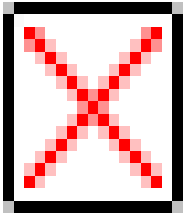


Debit note and invoice - linkage u/s.16(4) of CGST Act

APRIL 02, 2021

By Abhishek Tripathi, Advocate



AT the time Finance [Act, 2020](#)

amended section 16(4) of the CGST Act, experts advocated the amendment as a much-needed measure to delink taking of input tax credit on a debit note from the date of the invoice against which the said debit note was issued.

It is certainly natural to advocate such measure, as even the issue raised by the Law Committee and discussed in 38th GST Council Meeting suggested the same.

The Law Committee undoubtedly thought that section 16(4) is blocking the credit on the debit note relating to an invoice that is issued beyond September of the next financial year. But in fact, it may be the case that this amendment is not as significant as it was thought by the Law Committee.

The relevant extract of section 16(4) prior and post amendment [by Finance Act, 2020 dated 27.03.2020 w.e.f 01.01.2021] is as below:

Section 16(4) before the amendment	Section 16(4) after the amendment
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.	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.
<i>Emphasis Supplied</i>	

The phrase "**invoice relating to such**" in the above-amended provision was omitted. Yet, the omission of the phrase "**invoice relating to such**" served the statement of objects and reasons for the aforesaid amendment i.e. delinking the debit note from the date of issuance of an invoice.

In this article, the author attempts to explore the significance, if any, of the aforesaid amendment.

Before proceeding, let us have a look at the **gist of the issue** as stated in the Detailed Agenda Note - 38th GSTCM- Vol. 2 [page 19-20]. The relevant extract as below:

1.....

2. Plain reading of the provisions suggests that in case debit note relating to an invoice is issued beyond September of the next financial year, the same is barred from claiming ITC by the recipient. This is leading to a problem for sectors such as Automobiles, Heavy Engg. PSUs etc. where a price revision is inbuilt in the contract, and as per the provisions, in case of escalation on this account a debit note can be issued and corresponding tax shall be collected and deposited to the Government along with interest, but corresponding credit to the recipient is barred.

For the above issue, a recommendation was proposed by the Law Committee before the GST Council and finds its place in the Detailed Agenda Note - 38th GSTCM- Vol. 2 [page 19-20].

The Law Committee examined the matter and felt that credit may be allowed for debit notes irrespective of the date of issuance of the underlying invoice as anyway interest is being paid when tax liability is discharged in case of debit note. Accordingly, the Law Committee recommended to amend the provisions of section 16(4) to allow ITC on debit notes by linking it to the date of issuance of the debit note by omitting the words "invoice relating to such".

Sub-section 4 of section 16 of the CGST Act appears to put restrictions on taking of input tax credit after the prescribed due date. This sub-section provides the time limit for taking input tax credit with respect to two classes of invoices (i) such invoice or, (ii) **invoice relating** to such debit note pertains. And the said restriction was never on the debit note linked with an invoice. Since the beginning, the restriction of time limit was only on these two classes of invoices and the **"(ii) class"**

restriction was on invoices linked to debit note, not otherwise. If the intention of the legislature was to restrict input tax credit on the debit note linked with the date of issuance of an invoice, then instead of **"invoice relating to such debit note pertains"**

it would have been drafted and stated, **"debit note to an invoice"**. However, that's not the case and the language.

Even the Law Committee, in the **gist of issues** column, asserted the incorrect phrase of Section 16(4) and stated **"debit note relating to an invoice"** and proceeded on this language. As **debit note relating to an invoice**

was never envisaged by the provision, however, because of the incorrect phrase, it made Law Committee to propose an amendment for something which was never there in the provision.

Invoice relating to such debit note and, **debit note relating to an invoice**

bring different results all together when placed under section 16(4). Thus, unfortunately, the amendment doesn't serve the purpose as envisaged in the statement and objects and reasons.

If the aforesaid creation of two classes of 'invoice' is the legislative intent, does this mean that there is no time limit for taking the input tax credit for debit note linked to invoice prior to the amendment? As the legislature has left Section 16(4) ambiguous on prior occasion by not providing a time limit for taking input tax credit in respect of Bill of Entry, hence, leaving debit note linked to the invoice also might be the intent. In conclusion to the above view, as the debit note was never linked with the invoice, to that extent, the amendment seems irrelevant with regards to the statement of objects and reasons.

[The views expressed are strictly personal.]

(DISCLAIMER : The views expressed are strictly of the author and Taxindiaonline.com doesn't necessarily subscribe to the same. Taxindiaonline.com Pvt. Ltd. is not responsible or liable for any loss or damage caused to anyone due to any interpretation, error, omission in the articles being hosted on the site)