundant and if the intention of the Government was to link the Debit Note with Invoice only, then there would not be any requirement for amendment at first place. Hon'ble AAR emphasized on the fact that Debit Note is not an independent document in itself and hence, the same would also be dependent on the Original Invoice.

It is imperative to advert to the Explanatory clauses to the Finance Bill, 2020 and Memorandum Document to understand the intent behind the amendment which reads as under:

*"Clause 118 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.**"*

The explanatory clause which gives us insight into the intent of the amendment is clearly provides that such amendment has been done for purpose of availing input tax credit.

In our humble opinion, after reading amended Section 16(4) alongwith aforesaid Clause of the Explanatory Notes, language of the amended provision is unambiguous and does not have the scope of multiple interpretations which could not be appreciated by Hon'ble AAR while giving its ruling in the aforesaid case.

Inspite of legal clarity on the issue affirming the view that ITC on debit note stands delinked with Original Invoice after amendment, such views by AAR showcase the interpretation of Department on such amended provision and open doors for impending litigation on the subject.

Further, prospective effect of amendment w.e.f. 1st January 2021 is grey area for claims of ITC on Debit Notes issued prior to amendment in Section 16(4). It will not be out of place to mention that being a rectification of anomaly, such amendment should be treated as curative amendment and hence, should have application retrospectively w.e.f. 1st July 2017, however, with a piece of caution and ready for disputes from Revenue.

[Date: 20/04/2021]

*(The views expressed in this article are strictly personal)*

