

## Gst Saga of Sec 16(4) timelines

Brief Text:

Gst - CGST Act -

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 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 (4) of CGST Act is defined as specified time frame in which registered taxpayer is required to claim input tax credit. Specific transaction or circumstances defined the exact time.

Filing date of the monthly or quarterly return or annual return filing by the due date for financial year whichever is earlier.

Return need to be filled on 20 october for the month of the september and on 31 december of the succeeding financial year as annual return of the financial year.

Therefore, The deadline for claiming ITC is October 20th of the following fiscal year or the actual date that the annual report was filed whichever is earlier.

This restriction is in place because no changes to returns are allowed beyond September of the following tiscal year. No changes may be made after the yearly return has been filed if it is filed before the month of September.

Impact on Businesses:

This is a very contentious issue and a burning topic especially Now a days with gst notices issued for the year 2018-19.

Few Gst Citations wherein ITC claimed held to be allowed or disallowed for belated filing or claim of the input tax credit :

A. Madras High Court allowed ITC after Sec 16(4) date and in favour of the registered taxpayer.

W.M.P.(MD)Nos.6764 and 6765 of 2023

Date: 24.11.2023

KAVIN HP GAS GRAMIN VITRAK

Vs

1. THE COMMISSIONER OF COMMERCIAL TAXES,

OFFICE OF THE PRINCIPAL AND SPECIAL COMMISSIONER OF COMMERCIAL TAXES,  
CHENNAI

2. THE DEPUTY STATE TAX OFFICER-1,

OFFICE OF STATE TAX OFFICER, MELUR ASSESSMENT CIRCLE, MADURAI

It is held by Court that ITC is allowed to taxpayer even after Sept of Next Year 16(4) time limit.

As per Section 38 of the CGST Act, 2017 read with Rule 60 of the CGST Rules, 2017, ITC shall be claimed through GSTR-2 but the GSTN had not provided the facility of GSTR-2 till now. When the GSTR-2 Form itself is not available and electronic filing is not possible, then taxable person cannot be expected to file the Form electronically. Therefore, the entire basis of initiation of the proceedings itself is not sustainable.

It is submitted that Section 16(4) restriction apply only for the take/availment of the ITC after the Sept of next financial year and as per the above discussion, there is no facility of availment of ITC in GSTR 3B which is summary return itself, when there is no take/availment of ITC in the GSTR 3B, then the time limit of Section 16(4) is not apply as per the Act, Hence your SCN is illegal and beyond the provision of the Act, infect, still there is no facility for take/avail ITC in the GSTR 3B.

Reliance is placed on the Hon'ble Jharkhand High Court in case of Shri Kumaran Construction Co., a proprietorship Firm, District-East Singhbhum W. P. (T) No. 2582 of 2020, the Section 16(4) constitutional validity is challenged before the high court in this case, the interim order is issued on Dated 13-10-2020.

While the GST regime envisaged the filing process and recording of ITC and payment of taxes as above, admittedly, due to system issues and under preparedness with regard to the extent of data to be processed, Form GSTR-2, and 3 were not made operational; and have been now completely done away with. Form GSTR-2A was made operational only in September 2018 by the Government.

It is first decision of any court in favour of taxpayer on 16(4) issue.

B. The Hon'ble Supreme Court of India heard the case of Mrityunjay Kumar v. Union of India [SLP (C) No. 28270 of 2023], wherein the Hon'ble Supreme Court vide order dated January 3, 2024, issued notice in Special Leave Petition filed against the judgement of the Hon'ble Patna High Court in the case of Gobinda Construction v. Union of India and Others [CWJC No. 9108 of 2021 dated

September 8, 2023], wherein the Hon'ble Patna High upheld the constitutional validity of Section 16(4) of the Central Goods and Services Tax Act, 2017 ("the CGST Act") / the Bihar Goods and Services Tax Act, 2017 ("the BGST Act")

The matter was listed for 05.02.2024

C. The Chhattisgarh High Court in Jain Brothers vs Union of India; W.P.(T)No.191/2022; has confirmed the constitutionality of Section 16(4) of the Central Goods and Services Tax (CGST) Act, 2017.

D. Andhra Pradesh HC: Tirumala Konda Plywoods vs The Assistant Commissioner  
Case No. W.P.No.24235 of 2022; Acceptance of Late Returns with Late Fee Not a Reason to Clear Taxpayer from Time Limit for ITC Claim u/s 16(4).

E. Overriding Effect of Provision of ITC over Time Limit of Filing Returns: Calcutta HC in M/s. BBA Infrastructure Limited Vs Senior Joint Commissioner

Citation MAT NO. 1099 OF 2023, (I.A. NO. CAN 1 OF 2023); Maintains Constitutional Validity of GST Section 16(4).

Conclusion:

The above are few citations wherein Madras HC gave relief to the registered tax payer And Hon'ble Supreme Court issued notice in the SLP filed. Whereas other High courts ruled in favour of validity of Sec 16(4).

Way Forward:

Taxpayers keenly await the SC decision on the constitutional validity of this Section which would impact the flow of ITC and shape their dynamics