

VALIDITY OF SECTION 16(2)(D): IN CASE OF NON PAYMENT OF CONSIDERATION WITHIN 180 DAYS WHEN SUPPLY IS FROM ONE GSTIN TO ANOTHER GSTIN OF SAME LEGAL ENTITY/PAN

Reversal of ITC if payment is not made to supplier within 180 days

Section 16(2)(d) pertains to ITC reversal on invoices which are pending payment even after 180 days from the date of the invoice.

16(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** 16(2)(d) he has furnished the return **under section 39**;

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 added to his output tax liability, **along with interest thereon**, in such manner as may be prescribed:

Whether ITC has to be reversed when supply is made from one GSTN to another GSTN of same legal entity without consideration or Book Adjustment Entry?

CGST Rule 37: Reversal of Input Tax Credit in the case of Non-payment of Consideration

A registered person, who has availed of input tax credit on any inward supply of goods or services or both, **but fails to pay to the supplier** thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR 2 for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

Provided that the value of supplies made **without consideration** as specified in Schedule I of the said Act shall be **deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.**

Schedule I: Activity to be treated as supply even if made without consideration

Supply of goods or services or both **between related persons or between distinct persons** as specified in section 25, when made in the course or furtherance of business: (ONE GSTN TO ANOTHER GSTN OF SAME LEGAL ENTITY)

Hence there is an exception to Rule 37, non-reversal of ITC on account of non-payment within 180 days between related persons or distinct persons.

Also same view has been in favour of applicant in case of **Senco Gold Ltd (AAR West Bengal)** that there is no need to reverse ITC for book adjustments and can be considered as payment for the supplies made.