Claiming Input Tax Credit on Belatedly Self-Invoiced RCM Liabilities

A Critical Analysis of Section 16(4), Section 31(3)(f), Rule 47A and Circular No. 211/5/2024-GST

GST & Direct Tax Advisory Series
July 2026

SYNOPSIS

Registered persons who discover, belatedly, an unpaid liability under the Reverse Charge Mechanism (RCM) — most commonly on royalty paid for mining/quarrying rights, legal services, or services from unregistered suppliers — face a threshold question: does the four-year-old rule of Section 16(4) permanently bar Input Tax Credit (ITC) on tax paid now? Circular No. 211/5/2024-GST dated 26.06.2024 answers this in the taxpayer's favour, but the answer is conditional, procedurally exacting, and not free from litigation risk. This article examines the legal architecture governing such claims and the practical safeguards a taxpayer must observe.

1. Introduction

Under the reverse charge mechanism, it is the recipient of a notified supply — and not the supplier — who is cast with the obligation to pay tax. This obligation is accompanied by a lesser-noticed corollary: since the supplier does not issue a tax invoice, the recipient must generate the invoice himself. Practical experience shows that this self-invoicing obligation is frequently overlooked, particularly where the supplier is the Government (as in the case of mining royalty) or an unregistered person, and no invoice or reminder is ever received to trigger compliance.

The consequence, when the omission surfaces — whether through an internal review, an audit, or a departmental query — is a compliance dilemma: the taxpayer is willing to discharge the tax with interest, but is uncertain whether the accompanying Input Tax Credit can still be claimed, given that Section 16(4) of the CGST Act ordinarily extinguishes ITC entitlement after a fixed statutory window measured from the end of the relevant financial year.

2. Statutory Framework

2.1 The Self-Invoicing Obligation — Section 31(3)(f)

Section 31(3)(f) of the CGST Act, 2017 requires a registered person liable to pay tax under Section 9(3) or 9(4) (i.e., under RCM) to issue an invoice in respect of goods or services received by him from an unregistered supplier or an otherwise notified category of supply. This is commonly referred to as a “self-invoice.” Rule 36(1)(b) of the CGST Rules, 2017 correspondingly permits ITC to be availed on the basis of such a self-invoice, subject to actual payment of tax.

2.2 Time Limit for Self-Invoicing — Rule 47A

The Finance (No. 2) Act, 2024 amended Section 31(3)(f) to empower the Government to prescribe a time limit for issuance of the self-invoice. In exercise of this power, Rule 47A was inserted vide Notification No. 20/2024-Central Tax dated 08.10.2024, effective 01.11.2024, mandating that the self-invoice be issued within thirty days from the date of receipt of the supply of goods or services. Non-compliance does not invalidate the invoice once issued, but it exposes the taxpayer to interest under Section 50(1) and penal action under Section 122.

2.3 The ITC Time Bar — Section 16(4)

Section 16(4) bars a registered person from availing ITC in respect of any invoice or debit note after the thirtieth day of November following the end of the financial year to which such invoice or debit note pertains, or the date of furnishing of the relevant annual return, whichever is earlier. The provision is drafted with reference to the financial year of the invoice — not the financial year in which the underlying supply was received. This distinction is the fulcrum on which the entire analysis in this article turns.

2.4 Conditions for Availment — Section 16(2)

Section 16(2)(a) makes possession of a tax invoice (or such other prescribed document) a threshold condition for ITC. Where the supplier is unregistered or the supply falls under a notified RCM category, the "document" contemplated by law is necessarily the self-invoice issued by the recipient under Section 31(3)(f) — there being no other document the recipient could possibly possess.

3. The Interpretational Problem

Field formations, in several instances, have sought to compute the Section 16(4) time limit with reference to the financial year in which the underlying supply was actually received — not the year in which the self-invoice was eventually issued. On this view, a taxpayer discovering an unpaid RCM liability for, say, FY 2022-23 and issuing a self-invoice in FY 2026-27 would find the ITC already time-barred, since the Section 16(4) window for FY 2022-23 (30th November 2023, per the relevant annual return timeline) had long since closed — even though the tax itself is being paid now, for the first time, in cash.

Trade and industry represented against this position on the ground that Section 16(2)(a) makes the invoice a precondition to availment in the first place; until the self-invoice is issued, there is, in law, no document on the strength of which ITC could even be claimed. It would be incongruous, industry argued, for the time limit under Section 16(4) to run — and expire — before the very document that triggers eligibility under Section 16(2)(a) comes into existence.

4. Circular No. 211/5/2024-GST — The Resolution

The Central Board of Indirect Taxes and Customs, vide Circular No. 211/5/2024-GST dated 26.06.2024 (F. No. CBIC-20001/4/2024-GST), resolved this ambiguity in favour of the industry position. The operative clarification reads:

> *"...the relevant financial year for calculation of time limit for availment of input tax credit under the provisions of section 16(4) of CGST Act will be the financial year in which the invoice has been issued by the recipient under section 31(3)(f) of CGST 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 CGST Act."*

The circular simultaneously clarifies the corresponding cost of belated compliance: where the self-invoice is issued after the time of supply as determined under Section 13(3), the recipient remains liable to pay interest under Section 50 on the delayed cash payment of tax, and may additionally face penal action under Section 122 for the delayed issuance of the invoice itself. The circular thus decouples two consequences that are often conflated: the ITC time limit (relieved, by reference to the invoice date) and the interest/penalty exposure (not relieved, and computed from the original time of supply).

5. Practical Application

The clarification is of particular significance in three recurring fact patterns:

- Mining royalty and similar Government levies taxable under Section 9(3) (Notification No. 13/2017-Central Tax (Rate), as amended), where the Government, as supplier, issues no tax invoice and the recipient's self-invoicing obligation is easily overlooked in the absence of any external trigger.
- Legal and other professional services from advocates and other notified categories of unregistered suppliers under Section 9(3), where invoices are frequently not raised in RCM-compliant form.
- Import of services without consideration from a related party or establishment outside India, taxable under Section 9(4)/Schedule I, where the absence of a monetary trigger frequently results in the supply going unrecognised until an audit or transfer-pricing exercise surfaces it.

In each such case, the taxpayer's ability to now regularise the position — pay tax and interest, issue a self-invoice, and claim ITC referable to the financial year of that invoice — flows directly from the circular, and represents a meaningful relief from what would otherwise be a permanent and punitive credit loss.

6. Illustration

Consider a taxpayer who paid mining royalty of ₹2,00,000 in March 2023, failed to obtain GST registration at the time (notwithstanding the compulsory registration requirement under Section 24(iii) for persons liable under RCM), and registers only in July 2026. On issuing a self-invoice in July 2026 and discharging the corresponding RCM tax in cash through Form GSTR-3B for that month:

Particulars	Position	Statutory Basis
Financial year of self-invoice	FY 2026-27	Section 31(3)(f)
Section 16(4) outer limit for this credit	30th November 2027 (or annual return date for FY 2026-27, if earlier)	Section 16(4), as read with Circular 211/5/2024-GST
ITC time-barred as on July 2026?	No	Circular 211/5/2024-GST
Interest under Section 50(1)	Payable from original time of supply (Section 13(3)) to date of actual payment	Section 50(1); Circular 211/5/2024-GST (Para on delayed issuance)
Penal exposure for delayed self-invoicing / registration	Independently exposed	Sections 24(iii), 25, 122

The tax and interest components in such cases must be computed with precision — including identification of the correct GST rate applicable to the underlying supply (for mining royalty, the rate applicable to the extracted mineral itself, per Circular No. 164/20/2021-GST dated 06.10.2021) and the exact number of days of delay — before the return is filed, since both figures form part of the taxpayer's own admission on record.

7. Litigation Risk and Safeguards

While Circular No. 211/5/2024-GST is binding on field formations as a matter of settled administrative law, taxpayers relying on it in fact patterns involving prolonged, unexplained delay — as opposed to the genuine interpretational ambiguity that occasioned the circular — should anticipate the possibility of departmental scrutiny. The following safeguards are advisable:

- Issue the self-invoice promptly upon discovery of the omission, and in any event before filing the GSTR-3B in which ITC is proposed to be claimed.

- Pay the tax in cash (RCM liability cannot be discharged through the electronic credit ledger) together with interest computed from the correct time of supply under Section 13(3), not from the date of self-invoice.
- Maintain a complete audit trail: proof of the underlying payment (e.g., royalty challan), reasons for the delay, the self-invoice, the DRC-03 or GSTR-3B evidencing interest payment, and the return in which ITC is claimed.
- Independently evaluate exposure for the period of non-registration itself, which is a distinct compliance failure under Sections 24 and 25, not cured by the ITC relief under the circular.
- Where the delay is significant or the amounts material, consider obtaining a written opinion or, in appropriate cases, an Advance Ruling, before the position is taken in the return.

8. Conclusion

Circular No. 211/5/2024-GST performs an important corrective function: it aligns the operation of Section 16(4) with the practical reality that, in RCM cases involving self-invoicing, the recipient cannot be expected to avail credit before the qualifying document — the self-invoice — is brought into existence. For taxpayers regularising historical RCM defaults, the circular converts what would otherwise be an irrecoverable credit loss into a compliance cost limited to interest and possible penalty. The relief, however, is conditional and procedural rigour is essential: the self-invoice must actually be issued, the tax must actually be paid in cash, and the surrounding documentation must be capable of withstanding scrutiny. Belated compliance, undertaken correctly, remains considerably more advantageous than continued non-compliance — but it is not a substitute for timely registration and invoicing discipline going forward.

Disclaimer & Sources

This article is intended for general guidance on matters of professional interest only and does not constitute legal or tax advice. It should not be relied upon without independent professional consultation on the specific facts involved. Primary sources: Central Goods and Services Tax Act, 2017 (Sections 16, 24, 25, 31, 50, 122); CGST Rules, 2017 (Rules 36, 47A); Notification No. 20/2024-Central Tax dated 08.10.2024; Notification No. 13/2017-Central Tax (Rate) as amended by Notification No. 05/2020-Central Tax (Rate); Circular No. 164/20/2021-GST dated 06.10.2021; Circular No. 211/5/2024-GST dated 26.06.2024 (available at cbic.gov.in and gstcouncil.gov.in). Readers are advised to verify the current status of these provisions on www.cbic.gov.in and www.gst.gov.in prior to reliance.

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