

**An important note:**

The RCM GST liability for the period 2017-18 or 2018-19 has not been paid and now we are going to pay it (example - ocean freight GST under RCM). Can the ITC be taken now?

We have imported some goods in 2017-18 or 2018-19 and not availed ITC so far by mistake. Can it be availed now?

We are paying some additional IGST (differential) for the imports made in 2017-18 or 2018-19 now. No suppression involved. Can ITC be availed now?

One may normally think that in all the above cases, ITC cannot be claimed now as the time limit for availing ITC pertaining to the years 2017-18, 2018-19 are already over.

Let us examine the issue.

**Section 16 (4).**

*(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 [\* \* \*] debit note pertains or furnishing of the relevant annual return, whichever is earlier :*

**Section 16 (2).**

*(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;*

Such additional documents are prescribed 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 sub-section (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.

It may be noted RCM self invoice and Bill of Entry are separately prescribed as eligible documents under clauses (b) and (d) of Rule 36, respectively.

The time limit prescribed under 16 (4) applies only for the "**invoice or debit note for the supply of goods or services or both**".

This expression cannot cover BOE. It cannot cover RCM self invoice also. If the intention was to cover these documents also, 16 (4) would have been more specific. Further, RCM self invoice is not an invoice for supply of goods or services, but an invoice for the receipt. In this connection Sec. 31 (3) (f) may be referred to.

### **Section 31 (3) (f)**

(f) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9 shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both;

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Logically also, both RCM and Customs IGST the taxpayer himself would be paying the tax and taking the credit, whereas for other supplies, availing ITC involves matching with suppliers payment.

From the above it can be concluded that there is no time limit for availing ITC in respect of the following.

- (i) ITC of GST paid under RCM for various services received.
- (ii) IGST paid on imported goods.
- (iii) Additional IGST paid on imported goods, without any element of fraud, suppression, etc.

If you have missed out to take any such ITC in the earlier years, you may proceed to avail the same now.

The above view may not be accepted by the department but we have to litigate the same and we are of the view that the above interpretation is reasonable and can be sustained legally.