

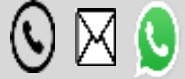


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## Section 16 of CGST Act, 2017

### 16. Eligibility and conditions for taking input tax credit.

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and, in the manner, specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, —

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;

(b) he has received the goods or services or both.

Explanation—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

- (i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;
- (ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]

(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and  
(d) he has furnished the return under section 39.

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

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:

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.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, (43 of 1961) the input tax credit on the said tax component shall not be allowed.

(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 thirtieth day of November following the end of financial year to which such invoice or 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.

Relevant Rule	Subject
Rule 36	Documentary requirements and conditions for claiming input tax credit
Rule 37	Reversal of input tax credit in the case of non-payment of consideration

### Our Interpretation

Section 16(1)	<p><b><u>Entitlement of ITC</u></b></p> <p>Every Registered person (Other than composition dealer) is entitled to ITC on all the goods and services received for business purpose, subject to certain conditions and the same can be utilized in the manner prescribed u/s 49. The eligible ITC shall be credited to the electronic credit Ledger after claiming it in the Return i.e., GSTR-3B.</p>
Section 16(2)	<p><b><u>Condition for taking ITC</u></b></p> <p>There are four conditions for availing the ITC</p> <ol style="list-style-type: none"> <li>1) Possession of Tax Invoice, Debit Note, Bill of Entry, RCM self-invoice</li> <li>2) The detail of such invoice or debit note is communicated in the GSTR-2B of the taxpayer. <b>The clause (aa) is inserted vide Notification No.39/2021-CT, dated 21-12-2021 and is effective from 01-01-2022.</b></li> <li>3) He has received the goods or services or both</li> <li>4) <b>The clause (ba) is inserted vide Notification No.18/2022-CT, dated 28-09-2022 and is effective from 01-10-2022.</b> This means that the details if invoices/ debit notes as communicated in GSTR-2B should not be restricted under Section 38.</li> </ol> <p>As per provisions of section 38(2) notified vide <b>Notification No.18/2022 – Central Tax dated 28-09-2022 effected from 01-10-2022</b>, the auto generated statement (GSTR-2B) consisting of two parts shall be provided. <b>One Part</b> shall state eligible Input Tax Credit which the Recipient can avail and utilize. The <b>Second Part</b> shall provide details of such supplies in respect of which Input Tax Credit cannot be availed by the Recipient wholly or partly. To know the restricted ITC as per section 16(2)(ba) the recipient shall have to check the second part of the GSTR-2B. A list shall be generated on the basis of inward supplies received from:</p> <ul style="list-style-type: none"> <li>• Supply by the newly Registered Person</li> <li>• Supply by the registered person who has defaulted in payment of tax</li> <li>• Supply by the registered person whose Output Tax Payable (as per GSTR-1) exceeding the output tax paid (as per GSTR-3B)</li> <li>• Supply by the registered person who availed input tax credit in excess of eligible input tax appearing in GSTR-2B.</li> </ul>

	<ul style="list-style-type: none"> <li>Supply by the registered person who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49. Provisions under section 49(12) are relating to minimum payment of output tax in cash even there is credit balance available in electronic credit ledger.</li> </ul> <p>Therefore, Clause (ba) provides a mandatory condition that ITC claimed by recipient should not be restricted under Section 38. Hence, ITC restricted or ineligible as per GSTR-2B cannot be claimed in Form GSTR-3B.</p> <ol style="list-style-type: none"> <li>Tax charged on invoice has been paid or adjusted by the supplier</li> <li>Recipient has filed the return claiming ITC i.e., GSTR-3B</li> </ol> <p><b>Proviso</b> to Section 16(2) says that where goods under an Invoice are received in lots or in instalments, the recipient <b>can claim ITC upon receipt of last lot or last instalment</b>.</p> <p><b>2<sup>nd</sup> Proviso</b> to Section 16(2) means that a Recipient has to make the payment of “valeur of supply and taxes” within 180 days to the supplier, otherwise ITC so claimed would be reversed proportionately under Rule 37 for non-payment of amount within stipulated date. Interest @18% shall be levied, if such is utilised ITC by recipient.</p> <p><b>3<sup>rd</sup> Proviso</b> to Section 16(2) means that a recipient can claim ITC, if reversed earlier due to Rule 37 upon payment to supplier.</p>
<p>Rule 36(1)</p>	<p><b><u>Documentary requirements and conditions for claiming input tax credit.</u></b></p> <p>The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely, -</p> <ol style="list-style-type: none"> <li>an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;</li> <li>an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;</li> <li>a debit note issued by a supplier in accordance with the provisions of section 34;</li> <li>a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;</li> <li>an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.</li> </ol>
<p>Rule 36(1)</p>	<p><b><u>Documents required for claiming ITC</u></b></p> <p>The ITC can be claimed on any of the documents:</p> <ol style="list-style-type: none"> <li>Tax invoice issued by supplier</li> <li>RCM-Self invoice issued by recipient</li> <li>Debit note issued by supplier</li> <li>Bill of entry as prescribed under Custom Act, 1962</li> <li>ISD Invoice/ credit notes</li> </ol>
<p>Rule 36(2)</p>	<p>Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document, and the relevant information, as contained in the said document, is furnished in FORM GSTR-2 by such person:</p> <p>Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.</p>
<p>Rule 36(2)</p>	<p><b><u>Content of documents</u></b></p> <p>ITC shall be availed only if all the applicable contents as specified in Rules, are contained in the said document more particularly, Tax component, description of item, Total Value, GSTIN of supplier &amp; buyer. Place of supply, etc.</p>

Rule 36(3)	No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, wilful misstatement or suppression of facts.
Rule 36(3)	<p><b><u>Prohibition for claiming ITC</u></b></p> <p>No ITC to the buyer, in respect of tax paid in pursuance of order where demand created on account of any fraud, wilful misstatement, or suppression of facts.</p>
Rule 36(4)	Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 percent of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.
Rule 36(4)	<p><b>Rule 36(4) introduced vide Notification No.49/2019 dated 09<sup>th</sup> October 2019.</b></p> <p>20% of Matched ITC was allowed- From 01-10-2019 Till 31-12-2019 vide N.No.49/2019 dt. 09-10-2019  10% of Matched ITC was allowed- From 01-01-2020 Till 31-12-2020 vide N.No.75/2019 dt. 26-12-2019  5% of Matched ITC was allowed- From 01-01-2021 Till 31-12-2021 vide N.No.94/2020 dt. 22-12-2020</p> <p>5% additional ITC was removed over and above ITC appearing in GSTR-2B. From 1<sup>st</sup> Jan 2022, taxpayers can avail ITC only if it is reported by their supplier in GSTR-1/ IFF and it shows in their GSTR-2B. This rule was amended via <b>Central Tax Notification No. 40/2021 on 29<sup>th</sup> December 2021</b>. Accordingly, you can claim Input Tax Credit (ITC) only if it is appearing in GSTR-2B from 1<sup>st</sup> January 2022.</p>
Rule 37	<p><b><u>Reversal of input tax credit in the case of non-payment of consideration-</u></b></p> <p><b><u>CBIC has amended the Rule 37 vide Notification No. 19/2022-CT dated 28.09.2022 w.e.f 01.10.2022 and the underlined words were inserted vide Notification No. 26/2022-CT dated 26.12.2022.</u></b></p> <p>(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply, <u>whether wholly or partly</u>, along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of section 16, shall pay <u>or reverse</u> an amount equal to the input tax credit availed in respect of such supply, <u>proportionate to the amount not paid to the supplier</u>, along with interest payable thereon under section 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice.</p> <p>Provided that value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.</p> <p>Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.</p> <p>(2) Where the said registered person subsequently makes the payment of the amount towards the value of such supply along with tax payable thereon to the supplier thereof, he shall be entitled to re avail the input tax credit referred to in sub-rule (1).</p> <p>(3) Omitted</p>

	<p>(4) The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.</p>
Rule 37	<p><b><u>Non-payment by recipient</u></b></p> <p>The amended Rule 37 (1) says that the taxpayer is liable to reverse proportionate ITC, in cases where only part of the invoice value is not paid within 180 days, only to the extent of the invoice value not paid to the supplier. The reversal shall be made in the GSTR-3B return for the tax period, following the period of 180 days. But the taxpayer is not prevented to reverse the same in the GSTR-3B return of the same period in which taxpayer anticipate reversing the ITC due to non-payment in 180 days so that the interest liability could be reduced further. In such case ITC claimed shall be added back as his output tax along with interest @18%.</p> <p>Further, in case where the recipient makes payment then he can reclaim out of the reversed account but interest element cannot be reclaimed.</p>
Rule 37A	<p><b><u>Reversal of ITC in the case of non-payment of tax by the supplier and re-availment thereof:</u></b></p> <p>Inserted vide Notification No. 26/2022-CT dated 26.12.2022:</p> <p>Where input tax credit has been availed by a registered person in the return in FORM GSTR-3B for a tax period in respect of such invoice or debit note, the details of which have been furnished by the supplier in the statement of outward supplies in FORM GSTR- 1 or using the invoice furnishing facility, but the return in FORM GSTR-3B for the tax period corresponding to the said statement of outward supplies has not been furnished by such supplier till the 31st day of September following the end of financial year in which the input tax credit in respect of such invoice or debit note has been availed, the said amount of input tax credit shall be reversed by the said registered person, while furnishing a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year:</p> <p>Provided that where the said amount of input tax credit is not reversed by the registered person in a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year during which such input tax credit has been availed, such amount shall be payable by the said person along with interest thereon under section 50.</p>
Rule 37A	<p><b>It specifies procedure for reversal of ITC on or before the 30<sup>th</sup> November, when the supplier has not filed GSTR-3B. Also provides for reavailment when such return has been filed by the supplier.</b></p> <p>Buyers will need to reverse ITC claimed on such supplies declared in the GSTR-1/Invoice Furnishing Facility (IFF) but not declared in GSTR-3B by the seller.</p> <p>Note that the below conditions must be satisfied for Rule 37A of GST to apply-</p> <ul style="list-style-type: none"> <li>• The buyer has claimed ITC on such invoice based on the record shown in GSTR-2B.</li> <li>• The supplier has not deposited the tax on such invoice/debit note</li> <li>• The supplier has not filed the GSTR-3B with the corresponding invoice/debit note</li> </ul> <p>In simpler words, this rule applies when the value of supply in supplier's GSTR-1 is more than their GSTR-3B, or an invoice declared in GSTR-1 is missed out in GSTR-3B by the supplier or vendor.</p> <p>The recipient would have initially claimed the ITC appearing in GSTR-2B through Table 4(A)(5) of Form GSTR-3B. If CGST Rule 37A gets attracted, they must reverse such claimed ITC by reporting it in Table 4(B)(2) of Form GSTR-3B.</p> <p>No interest gets attracted on ITC reversal if done within the defined time limit. However, interest gets attracted on ITC reversal if done after the defined time limit</p> <p>Rule 37A of GST provides relaxation to buyers who genuinely have missed claiming their ITC due to the fault of the supplier.</p> <p>They can re-claim reversed ITC even after the time limit given above if the corresponding supplier- Files the particular period's GSTR-3B after 30th September of the year following the FY, or</p>

	<p>Reports such as missed invoice/debit notes in any period's GSTR-3B filed after 30th September of the year following the FY, and</p> <p>Pays tax on such invoice/debit note after 30th September of the year following the FY.</p> <p>The recipient can re-claim or reavail the ITC in Table 4(D)(1) of Form GSTR-3B of any subsequent return periods.</p> <p>Note that such re-claims are allowed despite the restriction put under Section 16(4) of the CGST Act.</p>
Section 16(3)	<p><b><u>Depreciation on tax component of capital goods</u></b></p> <p>The law permits to claim full ITC on capital goods. So, if tax component as charged on the invoice of a capital good is claimed as ITC credit, then tax component cannot become part of capital goods for capitalization in Books of Accounts and thus, no depreciation can be charged on tax component for Income Tax purposes or accounting purpose.</p>
Section 16(4)	<p><b><u>Time limit for claiming ITC</u></b></p> <p>Earlier of the:</p> <ul style="list-style-type: none"> <li>▪ <b>Thirtieth day of November i.e., 30<sup>th</sup> November*</b> following the end of financial year to which such invoice or debit note pertains.</li> <li>▪ Furnishing of the Annual Return</li> </ul> <p>* <b>This was substituted w.e.f. 01-10-2022 vide Notification No. 18/2022, dt. 28-09-2022.</b> Earlier, the time limit for claiming ITC was <b>Earlier of:</b> due date of furnishing of the return under section 39 for the month of September or furnishing of the Annual Return.</p> <p>Proviso was inserted vide <b>CGST (Second Removal of Difficulties) Order No. 02/2018-CT, dt. 31-12-2018</b> meaning that for F.Y.2017-2018, the time limit for claiming ITC was extended till 23.04.2019, if the supplier has reported that invoice or debit note till 13.04.2019 in his GSTR-1.</p>

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