

MAHARASHTRA AUTHORITY FOR ADVANCE RULING
GST Bhavan, Old Building, 1st floor, B-Wing, Room No.107, Mazgaon, Mumbai - 400010.

(Constituted under Section 96 of the Maharashtra Goods and Services Tax Act, 2017)

BEFORE THE BENCH OF

(1) Shri. D. P. Gojamgunde, Joint Commissioner of State Tax, (Member)

(2) Ms. Priya Jadhav, Joint Commissioner of Central Tax, (Member)

ARA No.	AD270324187950T
GSTIN Number, if any/ User-id	27AAGFA2322M1ZK
Legal Name of Applicant	M/s. Adi Enterprises
Registered Address/Address provided while obtaining user id	01, Desaiwadi, Usgaon, Bhatane, Virar, Palghar, Maharashtra, 401303.
Details of application	GST-ARA, Application No. 03 Dated 19.04.2024
Concerned officer	Commissionerate- Palghar, Division-II, Range-I
Nature of activity(s) (proposed/present) in respect of which advance ruling sought	
A Category	Factory / Manufacturing
B Description (in brief)	Applicant is a manufacturer of "Ear buds" which is having HSN as 96190090.
Issue/s on which advance ruling required	➤ admissibility of input tax credit of tax paid or deemed to have been paid
Question(s) on which advance ruling is required	As per reproduced in para no. 01 of the proceedings.

PROCEEDINGS

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

The present application has been filed under Section 97 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017 [hereinafter referred to as "the CGST Act and MGST Act" respectively] by M/s. Adi Enterprises, the applicant, seeking an advance ruling in respect of the following questions.

- 1) Whether time limit of availing ITC as mentioned in Section 16(4) of CGST Act, 2017 is applicable on ITC eligible as per Bill of Entry?
- 2) In this case, can applicant avail this IGST paid as per bill of entry in the next GSTR3B?

01. FACTS AND CONTENTIONS - AS PER THE APPLICANT

The Applicant M/s Adi Enterprises has imported Machineries, having details as follows-

Commercial Invoice Date	18/08/2022
Invoice Value	USD 49000
Seller name	China Forbona Group Limited
Invoice Number	P220621518YD
Port Code	INBOM4
BE No	2134376
BE Date	24/08/2022
IGST Paid	Rs. 9,00,939

- This IGST paid through Bill of Entry is reflected in GSTR 2A of August 2022 and reflected in GSTR 2B of March 2023.
- This IGST credit is not availed in GSTR 3B of FY 2022-23
- The applicant is forgotten to avail this credit in GSTR 3B return till 30th November 2023 also.
- On 21/03/2024, an email received from GST department regarding excess IGST ITC available as per GSTR 2B but not claimed in GSTR 3B, so need to avail & reverse the same in upcoming GSTR 3B return.
- Then applicant remember about this left out IGST ITC to avail & accordingly the Applicant seeks clarification in AAR on the availability of this ITC.

Following documents Attached for your reference: -

- Commercial Invoice
- E-Way Bill
- Bill of Entry and its summary
- GSTR 2A- August 2022
- GSTR 2B- March 2023
- Email from GST Department

The applicant has sought clarification regarding the applicability of time limit as mentioned in section 16(4) of CGST Act, 2017 on ITC eligible as per Bill of Entry & can the applicant avail this IGST credit in its upcoming GSTR 3B return.

02. STATEMENT CONTAINING APPLICANT'S INTERPRETATION OF LAW

- 2.1 The applicant has mentioned below relevant provisions of the Act to seek clarification regarding the interpretation and application of the time limit for availing input tax credit (ITC) in relation to imported goods under the Central Goods and Services Tax (CGST) Act, 2017 and the Integrated Goods and Services Tax (IGST) Act, 2017.
- 2.2 Section 16 of the CGST Act, 2017 spells out the eligibility and conditions for availing the input tax credit. The Section 20 of IGST Act, 2017 provides for the applicability of various provisions of CGST Act, 2017 to the IGST Act, 2017 "mutatis mutandis" and by virtue of said section the provisions related to Input Tax Credit as spelt out in the CGST Act is made applicable to IGST Act, 2017.
- 2.3 The time limit to avail the ITC is provided for under sub-section (4) of section 16 of CGST Act, 2017. As per the said section the time limit to avail the ITC is thirtieth day of November following the end of the financial year or Annual Return of the relevant financial year to which such invoice or debit note pertains, whichever is earlier.

In the present context we must read Section 2(38), 2(66), 16(2)(a) and Section 16(4) of CGST Act, 2017 which reads as follows;

Section 2(38) "debit note" means a document issued by a registered person under sub-section (3) of section 34;

Section 2(66) "invoice" or "tax invoice" means the tax invoice referred to in section 31;



Section 16(2)(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;

Section 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 thirtieth day of November following the end of the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.....

2.4 On perusal of above provisions, it could be observed that at one place of very same section legislature takes a pain to mention "*such other tax paying documents as may be prescribed*" and by the time he reaches the end of section he left out the very same words i.e. "*such other tax paying documents as may be prescribed*".

2.5 Under the CGST Act, 2017 the ITC of Tax paid on import of goods i.e. IGST is allowed and in that regard we can refer to the Section 2(62)(a) of CGST Act, 2017 which reads as "input tax" in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes

(a) the integrated goods and services tax charged on import of goods;

and in order to allow such ITC under the CGST Act, 2017 the Section 16(2)(a) specifically make mention of the words "*such other tax paying documents as may be prescribed*" and accordingly spelt out at Rule 36(1)(d) of CGST Rules, 2017 the Bill of Entry or any similar documents as prescribe under the Customs Act, 1962 as one the documents eligible for availing the ITC.

2.6 Now let's go to the Section 20(iv) of IGST Act, 2017 which provides that Subject to the provisions of IGST Act, 2017 and the rules made thereunder, the provisions of CGST Act, 2017 relating to Input Tax Credit shall, *mutatis mutandis*, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act.

Under these circumstances the concept of the word "*mutatis mutandis*" needs quite deliberation to determine whether in the context of Section 16(4) of CGST Act, 2017 the same could be modified by importing and adding a new word and read as "*any invoice or debit note or bill of entry... ..*"

The rule of *mutatis mutandis* is a rule of adaption and allows the changes according to the context in the point of details and alteration to the words when necessary to suit the objective.

2.7 However, in the present context the word "Bill of Entry" itself holds an equal importance under the CGST Act, 2017 and in spite of that fact the same have been ignored under Section 16(4) of CGST Act, 2017 which could be unintended drafting error but such errors cannot be rectified in guise of *mutatis mutandis* under the IGST Act, 2017. The concept of *mutatis mutandis* cannot extend the



scope and power beyond the one originally envisaged under the referred legislation.

- 2.8 Further the tax on import of goods is being levied under the Section 3(1) of Custom Tariff Act 1975. Let us bring your attention to the levy under IGST Act, 2017 in the context of import of goods which reads as under;

Section 5(1) of IGST Act, 2017 - Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as maybe notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

Now we request you to review the Section 3(7) of the Custom Tariff Act, 1975 which reads as under;

Section 3(7) Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent. As is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8)."

- 2.9 If we would compare the same with Section 3(1) of Custom Tariff Act, 1975 which reads as under;

"Section 3(1) Any article which is imported into India shall, in addition, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India and if such excise duty on a like article is leviable at any percentage of its value, the additional duty to which the imported article shall be so liable shall be calculated at that percentage of the value of the imported article:"

- 2.10 Then we would appreciate the fact that the very difference in both above provisions are such that unlike Section 3(1) the levy of IGST under Section 3(7) is itself a levy and not any equivalent to other taxes or duty.

So according to us and to the best of our understanding and knowledge the school of thought that the barriers of time limit for availing the ITC under section 16(4) of CGST Act, 2017 doesn't apply in case of import of goods for the very reason that same doesn't find any mention therein.

- 2.11 This could be an unintended drafting error but won't change the consequences.

We would like to quote, Mr. Oliver Wendell Holmes Jr former Chief Justice of Supreme Court of USA who once said in his court "This is a Court of Law and



not a Court of Justice" which we believe to be in line with literal interpretation of law which may have harsh consequences on either side.

03. CONTENTION - AS PER THE CONCERNED JURISDICTIONAL OFFICER:

3.1 M/s Adi Enterprises having GSTIN Number 27AAGFA2322M1ZK situated at Building no1. Desaiwadi Usgaon, Bhatane Virar- 401303. The GSTIN is into manufacturing and exports of 'Ear buds' under HSN 96190090.

The taxpayer has filed application on 19.04.2024 application to Advance Ruling (State) seeking advance ruling on availment of ITC of tax paid or deemed to have been paid. They have imported machineries, the details of which are as under:

Commercial Invoice Date	18/08/2022
Invoice Value	USD 49000/
Seller Name	China Forbona Group Limited
Invoice Number	P22062 1518YD
Port Code	INBOM4
BE No	2134376
BE date	24/08/2022
IGST Paid	Rs 9,00,939/

3.2 The IGST of Rs 9,00,939/- was paid through Bill of Entry and the same was reflected in GSTR 2A of the Taxpayer for the month of August 2022 and the same was further reflected in GSTR2B of the Taxpayer up to the month of March 2023.

3.3 This IGST credit which was lying in GSTR3B was not availed by the Taxpayer for the period FY 2022-23. They had further not availed this IGST Credit in their GSTR-3B returns till 30" November 2023.

3.4 They received an email dt 21.03.2024 from the State GST department informing them regarding the excess IGST ITC available to them as balance/unutilised ITC as per GSTR-2B but not claimed by them in their GSTR 3B so they were required to avail and then reverse the same in the upcoming GSTR-3B return.

3.5 They thereafter on realising about the IGST ITC not availed by them due to oversight have now, accordingly sought clarification to avail the available ITC.

3.6 The applicant has sought clarification regarding the applicability of time limit as mentioned in Section 16(4) of CGST Act, 2017 on ITC eligible as per Bill of Entry and whether the applicant can avail this IGST credit in its upcoming GSTR-3B return.

3.7 Legal provisions

The applicant has referred to Section 16, 16(2)(a), 16(4), 2(38), 2(66) and observed that at one place of the very same section (Section 16) legislature takes pain to mention " such other tax paying documents as may be prescribed" and by the end of the section they find that the legislature had left out the very same word i. e. " such other tax paying documents as may be prescribed".

3.8 Further they have referred to Section 2(62)(a) of CGST Act 2017 and agreed that in order to allow such ITC under CGST Act 2017, the Section 16(2)(a) specifically



mentions the word: Such other tax paying documents as may be prescribed" and accordingly spelt out at rule 36(1)(d) of CGST Rules 2017 the Bill of Entry or any similar documents as prescribe under The Customs Act 1962 as one the documents eligible for availing the ITC.

3.9 They also made reference to Section 20(iv) of IGST Act 2017 which provides that subject to the provisions of IGST Act 2017 and the rules made thereunder, the provisions of CGST Act, 2017 relating to Input Tax credit shall, mutatis mutandis apply so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act and Section 5(1), 3(1) 3(7) of Customs Tariff Act 1975 and contended that the barriers of time limit for availing the ITC under Section 16(4) of CGST Act 2017 does not apply in case of import of goods for the very reason that same do not find any mention therein.

3.10 Comments

This office is of the opinion that though the word 'Bill of Entry' is not categorically mentioned in Section 16(4) of CGST Act, 2017 mere exclusion of word would not dilute the provisions contained therein with respect to availment of ITC on imported goods, as Section 20(iv) of IGST Act 2017 in very clear terms stipulates that subject to the provisions of CGST ACT 2017 and the rules made thereunder, the provisions of CGST Act 2017 relating to Input Tax credit shall "mutatis mutandis" and by virtue of said section the provisions related to Input Tax Credit as spelt out in the CGST Act 2017 is made applicable to IGST Act, 2017.

Therefore Section 16(4) is also applicable to availment of IGST on imported goods. Since the due date for availment of ITC on such imported goods has elapsed, the taxpayer is not eligible to claim ITC in terms of Section 16(4) of CGST Act 2017 read with Section 20(iv) of IGST Act, 2017.

04. HEARING

Preliminary e-hearing in the matter held on 06.02.2025. Ms. Rakhi Chandak, C.A., appeared and requested for admission of the application. Jurisdictional Officer was absent.

The application was admitted and called for final e-hearing on 27.03.2025. Ms. Rakhi Chandak, C.A., Authorized Representative, appeared made oral and written submissions. Jurisdictional Officer Ms. Bhaveshvari, Superintendent of CGST appeared. We heard both the sides.

05. OBSERVATIONS AND FINDINGS:

5.1 The Applicant M/s Adi Enterprises has imported Machineries from China. Bill of Entry was filed on 24/08/2022 and IGST paid on these imports is at Rs. 900939. This IGST paid through Bill of Entry was reflected in GSTR 2B of March 2023. This IGST credit was not availed by the applicant in GSTR 3B of FY 2022-23. The applicant forgot to avail this credit in GSTR 3B return till 30th November 2023 also. The Applicant seeks clarification on the availability of this ITC.



5.2 The applicant has mentioned that limitation of time for availing ITC as mentioned in section 16(4) is applicable only to ITC as per any invoice or debit note. The ITC to be claimed in respect of IGST paid on imports is to be availed on the basis of Bill of Entry and provisions of section 16(4) are not applicable for ITC availment in respect of Bill of Entry given the fact that Bill of Entry is one of the tax paying documents prescribed by section 16(2)(a) read with Rule 36(1)(d). Applicant contends that as limitation of time provided in section 16(4) is not applicable to ITC to be claimed in respect of Bill of Entry, he can claim it now.

5.3 Section 16 of the CGST Act, 2017 spells out the eligibility and conditions for availing the input tax credit. Section 20 of IGST Act, 2017 provides for the applicability of various provisions of CGST Act, 2017 "mutatis mutandis" to the IGST Act, 2017 and by virtue of said section, the provisions related to Input Tax Credit as spelt out in the CGST Act are made applicable to IGST Act, 2017.

5.4 The time limit to avail the ITC is provided for under sub-section (4) of section 16 of CGST Act, 2017. As per the said section, the time limit to avail the ITC is thirtieth day of November following the end of the financial year or furnishing of the Annual Return of the relevant financial year to which such invoice or debit note pertains, whichever is earlier.

5.5 This issue and the provisions of law in relation to them are interpreted as below: -

5.5.1 Bill of Entry carries all details of that are required in an invoice

(i) Section 2(66) of CGST Act, 2017 provides definition of 'invoice' as below.

'(66) "invoice" or "tax invoice" means the tax invoice referred to in section 31.'

In order to understand what is invoice, Section 31 is reproduced as under.

Section 31. Tax invoice. -

(1) A registered person supplying taxable goods shall, before or at the time of,-

- (a) removal of goods for supply to the recipient, where the supply involves movement of goods; or
- (b) delivery of goods or making available thereof to the recipient, in any other case, issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:

Provided that the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.

(2) A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed:

Provided that the Government may, on the recommendations of the Council, by notification,-



- (a) specify the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed;
- (b) subject to the condition mentioned therein, specify the categories of services in respect of which-
 - (i) any other document issued in relation to the supply shall be deemed to be a tax invoice; or
 - (ii) tax invoice may not be issued.]

Thus, a tax invoice should have the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed. These other particulars are prescribed in Rule 46. Relevant part of the said Rule is reproduced as under.

Rule 46. Tax invoice.-

Subject to rule 54, a tax invoice referred to in section 31 shall be issued by the registered person containing the following particulars, namely,-

- (a) name, address and Goods and Services Tax Identification Number of the supplier;
 - (b) a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters-hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;
 - (c) date of its issue;
 - (d) name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;
 - (e) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is fifty thousand rupees or more;
 - (f) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is less than fifty thousand rupees and the recipient requests that such details be recorded in the tax invoice
- Provided** ¹⁰[in cases involving supply of online money gaming or in cases] that where any taxable service is supplied by or through an electronic commerce operator or by a supplier of online information and database access or retrieval services to a recipient who is un-registered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the name of the state of the recipient and the same shall be deemed to be the address on record of the recipient;
- (g) Harmonised System of Nomenclature code for goods or services;
 - (h) description of goods or services;
 - (i) quantity in case of goods and unit or Unique Quantity Code thereof;
 - (j) total value of supply of goods or services or both;
 - (k) taxable value of the supply of goods or services or both taking into account discount or abatement, if any;
 - (l) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);



- (m) amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
- (n) place of supply along with the name of the State, in the case of a supply in the course of inter-State trade or commerce;
- (o) address of delivery where the same is different from the place of supply;
- (p) whether the tax is payable on reverse charge basis; and
- (q) signature or digital signature of the supplier or his authorised representative; and
- (r) Quick Response code, having embedded Invoice Reference Number (IRN) in it, in case invoice has been issued in the manner prescribed under sub-rule (4) of rule 48.
- (s) a declaration as below, that invoice is not required to be issued in the manner specified under sub-rule (4) of rule 48, in all cases where an invoice is issued, other than in the manner so specified under the said sub-rule (4) of rule 48, by the taxpayer having aggregate turnover in any preceding financial year from 2017-18 onwards more than the aggregate turnover as notified under the said sub-rule (4) of rule 48- "I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, we are not required to prepare an invoice in terms of the provisions of the said sub-rule."

(ii) Thus, the suppliers of goods are required to issue the tax-invoice. Import of goods or services falls under the category of inter-state supply. The relevant provisions of inter-state supply under IGST Act are as below.

7. Interstate Supply

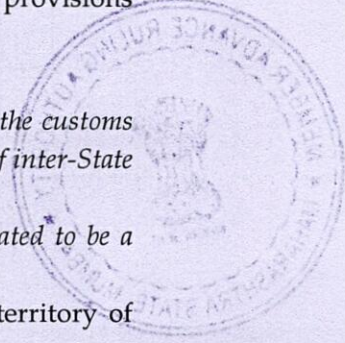
(2) Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.

(4) Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.

(iii) These provisions provide that supply of goods imported into the territory of India till they cross the customs frontier of India shall be treated as supply of goods in the course of interstate trade. So, this interstate supply at the hands of importer is liable for IGST on the value of goods imported, as it is an interstate supply in the hands of the importer.

(iv) The provisions of section 31 of CGST Act, 2017 are mutatis mutandis applicable to IGST Act. Hence, every supplier is required to issue a tax invoice as per this section. In case of importer, the document showing tax description, quantity and value of goods, the tax charged thereon and such other particulars mentioned in Rule 46 is the Bill of Entry itself. The Bill of Entry presented by the applicant shows following details.

1. Importer name: Adi Enterprises
2. Importer address: Desai Wadi, AT. Usangaon, Post Bhatan, Taluka Vasai, Dist. Palghar.
3. PAN: AAGFA2322M
4. GSTN: 27AAGFA2322M1ZK



5. Bill of Entry: 2134376
6. Date: 24.08.2022
7. Description of goods: Cotton Swab Machine (Model No. FBNN-01S)
8. HSN: 84798999
9. Quantity: 3
10. Type: G
11. State Code: 27
12. Name of State: Maharashtra
13. IGST assessable value: Rs. 50,05,214/-
14. IGST amount: Rs. 9,00,939/-
15. IGST Rate: 18%

These are the details required on any document to be called as 'tax invoice' as per Rule 46 of CSGT Rules 2017. Thus, Bill of Entry filed by the tax payer is nothing but the 'tax invoice' for the purposes of section 31. Thus, Section 16 (4) which is applicable to 'any invoice' is also applicable to the Bill of Entry.

5.5.2 Uniform application of entitlement and conditions for availing ITC

- (i) Further, in the context of the Section 16, Sec. 16 has heading 'Eligibility and conditions for taking input tax credit'. This Section makes provisions for entitlement to ITC and conditions with regards to this entitlement. The entitlement to ITC is subject to certain conditions. Thus, entitlement and conditions go hand in hand.

- (ii) As per Section 16 (1), taxpayer is entitled to take ITC charged on any supply of goods or services which are used or intended to be used in the course or furtherance of his business. This is subject to conditions mentioned in sub section (2), (3) & (4). These are reproduced as under: -

(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 paid by him along with interest payable under section 50, 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 to the supplier 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.

Section 16 (2) (a) (1) provides that the taxpayer is entitled to take ITC on tax invoice or debit note or such other tax paying documents as may be prescribed.

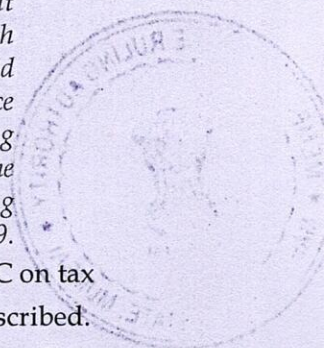
Rule 36 (1) prescribes the documents for claiming Input Tax credit. It is mentioned at (d) that Bill of Entry or any similar documents prescribed under the Customs Act 1962, is one such document. Sub Rule (1) & (2) of Rule 36 are reproduced as under: -

Rule 36

Rule 36: Documentary requirements and conditions for claiming input tax credit

(1) 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,-

- (a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;
- (b) an invoice issued in accordance with the provisions of clause (f) of subsection (3) of section 31, subject to the payment of tax;
- (c) a debit note issued by a supplier in accordance with the provisions of section 34;



(d) 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;

(e) 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.

(2) 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.

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.

Thus, the various types of documents prescribed in sub rule (1) above are with respect to different types of transactions. Sub Rule (2) provides that these documents should have applicable particulars as specified in the provisions of Chapter VI (which contain the provisions regarding tax invoice), for availing ITC. However, the proviso states that even if this document does not contain all the specified particulars but contain details of

- a. Amount of Tax charged
- b. Description of goods services
- c. total value of supply
- d. GSTIN of the supplier & recipient
- e. Place of supply in case of interstate supply

taxpayer can avail the ITC. Thus, the entitlement of ITC and conditions for availing ITC go hand in hand and there is no context to provide different conditions for different documents.

Sections 16 (4) aims to ensure timely ITC claims, prevent indefinite carry forward of credits and maintains fiscal discipline. This intent could apply to all forms of ITC, including IGST on imports, regardless of the tax paying documents. Since, ITC in respect of all types intra-state or inter-state supply is governed by section 16 of the CGST Act, all conditions under section 16 including the time limitation apply uniformly to all types of ITC. Hence, the condition of time limitation provided by section 16(4) is applicable to the transactions of IGST paid on imports.

5.5.3 Timely compliances Under GST

GST Act provides for self-assessment and filing of GST returns based on such self-assessment and making tax payments as per liability shown in these returns. For harmonious operation of GST laws timelines have been provided for filing of all types of returns, ITC availment, filing GST refund claims etc. Similarly, timelines are also provided to officers for granting registrations, scrutiny of returns, grants of refunds, audit or adjudications etc. These timelines are also important as one



aspect depends on the other. For example, GST refunds are to be claimed within two years. If there is no time limit for availing ITC of IGST paid on imports, then how is the taxpayer going to claim refund in respect of such ITC which remains un-availed. Various aspects of compliance such as filing of returns, availing ITC, claiming refund are dependent on each other. Further, scrutiny reconciliation or audit is in respect of filings of a particular financial year. If there is no time limit for filing of all the claims including availment of ITC, then there would not be possibility of reconciling or scrutinizing or auditing them within the timelines provided for these activities. Hence, GST law has to be interpreted in a way that allows harmonious working of various provisions of law. Thus, the term 'invoice' in section 16 (4) is to be interpreted to include any document evidencing tax payment such as a Bill of Entry.

06. In view of the extensive deliberations as held hereinabove, we pass an order as follows:

ORDER

(Under Section 98 of the Central Goods and Services Tax Act, 2017 and the Maharashtra Goods and Services Tax Act, 2017)

NO.GST-ARA- 03/2024-25/B- 212 Mumbai, dt. 29.04.2025

For reasons as discussed in the body of the order, the questions are answered thus -

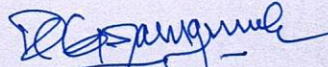
Question No.1. Whether time limit of availing ITC as mentioned in Section 16(4) of CGST Act, 2017 is applicable on ITC eligible as per Bill of Entry?

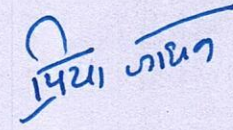
Answer No.1:- Answered in the Affirmative

Question No.2. In this case, can applicant avail this IGST paid as per bill of entry in the next GSTR3B?

Answer No.2:- No, in view of the answer given to the first question.




D.P. GOJAMGUNDE
(MEMBER)


PRIYA JADHAV
(MEMBER)

- Copy to:-
1. The applicant
 2. The concerned Central / State officer
 3. The Commissioner of State Tax, Maharashtra State, Mumbai
 4. The Pr. Chief Commissioner of Central Tax, Churchgate, Mumbai

5. The Joint commissioner of State Tax, Mahavikas for Website.

Note: -An Appeal against this advance ruling order shall be made before The Maharashtra Appellate Authority for Advance Ruling for Goods and Services Tax, 15th floor, Air India Building, Nariman Point, Mumbai - 400021. Online facility is available on gst.gov.in for online appeal application against order passed by Advance Ruling Authority.