

**GOVERNMENT OF WEST BENGAL
DIRECTORATE OF COMMERCIAL TAXES
14, BELIAGHATA ROAD, KOLKATA-700015**

TRADE CIRCULAR No. 05/2024
(Corresponding Central Circular No. 211/05/2024-GST)

DATED: 08.07.2024

Subject: Clarification on time limit under Section 16(4) of the WBGST Act, 2017 in respect of RCM supplies received from unregistered persons.

Representations have been received from trade and industry seeking clarity on the applicability of time limit specified under section 16(4) of the West Bengal Goods & Services Tax Act, 2017 (hereinafter referred to as the “WBGST Act”) for the purpose of availment of input tax credit (ITC) by the recipient on the tax paid by him under reverse charge mechanism (RCM) in respect of supplies received from unregistered persons. It has been represented that in some cases, where tax is payable on reverse charge basis by the recipient, such as, where an activity is performed by the overseas related person for the entity located in India and no consideration is involved, such an activity may not be considered as supply of services by the concerned recipient in India and accordingly, no invoice is issued as well as no tax is paid by the said recipient under RCM in respect of the same. However, later on, either on their own on the basis of some clarification issued by the department or on the basis of some court judgement or on being pointed out by the tax authorities during scrutiny or audit or otherwise, the said recipient issues the invoice and pays the tax under RCM, along with interest, and claims input tax credit on such tax paid.

1.2 It has been represented that some of the field formations are taking the view that in such cases, the relevant year of the invoice for the purpose of section 16(4) of WBGST Act is the year in which the said supply was received and accordingly, the time limit for availment of ITC under section 16(4) of WBGST Act is only upto the September/ November of the following financial year, i.e. the financial year following the financial year in which the said services was received. On the other hand, industry has represented that as the invoice in respect of such supplies received from unregistered supplier, where tax has to be paid by the recipient on RCM basis, is to be issued by the recipient as per section 31(3)(f) of WBGST Act, the relevant year of invoice for the purpose of section 16(4) of WBGST Act is the financial year in which such invoice has been issued and accordingly, ITC should be available

on the said invoice under section 16(4) of WBGST Act till the September/ November of the financial year following the financial year in which such invoice has been issued. Request has been made to issue clarification in the matter to avoid litigation.

2. The matter has been examined. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Commissioner, in exercise of his powers conferred under section 168 of the WBGST Act, hereby clarifies the issue as follows.

2.1 As per section 16(2)(a) of WBGST Act, 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 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.

2.2 Rule 36(1)(b) of the West Bengal Goods and Services Tax Rules, 2017 (hereinafter referred to as the “WBGST Rules”) prescribes that input tax credit shall be availed by a registered person *inter alia* on the basis of an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31 of WBGST Act, subject to the payment of tax.

2.3 Further, clause (f) of sub-section (3) of section 31 of WBGST Act provides that 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. Accordingly, where the supplier is unregistered and recipient is registered, and the recipient is liable to pay tax on the said supply on RCM basis, the recipient is required to issue invoice as per section 31(3)(f) of WBGST Act and pay the tax in cash on the same under RCM.

2.4 Section 16(4) of WBGST Act, as amended vide the West Bengal Taxation Laws (Amendment) Act, 2022 (West Ben. Act XXIV of 2022), deals with time limit to avail ITC, and is reproduced below-

*“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.**”*

Section 16(4) of WBGST Act, before the said amendment vide the West Bengal Taxation Laws (Amendment) Act, 2022 (West Ben. Act XXIV of 2022), provided as follows:

*“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.”*

2.5 It can be seen that section 16(4) of WBGST Act links the time limit for ITC availment with the financial year to which the invoice or debit note pertains. As discussed in Para 2.3 above, in case of supplies where the supplier is unregistered and recipient is registered and the tax has to be paid by the recipient on RCM basis, the recipient is required to issue invoice in terms of the provisions of section 31(3)(f) of WBGST Act and pay the tax on the same in cash under RCM. Further, as discussed in Para 2.1 above, ITC cannot be availed by a registered person in respect of any supply of goods or services or both received by him, as per the provisions of section 16(2)(a) of WBGST Act, unless he is in possession of a tax invoice or debit note or such other tax paying documents as may be prescribed.

2.6 A combined reading of the above provisions leads to a conclusion that as ITC can be availed by the recipient only on the basis of invoice or debit note or other duty paying document, and as in case of RCM supplies received by the recipient from unregistered supplier, invoice has to be issued by the recipient himself, the relevant financial year, to which invoice pertains, for the purpose of time limit for availment of ITC under section 16(4) of WBGST Act in such cases shall be the financial year of issuance of such invoice only. In cases, where the recipient issues the said invoice after the time of supply of the said supply and pays tax accordingly, he will be required to pay interest on such delayed payment of tax.

2.7 Accordingly, it is clarified that in cases of supplies received from unregistered suppliers, where tax has to be paid by the recipient under reverse charge mechanism (RCM) and where invoice is to be issued by the recipient of the supplies in accordance with section 31(3)(f) of WBGST Act, the relevant financial year for calculation of time limit for availment of input tax credit under the provisions of section 16(4) of WBGST Act will be the financial year in which the invoice has been issued by the recipient under section 31(3)(f) of WBGST Act, subject to payment of tax on the said supply by the recipient and fulfilment of other conditions and restrictions of section 16 and 17 of WBGST Act. In case, the recipient issues the invoice after the time of supply of the said supply and pays tax accordingly, he will be required to pay interest on such delayed payment of tax. Further, in cases of such delayed issuance of invoice by the recipient, he may also be liable to penal action under the

provisions of Section 122 of WBGST Act.

3. Difficulty, if any, in implementation of this Trade Circular may please be brought to the notice of the Commissioner.

Sd/-
(DEVI PRASAD KARANAM, IAS)
Commissioner, State Tax
West Bengal

Memo. No.- 62/CT/PRO
3C/PRO/2024

Date: 08.07.2024

Copy forwarded to the Special Commissioner, State tax /ISD for information and for uploading it on the official website of the Directorate for information of all concerned.

Sd/-
(Joyjit Banik)
Additional Commissioner, State Tax
&
PRO