INPUT TAX CREDIT (ITC)
- AN IN-DEPTH DISCUSSION

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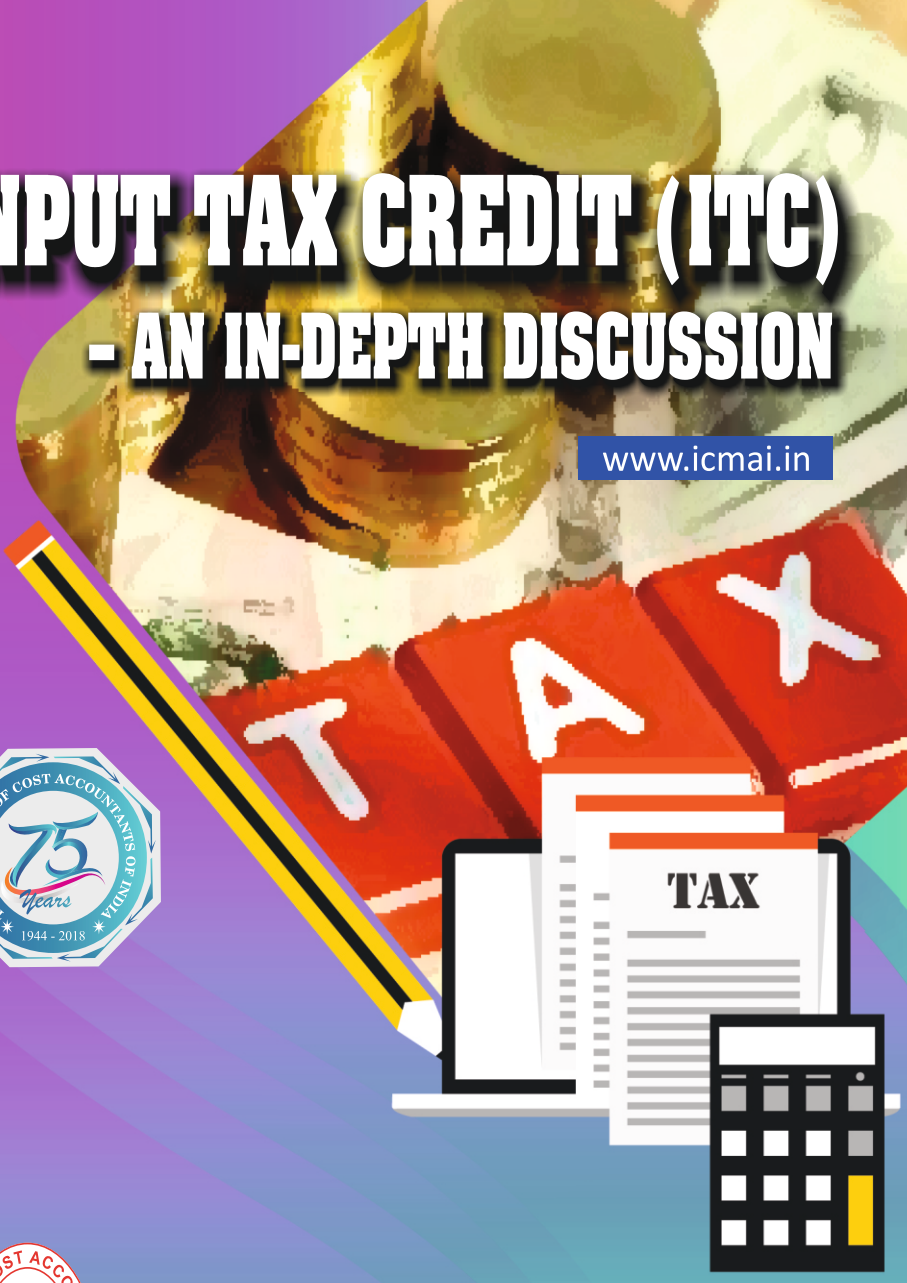

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Input Tax Credit (ITC)
– An In-depth Discussion

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President's Message

I am glad to know that the Taxation Committee is publishing a handbook on "Input Tax Credit". It is indeed great news, and I am sure that the team must be feeling proud too. It is indeed a great work, and I look forward to reading more such notes.

At the time of paying tax on output, one can reduce the tax he/she has already paid on inputs and pay the balance amount. For Example: When you buy a product/service from a registered dealer you pay taxes on the purchase. On selling, you collect the tax. You adjust the taxes paid at the time of purchase with the amount of output tax (tax on sales) and balance liability of tax (tax on sales minus tax on purchase) has to be paid to the government. This mechanism is called utilization of input tax credit (ITC).

ITC can be claimed only for business purposes. ITC will not be available for goods or services exclusively used for: (a) Personal use (b) Exempt supplies (c) Supplies. Again, ITC can be claimed by a person registered under GST only if he fulfils all the conditions as prescribed, like (a) The dealer should be in possession of tax invoice (b) The said goods/services have been received (c) Returns have been filed (d) The tax charged has been paid to the government by the supplier (e) When goods are received in instalments ITC can be claimed only when the last lot is received (f) No ITC will be allowed if depreciation has been claimed on tax component of a capital good. To make readers know and address such intricate issues the handbook would be quite helpful.

I congratulate CMA Niranjan Mishra, Chairman- Taxation Committee for bringing out the handbook on "Input Tax Credit". Commendable job by the entire Tax Research Team. My best wishes to Taxation Committee for its all future endeavors.

With warm regards,

CMA Amit A. Apte
20th March 2019

CHAIRMAN'S MESSAGE

Team TRD, you have today been successful in publishing the handbook on "Input Tax Credit" solely because of your hard work and efforts. Not to forget also the support and encouragement given by our eminent resource contributors who mentored you to achieve your aim. So hearty congratulations on your achievement and all the best to you for more such value additions in the future.

Recently the Institute has taken various initiatives in the field of taxation. Bringing out the handbook on "Input Tax Credit" would surely add another feather to the cap. In the context of ITC, an input may refer to any goods that are used by the businesses in order to create the finished products provided to the end users. Subsequent to GST introduction, businesses/ individuals are liable to pay GST on goods/services that are used as inputs. The input tax credit mechanism allows GST registered businesses to receive refunds on GST paid for the purchase of such inputs to prevent the cascading taxation effect.

Input Tax Credit (ITC) is available only to those businesses / individuals who have registered under the GST Act. This in effect means that ITC can be claimed by a wide range of businesses/individuals including but not limited to service providers, aggregators, e-commerce operators, agents, suppliers and/or manufacturers. In all the above cases, input tax credit claims can be made by the GST registered business/individuals on tax paid for the purchase of any business relevant inputs.

There are a few professions that need people to publish books or articles to move ahead in helping their stakeholders in undertaking their professional duties successfully. It is a tough job which consumes time and effort. I congratulate team – Tax Research, for all their commitments and achievements. I am happy to have CMA Vishwanath Bhat and CMA Amit Dey without whose contributions the handbook could not have been completed. I solicit appreciation and acceptance from all the readers.

Thank You.

CMA Niranjan Mishra
Chairman – Taxation Committee
22.03.2019

PREFACE

The biggest tax reform in the history of Indirect Tax is Goods and Services Tax(GST) which was implemented on 1st of July, 2017. There are four Acts i.e. Central Goods and Services Tax (CGST) Act, 2017, Integrated Goods and Services Tax (IGST) Act, 2017, Union Territory Goods and Services Tax (UTGST) Act, 2017 and Goods and Services Tax (Compensation to States) Act, 2017.

An explicit approach has been embraced in this book for providing a crisp and precise view of elaborative provisions Input Tax Credit which is very important for the taxpayers as well as tax professionals.

This book decodes the provisions on ITC under the GST law by providing a comprehensive analysis of sections on ITC under the CGST Act, 2017 along with the related CGST Rules. The book is intended for use by professionals, students and other academicians who wish to gain a practical understanding of the ITC concept under GST.

To bring this book, we are thankful to CMA Amit Dey and CMA Vishwanath Bhat who have contributed immensely in shaping up the contents of this book. Without their valuable support, this book could not have been published within such a short span of time. The department is indebted to him for his contributions. CMA Niranjan Mishra, Chairman – Taxation Committee has been our guiding star. Thank you Sir.

Tax Research Department
The Institute of Cost Accountants of India
23rd March, 2019

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1 Chapter
Background of ITC

Input Tax Credit or ITC is the tax that a business pays on a purchase and that it can use to reduce its tax liability when it makes a sale. In other words, businesses can reduce their tax liability by claiming credit to the extent of GST paid on purchases.Goods and Services Tax (GST) is an integrated tax system where every purchase by a business should be matched with a sale by another business. This makes flow of credit across an entire supply chain a seamless process.

What is "Input Tax" :

"Input tax" in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes

- IGST charged on import of goods
- Tax payable on reverse charge basis under IGST Act/ SGST Act/ CGST Act/ UTGST Act.
- But excludes tax paid under composition levy.

Therefore, 'Input tax credit' is the tax paid by a registered person under the Act whether on forward charge or reverse charge for the use of such goods or services or both in the course or furtherance of his business.

Capital Goods [Sec. 2(19) of CGST Act]

Capital Goods means goods, the value of which is capitalized

in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business.

Input [Sec. 2(59) of CGST Act]

"Input" means

- ❑ Any goods,
- ❑ Other than capital goods,
- ❑ Used or intended to be used by a supplier
- ❑ In the course or furtherance of business

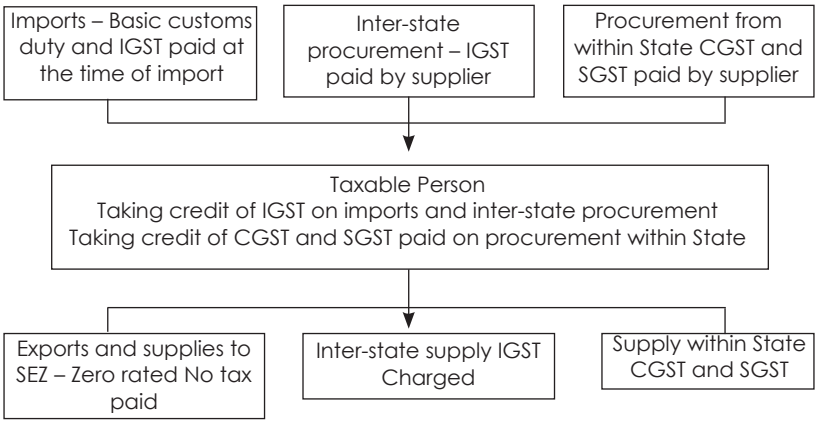
Input Service [Sec. 2(60) of CGST Act]

"Input service" means

- ❑ Any service
- ❑ Used or intended to be used by a supplier
- ❑ In the course or furtherance of business

'Input tax credit" means credit of "input tax"- section 2(56) of CGST Act. Burden of proof on taxable person availing input tax credit - Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person - section 155 of CGST Act.

Let's understand the flow of ITC:



Input	⟶	Output
IGST	⟶	IGST, CGST and SGST in that order
CGST	⟶	IGST and balance (if any) to CGST
SGST	⟶	IGST and balance (if any) to SGST

Every registered taxable person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49 of CGST Act, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person - section 16(1) of CGST Act.

Electronic Credit Ledger means the electronic credit ledger referred to in section 49(2) of CGST Act - section 2(46) of CGST Act.

"Electronic Credit Ledger" is the input tax credit ledger in electronic form maintained at the common portal for each registered taxable person. This credit can be utilized for GST liability as specified in section 49(4) of CGST Act.

"Input" means any goods other than capital goods, used or intended to be used by a supplier in the course or furtherance of business - section 2(59) of CGST Act.

"Input Service" means any service used or intended to be used by a supplier in the course or furtherance of business - section 2(60) of CGST Act.

"Outward supply" in relation to a person, means supply of goods or services, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be de by such person in the course or furtherance of business – section 2(83) of CGST Act.

Tax Credit to be taken in GSTR 3B by taxable person onhis own - When GST Law was implemented w.e.f. 1-7-2017, it was envisaged that supplier of goods and services will upload details

of his supplies in his in his GSTR-1 return. He will also upload debit notes and credit notes. These details will be auto populated in the GSTR 2A of the recipient of goods and services. Once he accepts them, these will go in his GSTR-2 return. The Input Tax credit will be taken on basis of details of his receipts in form GSTR-2.

This procedure is not yet operational. Hence, presently, Input Tax Credit to be taken in GSTR 3B by taxable person on his own. Of course, supplier has to upload his supplies in his GSTR-1. The recipient has to make sure that he can take Input Tax Credit only on basis of details of invoices as uploaded by supplier of goods and services in his GSTR-1.

How the recipient will know that supplier of goods and services has deposited the tax with Government? - As per section 16(2)(c) of CGST Act, the recipient of goods and services can avail ITC only if supplier has deposited the tax with Government either in cash or through utilisation of Input Tax Credit. At present, there is no mechanism by which the recipient would know whether the supplier has paid the tax with Government. However, as per revised system of returns w.e.f. 1 -10-2018, facility will be available to recipient to know whether supplier has filed return and paid taxes return cannot be filed without payment of taxes.

If the payment not made to supplier within 180 days, the recipient is required to reverse the ITC with interest. In my view, interest is payable only after 180 days, but issue is litigation prone.

At present, there is no mechanism by which the recipient would know whether the supplier has paid the tax with Government. However, as per revised system of returns w.e.f. 1-1-2019, facility will be available to recipient to know whether the supplier of goods or services has uploaded his return in his return GSTR-1. These details will be available to recipient of goods or services or both in form GSTR-2A.

Revised system of filing returns and taking ITC Revised system of filing returns and taking ITC is being implemented w.e.f.1-7-2019. Beginning is expected to be made from 1-7-2019. Let ushope that new system works.

Eligibility and Conditions for taking Input Tax Credit [Sec. 16 of CGST Act]

(a) **Registered person to take credit:** Every registered person subject to Section 49, shall be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business. The input tax credit is credited to the electronic credit ledger.

(b) **Conditions for availment of credit by registered person:** Subject to section41, input tax credit is available only if –

(i) He has received goods or services or both. The goods and or services must be used **by him** in the course or furtherance **of his** business.

(ii) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely:

(a) An invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;

(b) A debit note issued by a supplier in accordance with the provisions of section 34;

(c) A bill of entry;

(d) An invoice issued in accordance with the provisions of section 31(3)(f);

(e) A document issued by an input Service Distributor in accordance with the provisions of sub-rule (1) of rule invoice 7;

(f) A document issued by an Input Service Distributor, as prescribed in clause (g) of sub-rule (1) of rule 4.

(iii) The said document must contain all the prescribed particulars specified in the Invoice Rules. It may be noted that Invoice or such other document can

contain additional details other than those prescribed but no less.

(iv) Supplier of goods and/or services must upload the details of such document in the common portal i.e. GSTN.

(v) The supplier has paid the said amount of tax (as charged in the invoice) to appropriate Government in cash or by way of utilization of input tax credit, as admissible;

(vi) He (claimant of input tax credit) has furnished return under section 39 in FORM-GSTR 2;

(vii) **Goods received in Installments:** If goods are received in installmentsagainst a single invoice, credit can be taken upon receipt of last installment of goods.

(viii) **Failure to pay to supplier of goods or service or both, the value of supply and tax thereon:** If recipient of goods or service or both has notpaid the supplier within 180 days from date of invoice, the amount equal to input tax credit availed will be added to output liability of the recipient. Such non-payment of the value of invoice must be admitted in the return filed in FORM-GSTR 2 (Rule 2) for the month immediately following the period of 180 days from the date of issue of invoice. The said input tax credit can be re-availed on payment of value of supply and tax payable thereon.

(ix) **Tax component of Capital goods on which depreciation is claimed:** Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income Tax Act, 1961, the input tax credit shall not be allowed on the said tax component.

(x) **Time limit to avail the input tax credit:** A registered person is notentitled to take input tax credit on

invoice/debit notes after due date of furnishing of the return under section 39 for the month of September of the subsequent financial year or furnishing of the relevant annual return, whichever is earlier.

(xi) No registered person is permitted to avail any input tax credit pursuant to an order of demand on account of fraud, willful misstatement, or suppression of fact.

Input Tax Credit only if invoice complete in all respects - Input tax credit shall be availed by a registered person only if all the applicable particulars as prescribed in Invoice Rules are contained in the said document, and the relevant information, as contained in the said document, is furnished in form GSTR-2 by such person

- Rule 36(2) of CGST and SGST Rules, 2017.

Input Tax Credit available if tax invoice contains minimum specified details, even if it does not contain all required details

- Rule 36(2) of CGST Rules provides that Input Tax Credit shall beavailed by a registered person only if all the applicable particularsas prescribed in Invoice Rules are contained in the said document.

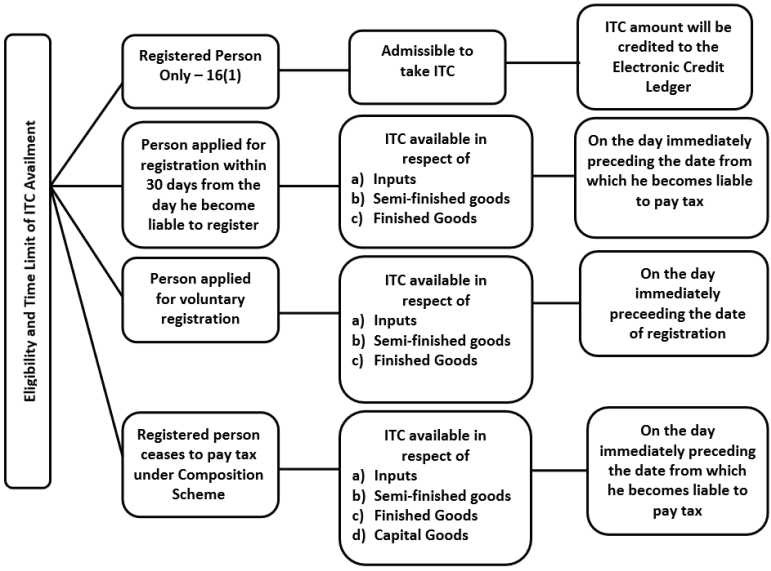
However, it is possible that there may be some omissions. Hence, now it is provided that if the said document does not contain all the specified particulars but contains the details of the amountof tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person - Proviso to rule 36(2) of CGST Rules inserted w.e.f. 4-9-2018.

Good and practical relaxation indeed.

In fact, after 1-7-2019, ITC will be mainly on basis of tax invoices and debit/credit notes uploaded by supplier in his return.

Time Limit for availing ITC: ITC can be claimed/availed up to the due date of furnishing of return for the month of September following

the end of the financial year to which the invoice pertainsOrDate of furnishing of the relevant annual return,Whichever is earlier.



A taxable person shall not be entitled to take input tax credit in respect of any supply of goods and/or services to him after the expiry of, one year from the date of issue of tax invoice relating to such supply - section 18(2) of CGST Act.

Further, a taxable 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 filing of the return under section 39 of CGST Act for the month of September following the end of financial year to which such invoice or invoice relating to debit note pertains or riling of the relevant annual return, whichever is earlier- section 16(4) of CGST Act.

Really, in view of section 16(4), in case of invoices receive after October, the taxable person gets less than one year to take input tax credit.

Relaxation for financial year 201718 - For the financial year 2017-18 (really only for the period July 2017 to March 2018), the input tax credit can be taken till the due date of furnishing return under

section 39 of CGST Act till due date of filing return for the Month of March 2019 in respect of any invoice or invoice relating to debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by supplier under section 37(1) of CGST Act till due date of filing details under section 37(1) of CGST Act for March 2019 - proviso to section 16(4) of CGST Act inserted vide Removal of Difficulties Order No. 02/2018 dated 31-12-2018.

In short, invoices and debit notes pertaining to period July 2017 to March 2018 can be uploaded by supplier in his GSTR-1 return up to return of March 2019 (which is to be filed by 10-4-2019) and the recipient can take its credit in bis GSTR-3B return up to return for the period up to March 2019 (which is to be filed by 20-4-2019).

Statute can prescribe time limit for availing Input Tax Credit -Input Tax Credit is in nature of benefit extended to dealer under the statutory scheme. The concession can be received by beneficiary only as per the scheme of statute.

ITC on Advance:

No Input tax credit if GST was paid by supplier on advance paid to him

Normally, ITC is taken on basis of 'Electronic Credit Ledger'. If advance payment was made to supplier of services before supply of services, the supplier is required to issue receipt voucher and pay tax to Government. However, at that stage the supplier cannot issue tax invoice and hence recipient cannot take ITC.

Input lax credit cannot be taken as services are not received and tax invoice is not issued by supplier. Presently, **GST is payable on receipt of advance in case of services and not in case of goods**.

What is the Entitlement for claiming ITC?

As per section 16(2) of CGST Act, registered taxable person shall not be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless following

conditions are satisfied:

(i) he is in possession of a tax invoice or debit note issued by a supplier registered under GST Act or such other taxpayingdocuments may be prescribed,

(ii) he has received the goods or services or both,

(iii) subject to section 41 orsection 43A of CGST Act, the tax charged in respect of such supply has been actually paid to the credit o the appropriate Government, either in cash orthrough utilization of input tax credit admissible in respect of the said supply [section 41 of CGST Act allows taking inputtax credit in electronic credit ledger on self assessment basis. Section 43A of CGST Act allows ITC on basis of invoicesuploaded by the supplier] {words in italics inserted videCGST (Amendment) Act. 2018 but not yet notified} and

(iv) he has furnished the return under section 39 [every taxable person is required to file electronic return every month as per section 39 of CGST Act].

In case of Inputs or capital goods receivedin installments. Where the goods against an invoice are received in lots or installments, the registeredtaxable person shall be entitled to the credit upon receipt of the last lot or installment - first proviso to section 16(2) of CGST Act.

Credit on basis of invoices uploaded by supplier, even if goods or services are received later, but before filing of return - As a simplification process, it the supplier uploads invoices by 10th of following month, input tax credit can be availed by recipient even if goods are received later, but before filing of return of same month [the due date of return may vary]. Due dates for very large taxpayers will be 20lh of following month. For smaller taxable persons, due date may be earlier. [This will be effective after revised system of filing returns is implemented].

Delivery to transporter or any person on direction of recipient by supplier is sufficient to take input tax credit - For the purpose of section 16(2)(b) of CGST Act, it shall be deemed that the taxable person has received the goods where the goods are

delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise –Explanation(i) to section 16(2)(b) of CGST Act. [The Explanation has been renumbered as Explanation (i) vide CGST(Amendment)Act,2018 w.e.f. 1-2-2019].Thus, in case 'bill to ship to' transactions, the intermediary can lake ITC when documents of title(i.e. LR or Consignment Note) is endorsed in his favour.

Section 39(1) of Sale of Goods Act states that delivery of goods to carrier is prima facie delivery to buyer.

As per section 23(2) of Sale of Goods Act if in pursuance of the contract, the seller delivers the goods to the buyer or to an earner or other bailee, for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract. It does not make difference whether the bailee or buyer was named by buyer or not.

In Manwar Tent Factory v. UOI AIR 1990 SC 1735, it was held that when contract stipulates for delivery of goods F.O.R. basis at place of dispatch, risk passes from consignor to consignee as soon as goods are loaded at the place of dispatch. Thus, transporter is agent of buyer for collection of goods. Hence, in my view, delivery to transporter is delivery to agent and ITC can be taken even if goods do not physically reach the place of taxable person. Of course, the supplier has to upload the invoice in his GSTR-1 and the recipient has to accept it and include it in his GSTR-2.

Supply of service to final customer by contractor is receipt of service by Principal (intermediary) - In many cases, services are sub-contracted. The Principal (or Contractor) asks contractor (or sub-contractor) to supply service directly to customer. In such cases, supply of service to customer will be supply of service to Principal, as per Explanation (ii) to section 12(2)(a) of CGST Act, which reads as follows -

For the purposes of section 16(2)(4) of CGST Act, it shall be

deemed that the registered person has received the services where the services are provided by the supplier to any person on the direction of and on account of such registered person - Explanation (ii) to section 16(2)(b) inserted vide CGST (Amendment) Act, 2018 w.e.f. 1-2-2019.

Final Input tax credit only after supplier makes payment of GST - The receiver (of goods and services) can take provisional credit on basis of return filed by supplier. However, he will be eligible to take final Input Tax Credit only after the supplier of such goods and services has paid the tax.

Taking input tax credit in respect of inputs sent for job work – Input tax credit is available in respect of goods sent for job work and brought back for further use.

To summarize, the credit of input tax can be taken as and when the person applies for the registration but the entitlement of credit of inputs would be from the day liability to tax arises.

Illustration:

- A person becomes liable to pay tax on 1st August 2018 and has obtained registration on 15th August 2018. Such person is eligible for input tax credit on inputs held in stock as on 31st July 2018.

- Mr. A applies for voluntary registration on 5th June 2018 and obtained registration on 22th June 2018. Mr. A is eligible for input tax credit on inputs in stock as on 21st June 2018.

- Mr. B, registered person was paying tax under composition rate up to 30th July 2018. However, w.e.f. 31st July 2018. Mr. B becomes liable to pay tax under regular scheme. Mr. B is eligible for input tax credit on inputs held in stock and capital goods as on closure of business hours as on 30th July 2018.

What will happen if payment not made to supplier within 180 days – Reversal:

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 180 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 - second proviso to section 16(2) of CGST Act.

If partial payment is made, the reversal will be proportionate to the amount not paid to the supplier. If the recipient later makes payment to supplier, he can take credit of input tax - third proviso to section 16(2) of CGST Act. Really, the recipient can take input tax credit only if tax has been actually paid by supplier. Then how Government is concerned about payment of invoice amount to supplier? Why Government is acting as recovery agent?

It seems that the intention is to avoid bogus transfers of input tax credit e.g. if a person has excess input tax credit, he can pass on this credit to others. However, the remedy thought of seems to be worse than disease as many genuine transactions will get affected. Often in case of large works contracts, some retention money is opted which is released after warranty period.

Further, some deductions from invoice for various reasons is common. In such case, this provision will create great nuisance to taxable persons. Post-sale discounts after negotiations are common in business. All such transactions will get affected.

Proportionate reversal if part amount paid - If (say) 85% amount of supplier's invoice (including tax amount) is paid, only15% tax amounts should be reversed.

Pay tax with interest even if supplier has paid full tax to Government- An unfair provision - On one hand, post supply discounts are not allowed as deduct ion from 'value' for GST. On the other hand, if less amount is paid to supplier, corresponding input tax credit is required to be reversed with interest, even when entire tax amount has been paid to Government by supplier.

In case of nonpayment/underpayment of consideration what is the Procedure for reversal ITC:

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 section 16(2), shall furnish the details of such supply and the amount of input tax credit availed of in form GSTR-2 for the month immediately following the period of 180 days from the date of issue of invoice'- Rule 37(1) of CGST and SGST Rules, 2017.

In cases where GST is payable without consideration as specified in Schedule I of CGST Act, the amount shall be deemed to have been paid - first proviso to Rule 37(1) of CGST and SGST Rules,2017 [The proviso re-numbered as first proviso w.e.f. 13-6-2018][Thus, in such case, actual receipt of payment is not required].

The amount of input tax credit as above shall be added to the output tax liability of the registered person for the month in which the details are furnished - Rule 37(2) of CGST and SGST Rules, 2017.

The registered person shall be liable to pay interest at the rate notified under section 50(1) of CGST Act for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned above is paid – Rule 37(3) of CGST and SGST Rules, 2017.

Payment deemed to be received if amount paid by recipient behalf of supplier is added in value for payment of GST – Section 15(2)(b) of CGST Act provides that any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in die price actually paid or payable for the goods or services or both is includible in value.

This cannot cover free inputs or services supplied by recipient, as only 'amount' paid by recipient on behalf of supplier is includible. This would be so only where there was contractual

liability on supplier to make those supplies. However, if amount was contractual liability of supplier but paid by recipient on his behalf, that amount will be includible in 'value1 for purpose of payment of GST.

Even if this amount is addible in value, obviously payment will not be received in respect of this amount from recipient. Normally, if payment is not received from recipient, proportionate input tax credit has to be reversed as per section 16(2) of CGST Act. However, in such cases, it will be deemed that the payment has been received. Thus, reversal of proportionate input tax credit will not be required - second proviso to rule 37(1) of CGST Rules, inserted w.e.f. 13-6-2018.This second provision should apply with retrospective effect, though the rule does notspecifically say so.

Re-availing the credit after payment to supplier - The credit of ITC so reversed can be taken after payment is made to the supplier of goods or services or both. The time limit as specified in section 16 of CGST Act will not apply to such re-credit - Rule 37(4) of CGST and SGST Rules, 2017.

If part of input goes in by-product or waste, ITC would be available:

Entire input tax credit is available, even if part of input goes in by-product or waste like sludgewhich is not taxable. Principleof proportionate apportionment is not applicable - Ruchi Soya Industries v. Slate of Madhya Pradesh (2014) 70 VST 40 (MP HC DB) - - following CST v. Bharat Petroleum Corporation Ltd. (1992) 2SCC220 = 85 ST C220(SC).

Availment of ITC in case of Process losses and handling loss:

There will be some loss of inputs during manufacturing process Cenvat (now ITC) is available on entire quantity of input even if part of input goes in process loss, since all inputs are 'used' in the manufacture of final product, even if it is not reflected in final product – Multi-metals Ltd. v. ACCE 57 ELT 209 (SC) = 1992 (1) SCC 715 = AIR 1992 SCI 532 = 1992 AIR SCW 1644-quoted with approval in UOIv. Indian Aluminum Co. Ltd - 1995 (77) ELT 268(SC - 3 member bench order), where it was held that exact mathematical equation between quantity of raw material

purchased and the raw material found in finished product is not possible, and should not be looked for. [This judgment is in respect of Proforma Credit, but its ratio is fully applicable to Cenvat (now ITC).]

In CCE v. IPF Vikram India 2002(150) ELT 175 (CEGAT), it was held that Cenvat on inputs (now ITC) which have gone in waste is not deniable - Departmental appeal dismissed by SC on merits -2003(153) ELT A303.

Entire Cenvat credit (now ITC) is available if part of input is contained in waste, refuse or by – product – Mahindra Hinoday Industries v. CCE (2014) 308 ELT 555 (CESTAT) relying on CBE&C circular No. B-4/7/2000-TRU dated 3-4-2000 – same view in Rupa and Co. v. CESTAT (2015) 324 ELT 295 (Mad HC DB)

Even if waste is not returned by job worker, Cenvat credit of excise duty (now ITC of GST) contained in such scrap or waste is not required to be reversed – Mukand Ltd. v. CCE (2015) 318 ELT 134 (CESTAT SMB).

Loss of input by evaporation during manufacturing processing is to be treated as ware or loss and Cenvat credit (now ITC) on such loss is not required to be reversed –CCEv. BOC(India) (2008) 223 ELT 33 (Guj HC DB).

Chlorine gas Left in cylinder after use of gas in processing can be termed as 'process loss' and its Cenvat credit (now ITC) is available -CCE v. Andhra Paper Mill (2011) 269 ELT 79 (AP HC DB).

Even excess process loss is allowable if any evidence of clandestine removal is not available - Rollex Electro Products v. CCE (2016) 338 ELT 736 (CESTAT).

During handling eligible there is Loss of inputs - In or in relation to the manufacture covers the entire manufacturing process starting from initial stage of handling of inputs. Thus, if wastage of input at the initial handling from tank discharge due to various reasons like spillage, pipeline losses, handling losses etc., it is 'in or in relation to manufacture' and Cenvat (now ITC) cannot be denied

Full ITC is available in case of natural losses but not in short receive:

If inputs are short received and there is loss during transit, the goods short received cannot be termed as 'used in or in relation to manufacture'. Hence, Cenvat credit (now ITC) on such short-received inputs is not available - Asea Brown Boveri Ltd. v. CCE 1994(74) ELT 897 (CEGAT) - same view in Bombay Dyeing v. CCE 1999 (113) ELT 331 (CEGAT)* Sterlite Industries v. CCE (2007) 212 ELT 193 (CESTAT) ' Carborundum Universal v. CCE (2008) 227 ELT 535 (CESTAT SMB).

Loss in transit of inputs due to natural causes allowable - In CCE v. Bhuwalka Steel Industries (2010) 24 STT 436 = 249 ELT 218 (CESTAT 3-member bench), it has been held that tolerances in respect of hygroscopic, volatile and such other cargo has to be allowed as per industry norms, excluding, however, unreasonable and exorbitant claims.

This was followed in CCE v. Somaiya Organo Chemicals (2012) 275 ELT 83 (CESTAT), where it was held that loss of molasses up to2% in transit and storage is permissible and Cenvat credit is not required to be reversed.

It has been held that if the loss is due to drayage occurring in transit, i.e. moisture loss, full Cenvat credit is available, as full quantity is received in the factory and loss is only dueto atmospheric changes - PKPN Spinning Mills v. C CE 1997(89) ELT 588 (CEGAT) *CCE v. Bombay Dyeing & Mfg.CoLtd 1998(97) ELT 101(CEGAT) * Hindustan Lever v. CCE 2004 (166, ELT 273 (CESTAT)* Tata Motors v. CCE(20O5) 1 STT228= (179) ELT 413 (CESTAT) Ganges Valley Foodsv.CCE(2007) 217 ELT 147 (CESTAT) * UOI v. Hindustan Zinc (2013).

Is correlation necessary between Input & Finished Goods for taking ITC?

There is no requirement of establishing relation between inputs/ input services and final product. There is no correlation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related -

CCE v. Dailchi Karkaria Ltd. 112 ELT 353 = AIR 1999 SC 3234 = 1999 AIR SCW 3205 - (1999) 7 SCC 448 (SC 3 member bench) - quoted with approval in CCE v. Bombay Dyeing (2007) 10 STT 286 (SC).

Credit on any input can be used for any taxable final product - Credit of input can be used in any of the taxable final product. In Pratap Steels Ltd v. CCE 1997(95) ELT 584 (CEGAT), it was held that excess credit accumulated on account of duty on final product being Jess than duty on inputs utilised there for, can be utilised for same final product manufactured out of non-duty paid inputs, as one to one correlation is not required under Cenvat (now ITC).

Is there any restriction to take the credit until sold or Utilised?

Credit will be available as soon as inputs or input services are received. It is not necessary to wait till these are utilised or sold.

What are the goods and services in which ITC is not eligible? – The Exclusion

The input tax credit eligibility is based on whether the same is used for taxable supplies or zero-rated supplies. Where the goods or service is used for both taxable and exempted supplies, only proportionate credit is eligible for registered person. Further, a list of ineligible input tax credit is also provided.

The value of exempt supplies shall include supply on which tax is paid under Reverse Charge, transaction in securities, sale of land and sale of building. Supplies in respect of which the outward supplier is not liable to pay tax but the recipient is made liable to pay the tax, then due to section 17(3), for the limited purpose of restricting input tax credit to the supplier (who is not made responsible to pay tax due to RCM provisions) the value of these supplies will be regarded as 'exempt supplies' while arriving at the net available input tax credit. Doubts have been raised whether such supplies should be included as exempt supplies by the recipient who pays the tax (on RCM basis). This is not the case, as the recipient has not made such supply.

Though definition of input lax is broad, input tax credit shall not be available in respect of activities and transactions specified in section 17(5) of CGST Act (termed as 'blocked credit']. The

specific exclusion means that but for such exclusion by blocking credit, the Input Tax Credit (ITC) would have been available.

Section 17(5)(a) and 17(5)(b) of CGST Act have been amended substantially vide CGST (Amendment) Act, 2018, w.e.f. 1-2-2019. The blocked credit as applicable w.e.f. 1-2-2019 is summarized below.

ITC is not available in respect of following -

- **Motor Vehicles and other Conveyances:** ITC for Motor Vehicles will not be available
  - Except when they are used for:
  - i. Transportation of Goods, or Making the following taxable services:
  - ii. Further supply of such vehicles/conveyances, or
  - iii. Transportation of passengers, or
    - a. Training for driving/flying/navigating such vehicles/conveyances.
    - b. Motor Vehicle for transportation of persons having seating capacity of more than 13 (including driver)., vessels and aircraft.
    - c. Motor Vehicles for transportation of money for or by a banking company or financial institution.
- Services of general insurance, repair and maintenance in respect of motor vehicles, vessels and aircraft on which credit is available.
- Vessels and aircrafts, except when used for (i) furthersupply, transportation of passengers or training (ii) transportation of goods. ITC on its leasing, renting or hire is also not allowable, except when used for making outward supply o same category of goods or services, or as element of mixed composite supply [no change]

- General insurance, servicing, repairs and maintenance of motor vehicles, vessels and aircrafts which are not eligible for ITC except when used for making outward supply o same category of goods or services, or as element of mixed composite supply [Specifically provided now. Earlier, there was no specific exclusion and hence it can be argued that these expenses were eligible earlier for ITC]

- Food, beverages, outdoor catering, beauty treatment etc. except when used for making outward supply of same category of goods or services, or as element of mixed/ composite supply.

- Membership of club, health and fitness centre.

- Travel benefits extended to employees on vacation.

- Works contract service for construction, repairs, renovations, additions, alterations, re-construction of immovable property except when used for further supply of works contract service.

- Construction, repairs, renovations, additions, alterations, re-construction of immovable property except plant and machinery on his own account.

- Tax paid under composition scheme under section 10 of CGST Act

- Goods and services received by non-resident taxable person except goods imported by him

- Goods and services used for personal consumption (may be of employees, directors or even others)

- Goods lost, stolen, destroyed, written off or given as gift or free samples

- Tax paid under section 74 (tax paid after allegation of fraud, willful misstatement or suppression of facts), 129 (tax paid after detention of goods in transit for violations of provisions of e-way bill) and 130 (penalty paid after confiscation of goods).

Section 17(5) of CGST Act, as amended w.e.f. 1 -2-2019

The entire section 17(5) of CGST Act (as amended by CGST (Amendment) Act, 2018 w.e.f. 1-2-2019, is given below for ready reference.

Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely: —

(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely: — (A) further supply of such motor vehicles; or (B) transportation of passengers; or (C) imparting training on driving such motor vehicles;

(ad) vessels and aircraft except when they are used—(i) for making the following taxable supplies, namely: — (A) further supply of such vessels or aircraft; or (B) transportation of passengers; or (C) imparting training on navigating such vessels; or (D) imparting training on flying such aircraft; (ii) for transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance insofar as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (ad): Provided that the input tax credit in respect of such services shall be available— (i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (ad) are used for the purposes specified therein; (ii) where received by a taxable person engaged— (I) in die manufacture of such motor vehicles, vessels or aircraft; or (II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

(b) (i) the following supply of goods or services or both— food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (ad) except when used

for the purposes specified therein, life insurance and health insurance: - - Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(b) (ii) the following supply of goods or services or both— membership of a club, health and fitness centre; and

(iii) the following supply of goods or services or both— travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide to its employees under any law for the time being in force.

works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation: For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

(e) goods or services or both on which tax has been paid undersection 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

(g) goods or services or both used for personal consumption;

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

Goods and services where ITC are blocked w.e.f. 1-2-2019 are discussed below:

Motor vehicles - Motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), are not eligible for ITC except when used for making the following taxable supplies, namely—

(A) further supply of such motor vehicles (B) transportation of passengers

(C) imparting training on driving of such vehicles - section 17(5) (a) of CGST Act. The words in italics inserted w.e.f. 1-2-2019.

The **ITC** on motor vehicles used for transportation of goods was eligible prior to 1 -2-2019 and continues to be eligible after 1 -2-2019.

Services of leasing, renting or hiring of motor vehicles referred to in clause (a) are also not eligible for ITC except when used for the purposes specified therein- section 17(5) (b)(i) of CGST Act inserted w.e.f. 1-2-2019. This clause is inserted vide CGST (Amendment) Act, 2018.

In my view, even prior to 1-2-2019, these services were not eligible for **ITC** in view of the words 'in respect of used in section 17(5) of **CGST** Act.

Vessels and aircraft - Vessels and aircrafts are not eligible for ITC except when used for making the following taxable supplies, namely—(i) (A) further supply of such vessels or aircrafts (B) transportation of passengers (C) imparting training on navigating such conveyances (D) imparting training on flying such aircrafts (ii) for transportation of goods - section 17(5) (aa) of CGST Act inserted w.e.f. 1-2-2019.

Services of leasing, renting or hiring of vessels or aircraft referred to in clause (ad) are also not eligible for ITC except when used

for the purposes specified therein - - section 17(5)(b)(i) of CGST Act w.e.f. 1-2-2019.

In my view, even prior to 1-2-2019, these services were not eligible for **ITC** in view of the words 'in respect of' used in section 17(5) of CGST Act.

Ineligible Repairs, maintenance and insurance of motor vehicles, vessels and aircrafts - Services of general insurance, servicing, repair and maintenance insofar as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (ad) is not eligible [i.e. when motor vehicle, vessel or aircraft is not eligible for ITC, its repairs, insurance and maintenance expenses are also not eligible. - section 17(5)(ab) of CGST Act inserted w.e.f. 1-2-2019.

The ITC on motor vehicles used for transportation of goods was eligible and continues to be eligible after 1-2-2019

Even earlier, in my view, these expenses were not eligible for ITC for reasons discussed below.

The term used in section 17(5) is 'in respect of motor vehicle or conveyance'. The phrase 'in respect of' is usually treated as similar to 'in relation to'. This is a broad term and it is expansive.

Thus, it should cover expenses relating to repair, insurance and maintenance of motor vehicles and conveyances also and these should not be eligible for input Tax Credit.

In respect of can be given wide meaning as 'in relation to' or 'with reference to' – Tularam Relumlalv. State of Bombay AIR 1954 SC 496. The phrase 'in respect of has wider connotation that 'in' – Godavaris Misra v. Nanda kishore AIR 1953 Ori 111, CIT v. Chunilal AIR 1968 Pat 364. The words 'in respect of admit of a wide connotation –UOI v. Vijay Chand Jain AIR 1977 SC 1302 = (1977) 2 SCC 405.

No ITC for vehicle used for transportation of cash (money) - Cash (money) is not 'goods'. Hence, ITC for vehicle used for transportation of cash is not available.

When Repairs, maintenance and insurance of motor vehicles, vessels and aircrafts eligible for ITC - The input tax credit in respect of insurance, maintenance and repair services of motor vehicle, vessels and aircrafts shall be available— (i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (ad) are used for the purposes specified therein; (ii) where received by a taxable person engaged— (I) in the manufacture of such motor vehicles, vessels or aircraft; or (II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him - proviso to section 17(5)(ab) of CGST Act inserted w.e.f. 1-2-2019.

This is new provision. This amendment in clause (ii) will be helpful in case of manufacturer of motor vehicles and suppliers of general insurance service. The items mentioned in clause (i) above were eligible even prior to 1-2-2019.

Goods and services for food, beauty treatment, health mainly for personal consumption -Services of food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, life insurance and health insurance are not eligible for ITC except where such inward supply of goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of taxable composite or mixed supply - section 17(5)(b) (i) of CGST Act, as amended vide CGST (Amendment) Act, 2018 w.e.f. 1-2-2018.

Even earlier, the statutory provision was same.These expenses are predominantly for personal use.Input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide to its employees under any law for the time being in force - - proviso to section 17(5)(b) of CGST Act inserted w.e.f. 1-2-2019.

ITC of canteen facility provided in factories under Factories Act- As per section 46 of Factories Act, if 250 or more workers are employed, provision of canteen facility is mandatory. Since this is mandatory, Input Tax Credit of canteen services provided to employees should be available in view of proviso to section 17(5)(b) of CGST Act w.e.f. 1-2-2019.

Really, under Factories Act, it is not legally required to provide free or subsidised meals.

Membership of club, health centre- Service of membership of a club, health and fitness centre is not eligible - section 17(5)(b)(ii) of CGST Act. This clause is inserted w.e.f. 1-2-2019.Even prior to 1-2-2019, the statutory provision was same. These expenses are predominantly for personal use.

Travel benefit to employees on leave or vacation - Services travel benefits extended to employees on vacation such as lea[1] or home travel concession are not eligible for ITC - section 17((b)(iii) of CGST Act inserted w.e.f. 1-2-2019.Even prior to 1-2-2019, the statutory provision was same. These expenses are predominantly for personal use.

Works Contract service- Works contract services when supply for construction of an immovable property (other than plant and machinery) is not eligible, except where it is an input service f< further supply of works contract service - section 17(5)(c) of CGS Act [same provision prior to 1-2-2019 - no change].

'Other than plant and machinery' means input tax credit of GST paid on plant and machinery procured will be available. Further, this credit of works contract will be available to build' or contractor who himself is undertaking works contract service as he is suing those services for further supply of works contra service.

The expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property - explanation below section 17(5)(d)of CGST Act. Thus, if expenses of renovation, repairs, re-construction or alterations are not capitalized in books of account of taxable person, its ITC is allowable. Input tax credit of works contract services received for maintenance and repairs of mall is not admissible.

Construction service - Goods or services received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account including when such goods or services or both are used in course or furtherance of

business is not eligible for Input Tax Credit - section 17(5)(d) of CGST Act [same provision prior to 1-2-2019 - no change].

The expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property - explanation below section 17(5)(d) of CGST Act.

Thus, if expenses of renovation, repairs, re-construction or alterations are not capitalized in books of account of taxable person, its ITC is allowable.

Input tax credit of material purchased for maintenance and repairs of mall is not admissible.

GST paid under composition scheme- Goods or services or both on which tax has been paid under section 10 (composition scheme) are not eligible - section 17(5)(e) of CGST Act [same provision prior to 1-2-2019 - no change].

Goods or services or both received by a non-resident taxable person- Goods or services or both received by a non-resident taxable person are not eligible for input tax credit, except on goods imported by him - section 17(5)(f) of CGST Act [same provision prior to 1-2-2019 - no change].

Goods and services used for personal consumption - Goods or services or both used for personal consumption are not eligible for input tax credit - section 17(5)(g) of CGST Act [same provision prior to 1-2-2019 - no change].What probably it means is that goods or services or both used for non-business purposes like personal use on consumption by partners or directors or proprietor will not be eligible for ITC.

Lost, stolen or destroyed goods and free samples - Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples are not eligible for input tax credit - section 17(5)(h) of CGST Act [same provision prior to 1-2-2019 - no change].

GST paid after detection of fraud or suppression or goods removed in contravention of GST Act - Any tax paid in terms of sections 74, 129 and 130 of CGST Act are not eligible for input tax credit. This covers GST paid after detection of fraud

or suppression or goods removed in contravention of GST Act - section 17(5)(i) of CGST Act [same provision prior to 1-2-2019 - no change]. - same provision in Rule 36(3) of CGST and SGST Rules, 2017.

What is the definition of 'plant and machinery' in GST ?

Section 17(6) of CGST Act:

"Plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes - (i) land, building or any other civil structures (ii) telecommunication towers; and (iii) pipelines laid outside the factory premises. Shed to protect plant and machinery is civil structure and its ITC is not available.

Can it be said that building is plant'? - Normally, 'plant' can include 'building', as per following case law. However, in view of specific exclusion of building from definition of 'plant', it is doubtful if building can be held as 'plant' for purpose of ITC in GST.

In CITv. Taj Mahal Hotel (1971) 82 ITR 44 (SC) = AIR 1972 SC 168 = 1971 (3) SCC 550, Supreme Court has held that sanitary fittings and pipelines installed in a hotel are 'plant' as their installation made it possible to carry on the business of hotel more profitably. SC followed 'functional test' in this case.

Dictionary meaning of "Plant"- The land, buildings and equipment used in an industry. - Quoted from McGraw Hills Dictionary in Singh Alloys & Steel Ltd v. ACCE1993 (66) ELT 594 (Cal). - quote in Rat hi Udyog Ltd v. CCE 2000 (121) ELT 524 (CEGAT 5 membi bench).

An engineering production facility, a factory, electric power station or the like - Academic Press Dictionary of Science and Technology - Union Carbide v. CCE 1996 (86) ELT 613 (CEGAT) * S Electricals v. CCE 2003 (155) ELT 534 (CEGAT 3-memberbenchOblum Electrical Industries P Ltd. v. CC 94 ELT 449 (SC) = AI 1997 SC 3467 = 1997 AIR SCW 3557 = 1997(7) SCC 581.

'Used for' is wider than 'used in' - The term 'Used for' is wide than 'used in' - Oblum Electrical Industries P Ltd. v. CC 94 EL 449 (SC) = AIR 1997 SC 3467 = 1997 AIR SCW 3557 = 1997 (' SCC 581.

What is the meaning of works contract in GST Law?

"Works contract" means a contract for building, construction fabrication, completion, erection, installation, fitting, improvement, modification, repair, maintenance, renovation alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract - section 2(1 H of CGST Act. Only composite contracts relating to immovable property are covered under 'works contract'.

Works contract as defined in section 2(119) of CGST Act is a composite supply and shall be treated as 'supply of service' - para 6(a) of Schedule II of CGST Act.

A tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract is deemed sale of goods under Article 366(29A) of Constitution of India. [As inserted by 46th Amendment to Constitution in 1982]. Thus, the Constitution states that 'works contract' is deemed sale of goods, while GST Law states that it is 'supply of service'

What is the meaning of Motor Vehicle in GST Law?

As per section 2(28) of Motor Vehicles Act, 1988, Motor vehicle or vehicle means any mechanically propelled vehicle adopted for use upon roads whether the power of propulsion is transmitted thereto from external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or vehicle of a special type adapted for use only in a factory or any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding 25 (Twenty-five) cubic centimeters.

In Bose Abraham v. State of Kerala (2001) 3 SCC 157 = 121 STC 614 (SC) = AIR 2001 SC 835, it was held that excavators and road rollers are 'motor vehicles'. Merely because a motor vehicle is put to a specific use as such being confined to an

enclosed premise, will not render the same to be a different kind of vehicle - quoted in Vijaya Traders v. CTO (2011) 45 VST 113 (AP HC DB).

In RDS Projects v. CTO (2007) 8 VST 574 (Mad HC), it has been held that excavator moving on chains mounted on belt and not meant for use on roads is not 'motor vehicle'.

No ITC of GST paid on excavators and road rollers, but available on tippers and dumpers - The ITC of GST paid on excavators or road rollers will not be available, as they are 'motor vehicles' as per MV Act (unless some specific provision is made).

However, ITC of GST paid on tippers and dumpers will be available as they are not 'motor vehicle' - FAQ No. 21 of FAQ on Mining issued by Directorate General of Taxpayer Services on 31-7-2017.ITC of GST paid on tippers and dumpers will be available as they are not 'motor vehicle' - FAQ No. 21 of FAQ on Mining issued by Directorate General of Taxpayer Services on 31 -7-2017.

Based on Important Case Law: Eligible/Ineligible ITC

Input services used for CSR Activity - Corporate Social Responsibility (CSR) is not only holistic approach but integrating core business strategy. Sustainability of company is dependent on CSR. Hence, input services used for CSR activities are eligible for Cenvat credit –Essel Petropackv. CCGST(2018) 362 ELT 833 (CESTAT) [decision for period prior to GST but principle applies to GST also].

Brokerage services relating to renting of building - Brokerage services relating to renting of building is eligible input service for renting of commercial property. The service falls under heading 9972 (really 99621 appears to be more appropriate)-Adwitya Spaces P Ltd. (AAR-Tamil Nadu).

GST paid on lease rent for land not eligible for ITC- In GGL Hotel and Resort Company Ltd.,(AAR-WEST BENGAL), applicant had taken on lease certain land for construction of resort and he was liable to pay annual lease rent. The lease rent paid during pre-operative period was to be capitalized in account books by applicant. It was held that input tax credit is not available to

applicant for lease rent paid during pre-operative period. The reason given was that ultimately the land should be treated as part of the cost of goods and services received for the purpose of constructing an immovable property (other than plant and machinery) on the applicant's own account. Input tax credit is, therefore, not admissible on such lease rental in terms of section 17(5)(d) of CGST Act [very strained reasoning indeed. It is well settled that exclusion clause in any benevolent provision has to be constructed].

Availment of ITC of capital goods:

Entire ITC of GST paid on capital goods will be available in first year itself, as these are 'goods'. Term 'capital goods' is defined in section 2(19) of CGST Act as follows -

"Capital goods" means goods, the value of which is capitalised in the books of account of the person claiming the credit and which are used or intended to be used in the course or furtherance of business - section 2(19) of CGST Act.

What is the meaning of 'capital goods' for purpose of ITC?

"Capital goods" shall include "plant and machinery" as defined in the Explanation to section 17 of CGST Act - Explanation below Rule 45 of CGST and SGST Rules, 2017.

For purpose of Chapter V of CGST Act (Input Tax Credit) and Chapter VI of CGST Act (Registration), expression 'plant and machinery' is defined as follows [Explanation to section 17 of CGST Act].

"Plant and machinery" means apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes - (i) land,building or any other civil structures (ii) telecommunication towers; and (iii) pipelines laid outside the factory premises.

Double benefit is not allowed - If depreciation claimed on tax component the ITC is not available:

Where the registered taxable person has claimed depreciation on the tax component of the cost of capital goods under the

provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed - section 16(3) of CGST Act.

Thus, if net value of capital goods is Rs. 100 lakhs and GST paid is Rs. 18 lakhs, the taxable person should claim depreciation in income tax only on Rs. 100 lakhs.

Pipelines and telecommunication tower - Ineligible ITC

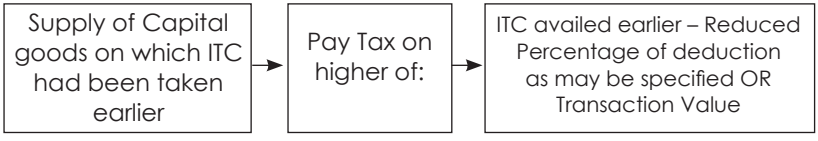
Credit of input tax in respect of pipelines laid outside the factory and telecommunication towers fixed to earth by foundation or structural support including foundation and structural support are not eligible for input tax credit - Explanation to section 17 of CGST Act.

Though telecommunication tower, being immovable property, is not eligible for ITC, the Input Tax Credit will be available in respect of other goods used to provide infrastructure (which are movable) and services used for providing infrastructure. These would cover pre-fabricated shelter made of insulating PUF material made of fibers, Electronic Panel, Base Transceiver Station (BTS) and other radio transmission and reception equipment, a diesel generator set, six poles of 6 to 9 meters length each made of hollow steel galvanized pipes. These are easily removable and hence are 'goods' eligible for ITC -Vindhya Telelinks Ltd,(AAR- Uttarakhand).

Supply of capital goods on which Input tax credit is taken:

The registered person shall:

- Pay an amount equal to input tax credit taken on such capital goods reduced by percentage points as prescribed or
- Tax on the transaction value of such capital goods, whichever is higher.



In case of supply of capital goods on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by the percentage points as may be specified or the tax on the transaction value of such capital goods or plant and machinery determined under section 15 of CGST Act, whichever is higher- section 18(6) of CGST Act.

The amount of credit shall be calculated by reducing the input tax @ 5% for every quarter or part thereof, from the date of issue of invoice for the capital goods - Rule 40(2) of CGST and SGST Rules, 2017.

However, in case of bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15 of CGST Act - proviso to section 18(6) of CGST Act.

Tax implication at the time of Merger, amalgamation or sale of business:

Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provision for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in the such manner as may be prescribed -section 18(3) of CGST Act. Procedure for transfer of credit on sale, merger, amalgamation, lease or transfer of a business

A registered person shall, on sale, merger, demerger, amalgamation, lease or transfer or change in ownership of business for any reason, furnish the details of sale, merger, demerger, amalgamation, lease or transfer of business, in form GST ITC-02 electronically on the Common Portal along with a request to transfer the unutilized input tax credit lying in his electronic credit ledger to the transferee - Rule 41(1) of CGST and SGST Rules, 2017.

In the case of demerger, the input tax credit shall be apportioned

in the ratio of the value of assets of the new units as specified in the demerger scheme.

The transferor shall also submit a copy of a certificate issued by a practicing cost accountant (CMA) or chartered account (CA) certifying that the sale, merger, demerger, amalgamation, lease or transfer of business has been done with a specific provision for transfer of liabilities - Rule 41(2) of CGST and SGST Rules, 2017.

The transferee shall, on the Common Portal, accept the details so furnished by the transferor and, upon such acceptance, the unutilized credit specified in form GST ITC-02 shall be credited to his electronic credit ledger - Rule 41(3) of CGST and SGST Rules, 2017.

The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account - Rule 41 (4) of CGST and SGST Rules, 2017.

What will happen if sole proprietor died in between ?

The application for cancellation of registration shall be made by legal heir/successor in form GSTREG-16. The new entity in which the applicant proposes to amalgamate itself shall be registered under GST before submission of application for cancellation of registration which is in name of deceased sole proprietor. Before filing application for cancellation, tax return up to the date of surrender of registration should be filed - Instruction No. 7(b) under form GST REG-16 inserted on 30-10-2018.

Transfer of ITC on obtaining separate registration for multiple places of business within a State or Union Territory:

A person who is having single registration within State or Union Territory make like to have multiple registrations within the State. Procedure for the same has been specified in rule 41A of CGST Rules, inserted w.e.f. 1-2-2019. The procedure is discussed under 'Registration'.

Input Tax Credit when taxable person becomes eligible for first time -

In some cases, the taxable person becomes liable to pay GST at a later stage e.g. exemption to his supply of goods or services is withdrawn or when he opts out of composition scheme or when he applies for registration after he becomes liable to pay GST. In such cases, provisions have been made to enable him to avail input tax credit.

Credit of input tax at the time of registration -

A person who has applied for registration under the Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall, subject to such conditions and restrictions as may be prescribed, be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of CGST Act - section 18(1) (a) of CGST Act.

This provision also applies if a taxable person takes voluntary registration under section 25(3) of CGST Act, even if his turnover is below exemption limit - section 18(I)(b) of CGST Act.

The amount of credit under section 18(1) of CGST Act shall be calculated in such manner as may be prescribed - section 18(5) of CGST Act.

Claiming credit when person applies for registration within 30 days - Input tax credit claimed in accordance with the provisions of section 18(1) of CGST Act on the inputs lying in stock or inputs contained in semi-finished or finished goods lying in stock, or the credit claimed on capital goods in accordance with the provisions of clauses (c) and (d) of section 18(1) of CGST Act, shall be subject to the following conditions—

The input tax credit on capital goods, in terms of clauses (c) and (d) of section 18(1), shall be claimed after reducing the tax paid on such capital goods by 5% per quarter of a year or part thereof from the date of invoice or such other documents on which the capital goods were received by the taxable person.

The registered person shall within thirty days from the date of

his becoming eligible to avail of input tax credit under section 18(1) shall make a declaration, electronically, on the Common Portal in form GST ITC-01 to the effect that he is eligible to avail of input tax credit as aforesaid. This period of 30 days can be extended by Commissioner by a notification. The notification can be issued either by Central Tax Authorities or State Tax Authorities or Union Territory Tax Authorities.

The time limit for filing form ITC-01 has been extended to 30-11-2017 - Notification No. 52/2017-CT dated 28-10-2017.

(c) The declaration under clause (b) shall clearly specify the details relating to the inputs lying in stock or inputs contained in semi-finished or finished goods lying in stock, or as the case may be, capital goods—

(i) on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act, in the case of a claim under Section 18(l)(a).

(ii) on the day immediately preceding the date of grant of registration, in the case of a claim under Section 18(l)(b).

(iii) on the day immediately preceding the date from which he becomes liable to pay tax under section 9, in the case of a claim under Section 18(l)(c).

(iv) on the day immediately preceding the date from which supplies made by the registered person becomes taxable, in the case of a claim under Section 18(l)(d).

The details furnished in the declaration under clause (c) shall be duly certified by a practicing cost accountant (CMA)or chartered account (CA) if the aggregate value of claim on account of central tax, State tax and integrated tax exceeds two lakh rupees.

The input tax credit claimed in accordance with clauses (c) and (d) of section 18(1) of CGST Act shall be verified with the corresponding details furnished by the corresponding supplier

in form GSTR-1 or in form GSTR- 4, on the Common Portal.

Input tax credit when person opts out of composition scheme

Where any registered taxable person ceases to pay tax under section 10 of CGST Act [which provides for composition scheme], he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9 of CGST Act [on basis of transaction value]. Credit on capital goods shall be reduced by such percentage as may be prescribed - section 18(I)(d) of CGST Act.

Input tax credit on stock when exemption on goods or services withdrawn

Where an exempt supply of goods or services or both by a registered taxable person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable - section 18(1) (d) of CGST Act.

The credit on capital goods shall be reduced by such percentage points as may be prescribed in this behalf - proviso to section 18(I)(d)of CGST Act.

Procedure for Claiming credit when person applies for registration within 30 days or when shifts from composition scheme or goods cease to be exempt

As per rule 40(1) of CGST Rules, Input tax credit claimed in accordance with the provisions of section 18(1) of CGST Act on the inputs lying in stock or inputs contained in semi-finished or finished goods lying in stock, or the credit claimed on capital goods in accordance with the provisions of clauses (c) and (d) of section 18(1) of CGST Act, shall be subject to the following conditions -

[Note - section 18(I)(c) of CGST Act relates to ITC when taxable

person under composition scheme shifts to normal scheme. Section 18(I)(d) of CGST Act relates to ITC when exempt supply of goods becomes a taxable supply. Credit of ITC on capital goods can be availed only in these two situations and not when a taxable person applies for fresh registration].

The input tax credit on capital goods, in terms of clauses (c) and (d) of section 18(1), shall be claimed after reducing the tax paid on such capital goods by 5% per quarter of a year or part thereof from the date of invoice or such other documents on which the capital goods were received by the taxable person

The registered person shall within thirty days from the date of his becoming eligible to avail of input tax credit under section 18(1) make a declaration, electronically, on the Common Portal in form GST ITC-01 to the effect that he is eligible to avail of input tax credit as aforesaid. This period of 30 days can be extended by Commissioner by a notification. Thenotification can be issued either by Central Tax Authorities or State Tax Authorities or Union Territory Tax Authorities.

The time limit for filing form ITC-01 has been extended to 30-11-2017 - Notification No. 52/2017-CT dated 28-10-2017.

(c) The declaration under clause (b) shall clearly specify the details relating to the inputs lying in stock or inputs contained in semi-finished or finished goods lying in stock, or as the case may be, capital goods-

(i) on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act, in the case of a claim under section 18(I)(a).

(ii) on the day immediately preceding the date of grant of registration, in the case of a claim under section I8(I)(b).

(iii) on the day immediately preceding the date from which he becomes liable to pay tax under section 9, in the case of a claim under section 18(I)(c).

(iv) on the day immediately preceding the date from

which supplies made by the registered person becomes taxable, in the case of a claim under section 18(l)(d).

The details furnished in the declaration under clause (c) shall be duly certified by a practicing cost accountant (CMA) or chartered accountant (CA) if the aggregate value of claim on account of central tax, State tax and integrated tax exceeds two lakh rupees.

The input tax credit claimed in accordance with clauses (c) and (d) of section 18(1) of CGST Act shall be verified with the corresponding details furnished by the corresponding supplier in form GSTR-1 or in form GSTR- 4, on the Common Portal.

If goods become exempt or taxable person switches to composition scheme - Reversal of ITC

If a taxable person switches over from normal scheme to composition scheme, or his product which was earlier taxable becomes exempt, he is required to reverse input tax credit of GST paid on stock, WIP and finished goods. He is also required to reverse ITC taken on capital goods, after allowing deduction of 5% per quarter.

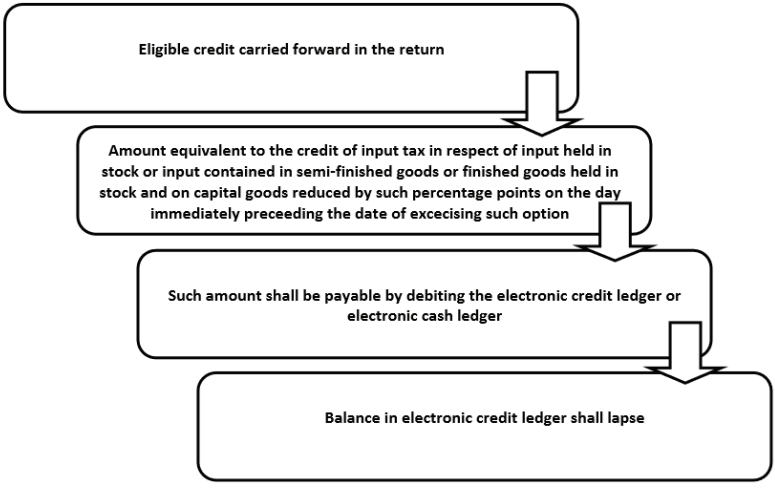
Provisions for this purpose are made in section 18(4) and Rule 44 of CGST and SGST Rules, 2017.

Where any registered taxable person who has availed of input tax credit switches over as a taxable person for paying tax under section 10 of CGST Act [composition scheme] or, where the goods and/or services supplied by him become wholly exempt, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of such switch over or, as the case may be, the date of such exemption - section 18(4) of CGST Act.

After payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse -proviso to

section 18(4) of CGST Act.The amount payable under section 18(4) of CGST Act shall be calculated in such manner as may be prescribed - section 18(5) of CGST Act.

Switching from regular to composition– Pay and Exit



Reversal of ITC if registration is cancelled

If GST registration of a taxable person is cancelled, reversal of Input Tax Credit on inputs in stock is required. Reversal of ITC on capital goods is also required by reducing the credit @ 5% per quarter - section 29(5) of CGST Act.

Reversal of input tax credit if goods or services become wholly exempt or GST registration cancelled

The amount of input tax credit, relating to inputs lying in stock, inputs contained in semi-finished and finished goods lying in stock, and capital goods lying in stock, for the purposes of section 18(4)or section 29(5) of CGST Act, shall be determined as follows - Rule 44(1) of CGST and SGST Rules, 2017:

For inputs lying in stock, and inputs contained in semi-finished and finished goods lying in stock, the input tax credit shall be calculated proportionately on the basis of corresponding invoices on which credit had been availed by the registered

taxable person on such input.

For capital goods lying in stock the input tax credit involved in the remaining residual life in months shall be computed on pro-rata basis, taking the residual life as five years.

The amount, as prescribed in rule 44(1) shall be determined separately for input tax credit of IGST and CGST - rule 44(2) of CGST Rules.

Where the tax invoices related to the inputs lying in stock are not available, the registered person shall estimate the amount under rule 41(1) based on the prevailing market price of goods on the effective date of occurrence of any of the events specified in section 18(4) or section 29(5) - rule 44(3) of CGST Rules.

The amount determined under rule 44(1) shall form part of the output tax liability of the registered person and the details of the amount shall be furnished in form GST ITC-03, where such amount relates to any event specified in section 18(4) and in form GSTR-10, where such amount relates to cancellation of registration - rule 44(4) of CGST Rules.

The details shall be certified by a practicing CA/CMA - rule 44(5) of CGST Rules. The amount of ITC for purpose of section 18(6) of CGST Act relating to capital goods will be determined in same manner as specified in rule 44(1)(b) of CGST Rules. It will be determined separately for ITC of CGST, SGST, UTGST and IGST - rule 44(6) of CGST Rules.

If such amount exceeds the tax determined on the transaction value of the capital goods, the amount shall be added as output tax liability in form GSTR-1 - proviso to rule 44(6) of CGST Rules.

Imported gold dore bar sold after 1 -7-2017 - Reversal of ITC

In case of import of gold dore bar before 1-7-2017, CVD was payable. The credit of such CVD is available under section 140 of CGST Act. While supplying such gold bars or contained in gold or gold jewellery held in stock on 1-7-2017, the taxable person is eligible for only one-sixth (i.e. 16/6667%) of the credit.

Balance (i.e. 83.3333%) will have to be reverse i.e. debited in electronic credit ledger at the time of supply. In case of supplies made prior to 17-8-2017, such reversal shall be made within one week - rule 44A of CGST Rules inserted w.e.f. 17-8-2017.

ITC wrongly taken - Recovery

Where credit has been taken wrongly, the same shall be demanded from the registered person by issuing show cause notice sections 73 and 74 of CGST Act.

Rule 42 of Central Goods and Services Tax (CGST) Rules, 2017- Manner of Distribution of Common ITC of Input & Input Services

Sl. No.	Particulars	Refer-ence	CGST	SGST/ UTGST	IGST
1	Total input tax on inputs and input services for the tax period May 2018	T	1,00,000	1,00,000	50,000
	Out of the total input tax (T):				
2	Input tax used exclusively for non-business purposes (Note 1)	T1	10,000	10,000	5,000
3	Input tax used exclusively for effecting exempt supplies (Note 1)	T2	10,000	10,000	5,000
4	Input tax ineligible under	T3	5,000	5,000	2,500
	Section 17(5) (Note 1)				
	Total		25,000	25,000	12,500
	ITC credited to Electronic Credit Ledger (Note 1)	C1 = T –(T1+ T2 + T3)	75,000	75,000	37,500
	Input tax credit used exclusively for taxable supplies (including zero-rated supplies)	T4	50,000	50,000	25,000
	Note 1: T1, T2, T3 and T4 Shall be determined as above and declared In Form GSTR-2				
	Common Credit	C2 = C1 –T4	25,000	25,000	12,500
	Aggregate Value of exempt supplies for the tax period May 2018(Note 2 & 3)	E	25,00,000	25,00,000	25,00,000
	Total Turnover of the registered person for thetaxperiod May 2018 (Note 2)	F	1,00,00,000	1,00,00,000	1,00,00,000

Note 1: T1, T2, T3 and T4 shall be DETERMINED AS ABOVE and declared in Form GSTR-2

Note 2: If the registered person does not have any turnover for May 2018, then the value of E and F shall be considered for the last tax period for which such details are available

Note 3: Aggregate value excludes taxes

Note 4: The registered person is expected to make such computation for each tax period and for the whole year as well. In case the resultant computation results in short credit availed, then such credit can be claimed in the electronic credit ledger. Further, if on computation for the whole year, the registered person has claimed excess credit on a month on month basis, then such excess credit claimed for the year shall be added back to the output liability and will be liable for payment with interest.

Manner of Distribution of Credit by Input Service Distributor (ISD) [Sec. 20]

Input Service Distributor (ISD) is an office of the supplier of goods or services or both where a document (like invoice) of services attributable to other locations are received (since they might be registered separately). Since the services relate to other locations the corresponding credit should be transferred to such locations (having separate registrations) as services are supplied from there. ISD cannot be an office that does any supply of its own but must be one that merely collects invoice for services and issue prescribed document for its distribution.

Illustration: Corporate office of XYZ company Ltd., is at New Delhi, having its business locations of selling and servicing of goods at New Delhi, Chennai, Mumbai and Kolkata. For example, if the software license and maintenance is used at all the locations, invoice indicating CGST and SGST is received at Corporate Office. Since the software is used at all the four locations, the input tax credit of entire services cannot be claimed at New Delhi. The same has to be distributed to all four locations. For that reason, the Delhi Corporate office has to act as ISD to distribute the credit.

Conditions to distribute credit by ISD

The conditions to distribute the credit by ISD are as follows:

- Credit to be distributed to recipient under prescribed documents containing prescribed details. Such document should be issued to each of the recipient of credit.
- Credit distributed should not exceed the credit available for distribution.
- Tax paid on input services used by a particular location (registered as supplier), is to be distributed only to that location.
- Credit of tax paid on input service used by more than one location who are operational is to be distributed to all of them based on the pro-rata basis of turnover of each location in a State to aggregate turnover of all such locations who have used such services.
- The period to be considered for computation is the previous financial year of that location. If it does not have any turnover in the previous financial year, then previous quarter of the month to which the credit is being distributed.
- The credit of IGST should always be distributed as IGST credit to all the units to which the service is attributable, regardless of where they are located.
- The credit of CGST and SGST should be distributed as IGST credit to all the units located outside the State in which the ISD is located, and as CGST and SGST respectively, in case of distribution of credit to a unit located in the same State as the ISD.

Rule 39 of Central Goods and Services Tax (CGST) Rules, 2017 - For distribution of credits by an Input Service Distributor (ISD)

Yoko Infotech Ltd. Has its head office in Mumbai, for which it additionally has an ISD registration. The company has 12 units across India including its head office. It receives the following invoices in the name of the ISD at Mumbai, for the month of January 2019; **Invoice A:** Rs.1,00,000 @ IGST 18,000 issued by

Peace Link Technologies (registered in Uttar Pradesh) for repairs executed in 3 units – Bangalore, Kolkata, Gurgaon (Note: Gurgaon location is not registered as it is engaged in making only exempt supplies)

Invoice B: Rs.3,00,000 @ CGST 27,000, SGST 27,000 issued by M/s. Tec Force (registered in Pune) for repairs executed in 3 units – Mumbai, Bangalore, Kolkata;

Invoice C: Rs.5,00,000 @ IGST 90,000 issued by M/s. Georgia Marketing (registered in Bangalore) for marketing services for the company as a whole;

Invoice D: Rs.10,000 @ CGST 900 & SGSTRs.900 issued by M/s Gopal Coffee Works(registered in Mumbai) for supply of beverages during the month to its Mumbai unit.

All taxes have been considered at 18% (CGST and SGST at 9% each).

The turnover of each of the units during the year 2017-18 is: Mumbai: 1 crore; Bangalore 2 crore; Kolkata 1 crore; Gurgaon 2 crore; each of the other 8 units: 50 lakhs, resulting in the aggregate turnover of the company in the previous financial year of 10 crores.

Particulars	Invoice	Bangalore	Kolkata	Mumbai	Gurgaon	8 units	Total
Invoice A							
T/o in State	Note 1	2 crores	1 crore	-	2 crores	-	5 crores
Pro-rata ratio		40%	20%	-	40%	-	100%
Credit	18,000	7,200	3,600	-	7,200	-	18,000
Type	IGST	IGST	IGST	-	IGST	-	
Invoice B							
T/o in State	Note 2	2 crores	1 crore	1 crore	-	-	4 crores
Pro-rata ratio		50%	25%	25%	-	-	100%
CGST Credit	27,000						

Distribu-tion		13,500	6,750	6,750			27,000
Type	IGST	IGST	IGST	-	IGST	-	
SGST Credit	27,000						
Distribu-tion		13,500	6,750	6,750			27,000
Type	IGST	IGST	IGST	-	IGST	-	
Invoice C							
T/o in State	Note 3	2 crores	1 crore	1 crore	2 crores	0.5 * 8 crore	10 crore
Pro-rata ratio		20%	10%	10%	20%	5% * 8 units	100%
Credit	90,000	18,000	9,000	9,000	18,000	4,500 * 8 units	90,000
Type	IGST	IGST	IGST	-	IGST	-	
Invoice D							
Attribut-able To	Note 4	-	-	Yes	-	-	-
Credit (ineligi-ble)	900	-	-	900	-	-	900
Type	CGST	-	-	CGST	-	-	-
Credit (ineligi-ble)	900	-	-	900	-	-	900
Type	SGST	-	-	SGST	-	-	-
Credit of CGST, SGST and IGST on invoice		**Total eligible credits distributed as CGST, SGST and IGST as applicable (refer Note below)**					
CGST	27,000	-	-	6,750	-	-	6,750
SGST	27,000	-	-	6,750	-	-	6,750
IGST	108,000	52,200	26,100	9,000	25,200	4,500 each (viz. total of 36,000)	148,500
TOTAL	162,000	52,200	26,100	22,500	25,200	36,000	162,000

Illustration: A Ltd as an ISD has input service credit ofRs.35 lakhs used by more than one location, to be distributed among recipients' locations X, Y and Z. The turnover of X, Y, Z in preceding financial year is Rs. 10 crores, Rs. 15 crores and Rs. 5 crores respectively. The credit of Rs. 5 lakhs pertain to input

service received only by Z. The credit attributable to X, Y, Z are as follows:

Particulars	**Amount (in Rs.)**
Total credit to be distributed as ISD	35 Lakhs
Credit of service used only by Z location	5 Lakhs
Credit available for distribution for all units	30 Lakhs
Credit distributable to X	10 Lakhs
10 crores / 30 crores * 30 Lakhs	
Credit distributable to Y	15 Lakhs
15 crores / 30 crores * 30 Lakhs	
Credit distributable to Z	10 Lakhs
5 crores / 30 crores * 30 Lakhs = 5 Lakhs	
Credit directly attributable to Z 5 Lakhs	

2 Chapter

FAQs

Q1. What are the conditions to be fulfilled for entitlement of input tax credit?

Ans. A registered person will be entitled to claim input tax credit only upon fulfillment of the following conditions:

He is in possession of tax invoice/ debit note issued by a registered supplier or any other tax paying documents;

He has received the goods and /or services or both;

The tax charged on such supply is paid to the Government (by way of cash or by utilizing input tax credit)

He has furnished a valid return.

Q2. Whether Input tax credit on Inputs and Capital Goods is allowed in one instalment?

Ans. Yes. Input tax credit will be available in full with respect to inputs and capital goods, subject to fulfilment of the prescribed conditions under Section 16(2) of the CGST Act. Even in the case of supply of goods in lots/ instalments, the credit would be available in full on the receipt of the last lot/ instalment.

Q3. One of the conditions to claim credit is that the receiver has received the goods. Is there any provision for deemed receipt of goods in case of transfer of document of title before or during the movement of goods?

Ans. Yes. Explanation to Section 16(2)(b) of the CGST Act

provides for deemed receipt of goods where the goods are delivered by the supplier to the recipient or any other person on the direction of the recipient, whether acting as agent or otherwise, before or during movement of goods.

Q4. If certain goods/ services are used partly for business and partly for non-business purposes, will the credits be allowed in full or proportionately?

Ans. The credit on goods/ services used partly for business and partly for non-business purposes will be allowed proportionately to the extent it is attributable for business purposes.

Q5. Credit attributable to exempt supplies is not available to a registered person. What are the supplies that are included in exempt supplies?

Ans. 'Exempt Supplies' for these purposes means all supplies other than taxable and zero-**rated** supplies and specifically include the following:

- Supplies liable to tax under reverse charge mechanism;
- Transactions in securities;
- Sale of land;
- Sale of building.

Q6. Whether input tax credit will be available on taxable goods which are given by way of gift or free samples under the sales promotion?

Ans. No. Section 17(5)(h) specifically restricts input tax credit on goods disposed of by way of gift or free samples.

Q7. Whether input tax credit is allowed on inputs which become waste and is sold as scrap?

Ans. Section 17(5)(h) specifically restricts input tax credit on goods lost, stolen, destroyed, written off or disposed by way of gift or free samples. Therefore, if the goods have been destroyed in full, input tax credit will not be available.

However, if in the process of manufacture some inputs become waste and are sold as scrap, credit shall not be denied. Further, output tax shall be payable on sale of such waste/scrap.

Q8. Whether Input tax credit is available in respect of input tax paid on use of mobile phones/ laptops given to employees?

Ans. Yes. The mobile phones/ laptops would be covered under the definition of 'inputs' as they are used in the course/ furtherance of business and hence, the input tax paid on such goods will be available as input tax credit.

Q9. Whether benefit of input tax credit would be available if the company procures health insurance services for benefit of its employees. Procurement of such services is mandatory under Factories Act

Ans. Yes. Section 17(5) (b)(iii)(A) provides that tax paid w.r.t rent a cab services, life/health insurance services will be eligible as input tax credit where the Government notifies that such services are obligatory for an employer to provide to its employees under any law for the time being in force.

Q10. Whether input tax credit can be availed on input services and capital goods (lyingin stock) when there is application for new registration or during voluntary registration under section 18?

Ans. No. In case of new registrations and voluntary registrations, input tax credit can be availed only on the stock held (inputs, semi-finished goods or finished goods) preceding the day when he is liable to pay tax or preceding to the date of grant of voluntary registration. Input service and capital goods lying in stock are not eligible for ITC.

Q11. In case of change of scheme from composition scheme to Regular scheme whether input tax credit on capital goods is eligible.

Ans. Yes. In such a scenario, the registered person will be entitled to claim input tax credit on the stock held (inputs, semi-finished goods or finished goods) and on the capital goods

preceding the day when he is liable to pay tax under the regular scheme. The credit of capital goods shall stand reduced by five percentage points for every quarter.

Q12. Whether the principal is entitled to take input tax credit even when the principal has not received the goods and directly sent to job worker by the vendor?

Ans. Yes. Section 19(2) and Section 19 (5) allows the principal to take input tax credit of goods not received by him, if the goods are sent directly to the job workers premises by the vendor.

Q13. Whether CGST can be distributed as SGST and whether SGST can be distributed as CGST within the states and between the states?

Ans. No. Section 20(1) does not permit distribution of CGST as SGST and vice versa. This flows from the fundamentals of the GST law wherein the credit of CGST cannot be utilized against SGST and *vice versa*.

Q14. What are the documents to be issued by an ISD?

Ans. An ISD is required to issue an ISD invoice indicating that the invoice is issued only for distribution and an ISD credit note for reduction of credit (if already distributed).

Q15. How will transfer of credit on account of de-merger be apportioned?

Ans. In case of demerger, the credit will be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.

Q16. How to determine the reversals of credit in case of such special circumstances if the invoices are not available?

Ans. If the invoices relating to inputs in stock are not available, the prevailing market price of goods on the effective date of occurrence of the events i.e. change of the scheme from Composition to Regular scheme, supplies becoming taxable which were earlier exempt and cancellation of registration, should be considered for estimation.

Q17. For the purpose of determining exempt supply under Section 17(2) and Section17(3), how should the value of land and building be determined?

Ans. The value of land and building adopted for the purpose of paying stamp duty should be considered.

Q18. For the purpose of determining exempt supply under Section 17(2) and Section17(3), how should the value of security be determined?

Ans. The value of security should be considered as 1% of such security.

Q19. ABC Co. Ltd. is engaged in the manufacture of heavy machinery. It procured the following items during the month of July.

Sl. No.	Items	GST paid (Rs.)
(i)	Electrical transformers to be used in the manufacturing process	5,20,000
(ii)	Trucks used for the transport of raw material	1,00,000
(iii)	Raw material	2,00,000
(iv)	Confectionery items for consumption of employees working in the factory	25,000

Determine the amount of ITC available with ABC Co. Ltd., for the month of July by giving necessary explanations for treatment of various items.

Note:

(i) All the condition necessary for availing the ITC have been fulfilled.

(ii) ABC Co. Ltd. is not eligible for any threshold exemption.

Ans.

Computation of ITC available with ABC Co. Ltd. for the month of July

Sl. No.	Items	ITC (Rs.)
(i)	Electrical transformers	5,20,000
	[Being goods used in the course or furtherance of business, ITC	
	thereon is available in terms of section 16(1)]	
(ii)	Trucks used for the transport of raw material	1,00,000
	[Though ITC on motor vehicles has been specifically disallowed	
	under section 17(5)(a), ITC on motor vehicles	
	used for transportation of goods is allowed under section 17(5)(a)(ii)]	
(iii)	Raw material	2,00,000
	[Being goods used in the course or furtherance of business, ITC	
	thereon is available in terms of section 16(1)]	
(iv)	Confectionery items for consumption of employees working in the factory	Nil
	[ITC on food or beverages is specifically disallowed unless the	
	same is used for making outward taxable supply of the same	
	category or as an element of the taxable composite or mixed	
	supply-Section 17(5)(b)(i)]	
	Total ITC	**8,20,000**

Q20. XYZ Ltd., is engaged in manufacture of taxable goods. Compute the ITCavailablewith XYZ Ltd. for the month of October, 2019 from the following particulars: -

Sl. No.	Inward supplies	GST (Rs.)	Remarks
(i)	Inputs 'A'	1,00,000	One invoice on which GST payable was Rs. 10,000, is missing
(ii)	Inputs 'B'	50,000	Inputs are to be received in two

			installments. First installment has been received in October, 2018.
(iii)	Capital goods	1,20,000	XYZ Ltd. has capitalized the capital goods at full invoice value inclusive of GST as it will avail depreciation on the full invoice value.

Note:

(i) All the conditions necessary for availing the ITC have been fulfilled.

(ii) ABC Co. Ltd. is not eligible for any threshold exemption.

(iii) The annual return for the financial year 2018-19 was filed on 15th September, 2019.

Ans.

Computation of ITC available with XYZ Ltd. for the month of October, 2019

Sl. No.	Inward supplies	GST (Rs.)
(i)	Inputs 'A' [ITC cannot be taken on missing invoice. The registered person should have the invoice in its possession to claim ITC-Section 16(2)(a)]	90,000
(ii)	Inputs 'B' [When inputs are received in instalments, ITC can be availed only on receipt of last instalment-First proviso to section 16(2)]	Nil
(iii)	Capital goods [Input tax paid on capital goods cannot be availed as ITC, if depreciation has been claimed on such tax component – Section 16(3)]	Nil

Q21. Mr. X, a supplier of goods, pays GST under regular scheme.

Mr. X is not eligible for any threshold exemption. He has made the following outward taxable supplies in a tax period:

Particulars	(Rs.)
Intra-State supply of goods	8,00,000
Inter-State supply of goods	3,00,000

He has also furnished the following information in respect of purchases made by him in that tax period:

Particulars	(Rs.)
Intra-State purchases of goods	3,00,000
Inter-State purchases of goods	50,000

Mr. X has following ITCs with him at the beginning of the tax period.

Particulars	(Rs.)
CGST	30,000
SGST	30,000
IGST	70,000

Note:

(i) Rate of CGST, SGST and IGST to be 9%, 9% and 18% respectively.

(ii) Both inward and outward supplies are exclusive of taxes, wherever applicable.

(iii) All the conditions necessary for availing the ITC have been fulfilled.

Compute the net GST payable by Mr. X during the tax period. Make suitable assumptions as required.

Ans. Computation of GST payable by Mr. X on outward supplies

Sl. No.	Particulars	(Rs.)	GST (Rs.)
(i)	Intra-State supply of goods		

	CGST @ 9% on Rs. 8,00,000	72,000	
	SGST @ 9% on Rs. 8,00,000	72,000	1,44,000
(ii)	Inter-State supply of goods		
	IGST @ 18% on Rs. 3,00,000		54,000
	Total GST payable		**1,98,000**

Computation of total ITC

Particulars	**CGST @ 9% (Rs.)**	**SGST @ 9% (Rs.)**	**IGST @ 18% (Rs.)**
Opening ITC	30,000	30,000	70,000
Add: ITC on Intra-State purchases of goods valuing Rs. 3,00,000	27,000	27,000	Nil
Add: ITC on Inter-State purchases of goods valuing Rs. 50,000	Nil	Nil	9,000
Total ITC	57,000	57,000	79,000

Computation of GST payable from cash ledger

Particulars	**CGST @ 9% (Rs.)**	**SGST @ 9% (Rs.)**	**IGST @ 18% (Rs.)**
GST payable	72,000	72,000	54,000
Less: ITC	(57,000)-CGST	(57,000)-SGST	(54,000)-IGST
	(15,000)-IGST	(10,000) – IGST	
Net GST payable	Nil	5,000	Nil

Note: ITC of IGST has been used to pay IGST, CGST and SGST in that order.

3 Chapter

Annexure: The Act Itself

INPUT TAX CREDIT

Eligibility and conditions for taking input tax credit.

16. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(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,—

(a) 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;

(b) he has received the goods or services or both. Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement

of goods, either by way of transfer of documents of title to goods or otherwise;

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39: Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

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:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

(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.

Apportionment of credit and blocked credits:

17. (1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

(4) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:

Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:

Provided further that the restriction of fifty per cent. shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(a) motor vehicles and other conveyances except when they are used—

(i) for making the following taxable supplies, namely:—

(A) further supply of such vehicles or conveyances ; or

(B) transportation of passengers; or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods;

(b) the following supply of goods or services or both—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre;

(iii) rent-a-cab, life insurance and health insurance except where—

(A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or

(B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and

(iv) travel benefits extended to employees on vacation such as leave or home travel concession;

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service; (d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.—For the purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

(e) goods or services or both on which tax has been paid under section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

(g) goods or services or both used for personal consumption;

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

(6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed. Explanation.—For the purposes of this

Chapter and Chapter VI, the expression "plant and machinery" means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

(i) land, building or any other civil structures;

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises.

Availability of credit in special circumstances.

18. (1) Subject to such conditions and restrictions as may be prescribed—

(a) a person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;

(b) a person who takes registration under sub-section (3) of section 25 shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration;

(c) where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed;

(d) where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed.

(2) A registered person shall not be entitled to take input tax credit under sub-section (1) in respect of any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply.

(3) Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.

(4) Where any registered person who has availed of input tax credit opts to pay tax under section 10 or, where the goods or services or both supplied by him become wholly exempt, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of exercising of such option or, as the case may be, the date of such exemption:

Provided that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

(5) The amount of credit under sub-section (1) and the amount payable under sub-section (4) shall be calculated in such manner as may be prescribed.

(6) In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher:

Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.

Taking input tax credit in respect of inputs and capital goods sent for job work.

19. (1) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on inputs sent to a job worker for job work.

(2) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job work without being first brought to his place of business.

(3) Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise or are not supplied from the place of business of the job worker in accordance with clause (a) or clause (b) of sub-section (1) of section 143 within one year of being sent out, it shall be deemed that such inputs had been supplied by the principal

to the job worker on the day when the said inputs were sent out:

Provided that where the inputs are sent directly to a job worker, the period of one year shall be counted from the date of receipt of inputs by the job worker.

(4) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on capital goods sent to a job worker for job work.

(5) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on capital goods even if the capital goods are directly sent to a job worker for job work without being first brought to his place of business.

(6) Where the capital goods sent for job work are not received back by the principal within a period of three years of being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out:

Provided that where the capital goods are sent directly to a job worker, the period of three years shall be counted from the date of receipt of capital goods by the job worker.

(7) Nothing contained in sub-section (3) or sub-section (6) shall apply to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work.

Explanation.—For the purpose of this section, "principal" means the person referred to in section 143.

Manner of distribution of credit by Input Service Distributor.

20. (1) The Input Service Distributor shall distribute the credit of central tax as central tax or integrated tax and integrated

tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed.

(2) The Input Service Distributor may distribute the credit subject to the following conditions, namely:—

(a) the credit can be distributed to the recipients of credit against a document containing such details as may be prescribed;

(b) the amount of the credit distributed shall not exceed the amount of credit available for distribution;

(c) the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;

(d) the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;

(e) the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.

Explanation.—For the purposes of this section,—

(a) the "relevant period" shall be—

(i) if the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or

(ii) if some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;

(b) the expression "recipient of credit" means the supplier of goods or services or both having the same Permanent Account Number as that of the Input Service Distributor;

(c) the term ''turnover'', in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.

Manner of recovery of credit distributed in excess.

21. Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of amount to be recovered.

REFUNDS

Refund of tax:

54. (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed: Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.

(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of six months from the last day of the quarter in which such supply was received.

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:

Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

(i) zero rated supplies made without payment of tax;

(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of

India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

(4) The application shall be accompanied by—

(a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and

(b) such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:

Provided that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.

(5) If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund referred to in section 57.

(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total

amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

(7) The proper officer shall issue the order under sub-section (5) within sixty days from the date of receipt of application complete in all respects.

(8) Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

(a) refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies;

(b) refund of unutilised input tax credit under sub-section (3); (c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;

(d) refund of tax in pursuance of section 77;

(e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or

(f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

(9) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in

accordance with the provisions of sub-section (8).

(10) Where any refund is due under sub-section (3) to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may—

(a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

(b) deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law. Explanation.—For the purposes of this sub-section, the expression "specified date" shall mean the last date for filing an appeal under this Act.

(11) Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceedings on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

(12) Where a refund is withheld under sub-section (11), the taxable person shall, notwithstanding anything contained in section 56, be entitled to interest at such rate not exceeding six per cent. as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled to refund.

(13) Notwithstanding anything to the contrary contained in this section, the amount of advance tax deposited by a casual taxable person or a non-resident taxable person under sub-section (2) of section 27, shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained

in force, furnished all the returns required under section 39.

(14) Notwithstanding anything contained in this section, no refund under sub-section (5) or sub-section (6) shall be paid to an applicant, if the amount is less than one thousand rupees.

Explanation.—For the purposes of this section,—

(1) "refund" includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilised input tax credit as provided under sub-section (3).

(2) "relevant date" means— (a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,—

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(ii) if the goods are exported by land, the date on which such goods pass the frontier; or

(iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of—

(i) receipt of payment in convertible foreign exchange,

where the supply of services had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;

(e) in the case of refund of unutilised input tax credit under sub-section (3), the end of the financial year in which such claim for refund arises;

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof;

(g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and

(h) in any other case, the date of payment of tax.

Refund in certain cases.

55. The Government may, on the recommendations of the Council, by notification, specify any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries and any other person or class of persons as may be specified in this behalf, who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them.

Interest on delayed refunds.

56. If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from

the date of receipt of application under subsection (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:

Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.

Explanation.—For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5).

57. The Government shall constitute a Fund, to be called the Consumer Welfare Fund and there shall be credited to the Fund,—

    (a) the amount referred to in sub-section (5) of section 54;

    (b) any income from investment of the amount credited to the Fund; and

    (c) such other monies received by it, in such manner as may be prescribed.

58. (1) All sums credited to the Fund shall be utilised by the Government for the welfare of the consumers in such manner as may be prescribed.

(2) The Government or the authority specified by it shall maintain proper and separate account and other relevant records in relation to the Fund and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

Refund – Rules

89. Application for refund of tax, interest, penalty, fees or any other amount.-(1) Any person, except the persons covered under notification issued under section 55,claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file an application electronically in FORM GST RFD-01through the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that any claim for refund relating to balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 may be made through the return furnished for the relevant tax period in FORM GSTR-3 or FORM GSTR-4 or FORM GSTR-7, as the case may be:

Provided further that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the –

(a) supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorised operations, as endorsed by the specified officer of the Zone;

(b) supplier of services along with such evidence regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone:

Provided also that in respect of supplies regarded as deemed exports, the application may be filed by, -

(a) the recipient of deemed export supplies; or

(b) the supplier of deemed export supplies in cases where the recipient does not avail of input tax credit on such supplies and furnishes an undertaking to the effect that the supplier may claim the refund Provided also that refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him.

(2) The application under sub-rule (1) shall be accompanied by any of the following documentary evidences in Annexure 1 in Form GST RFD-01, as applicable, to establish that a refund is due to the applicant, namely:-

(a) the reference number of the order and a copy of the order passed by the proper officer or an appellate authority or Appellate Tribunal or court resulting in such refund or reference number of the payment of the amount specified in subsection (6) of section 107 and sub-section (8) of section 112 claimed as refund;

(b) a statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices, in a case where the refund is on account of export of goods;

(c) a statement containing the number and date of invoices and the relevant Bank Realisation Certificates or Foreign Inward Remittance Certificates, as the case may be, in a case where the refund is on account of the export of services;

(d) a statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding the endorsement specified in the second proviso to sub-rule (1) in the case of the supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer;

(e) a statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule (1) and

the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the Special Economic Zone Act, 2005, in a case where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone developer;

(f) a declaration to the effect that the Special Economic Zone unit or the Special Economic Zone developer has not availed the input tax credit of the tax paid by the supplier of goods or services or both, in a case where the refund is on account of supply of goods or services made to a Special Economic Zone unit or a Special Economic Zone developer;

(g) a statement containing the number and date of invoices along with such other evidence as may be notified in this behalf, in a case where the refund is on account of deemed exports;

(h) a statement containing the number and the date of the invoices received and issued during a tax period in a case where the claim pertains to refund of any unutilised input tax credit under sub-section (3) of section 54 where the credit has accumulated on account of the rate of tax on the inputs being higher than the rate of tax on output supplies, other than nil-rated or fully exempt supplies;

(i) the reference number of the final assessment order and a copy of the said order in a case where the refund arises on account of the finalisation of provisional assessment;

(j) a statement showing the details of transactions considered as intra-State supply but which is subsequently held to be inter-State supply;

(k) a statement showing the details of the amount of claim on account of excess payment of tax;

(l) a declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed does not exceed two lakh rupees:

Provided that a declaration is not required to be furnished in respect of the cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of sub-section (8) of section 54;

(m) a Certificate in Annexure 2 of FORM GST RFD-01 issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed exceeds two lakh rupees:

Provided that a certificate is not required to be furnished in respect of cases covered under clause (a) or clause (b) or clause (c) or clause (d) or clause (f) of subsection (8) of section 54; Explanation.– For the purposes of this rule-

(i) in case of refunds referred to in clause (c) of sub-section (8) of section 54, the expression "invoice" means invoice conforming to the provisions contained in section 31;

(ii) where the amount of tax has been recovered from the recipient, it shall be deemed that the incidence of tax has been passed on to the ultimate consumer.

(3) Where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed.

(4) In the case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax Act,

2017 (13 of 2017), refund of input tax credit shall be granted as per the following formula –

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷Adjusted Total Turnover Where, -

(A) "Refund amount" means the maximum refund that is admissible;

(B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;

(C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;

(D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

(E) "Adjusted Total Turnover" means the sum total of the value of-

(a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and

(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services, excluding-

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.'

(F) "Relevant period" means the period for which the claim has been filed.

(4A) In the case of supplies received on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 48/2017-Central Tax dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R 1305 (E) dated the 18th October, 2017, refund of input tax credit, availed in respect of other inputs or input services used in making zero-rated supply of goods or services or both, shall be granted.

(4B) Where the person claiming refund of unutilised input tax credit on account of zero rated supplies without payment of tax has –

(a) received supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321(E), dated the 23rd October, 2017; or

(b) availed the benefit of notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/2017Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299(E), dated the 13th October, 2017, the refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted.

(5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.

Explanation:- For the purposes of this sub-rule, the expressions –

(a) "Net ITC" shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and

(b) "Adjusted Total turnover" shall have the same meaning as assigned to it in sub-rule (4).

90. Acknowledgement.-

(1) Where the application relates to a claim for refund from the electronic cash ledger, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted

from such date of filing.

(2) The application for refund, other than claim for refund from electronic cash ledger, shall be forwarded to the proper officer who shall, within a period of fifteen days of filing of the said application, scrutinize the application for its completeness and where the application is found to be complete in terms of sub-rule (2), (3) and (4)of rule 89, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period specified in sub-section (7) of section 54 shall be counted from such date of filing.

(3) Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in FORM GST RFD-03 through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies.

(4) Where deficiencies have been communicated in FORM GST RFD-03 under the State Goods and Service Tax Rules, 2017, the same shall also deemed to have been communicated under this rule along with the deficiencies communicated under sub-rule (3).

91. Grant of provisional refund.-

(1) The provisional refund in accordance with the provisions of sub-section (6) of section 54 shall be granted subject to the condition that the person claiming refund has, during any period of five years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law where the amount of tax evaded exceeds two hundred and fifty lakh rupees.

(2) The proper officer, after scrutiny of the claim and the evidence submitted in support thereof and on being prima facie satisfied that the amount claimed as refund under sub-rule (1) is due to the applicant in accordance with

the provisions of sub-section (6) of section 54, shall make an order in FORM GST RFD-04, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding seven days from the date of the acknowledgement under sub-rule (1) or sub-rule (2) of rule 90.

(3) The proper officer shall issue a payment advice in FORM GST RFD-05 for the amount sanctioned under sub-rule (2) and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

92. Order sanctioning refund.-

(1) Where, upon examination of the application, the proper officer is satisfied that a refund under sub-section (5) of section 54 is due and payable to the applicant, he shall make an order in FORM GST RFD-06 sanctioning the amount of refund to which the applicant is entitled, mentioning therein the amount, if any, refunded to him on a provisional basis under sub-section (6) of section 54, amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable:

Provided that in cases where the amount of refund is completely adjusted against any outstanding demand under the Act or under any existing law, an order giving details of the adjustment shall be issued in Part A of FORM GST RFD-07.

(2) Where the proper officer or the Commissioner is of the opinion that the amount of refund is liable to be withheld under the provisions of sub-section (10) or, as the case may be, sub-section (11) of section 54, he shall pass an order in Part B of FORM GST RFD-07 informing him the reasons for withholding of such refund.

(3) Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable

to the applicant, he shall issue a notice in FORM GST RFD-08to the applicant, requiring him to furnish a reply in FORM GST RFD-09 within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in FORM GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provisions of sub-rule (1) shall, mutatis mutandis, apply to the extent refund is allowed:

Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard.

(4) Where the proper officer is satisfied that the amount refundable under sub-rule (1) or sub-rule (2) is payable to the applicant under sub-section (8) of section 54, he shall make an order in FORM GST RFD-06 and issue a payment advice in FORM GST RFD-05 for the amount of refund and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

(5) Where the proper officer is satisfied that the amount refundable under sub-rule (1) or sub-rule (2) is not payable to the applicant under sub-section (8) of section 54, he shall make an order in FORM GST RFD-06 and issue an advice in FORM GST RFD-05, for the amount of refund to be credited to the Consumer Welfare Fund.

93. Credit of the amount of rejected refund claim.-

(1) Where any deficiencies have been communicated under sub-rule (3) of rule 90, the amount debited under sub-rule (3) of rule 89 shall be re-credited to the electronic credit ledger.

(2) Where any amount claimed as refund is rejected under rule 92, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in FORM GST PMT-03.

Explanation.– For the purposes of this rule, a refund shall be

deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal.

94. Order sanctioning interest on delayed refunds.-Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a payment advice in FORM GST RFD-05, specifying therein the amount of refund which is delayed, the period of delay for which interest is payable and the amount of interest payable, and such amount of interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

95. Refund of tax to certain persons.-

(1) Any person eligible to claim refund of tax paid by him on his inward supplies as per notification issued section 55 shall apply for refund in FORM GST RFD-10 once in every quarter, electronically on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, along with a statement of the inward supplies of goods or services or both in FORM GSTR-11.

(2) An acknowledgement for the receipt of the application for refund shall be issued in FORM GST RFD-02.

(3) The refund of tax paid by the applicant shall be available if-

(a) the inward supplies of goods or services or both were received from a registered person against a tax invoice

(b) name and Goods and Services Tax Identification Number or Unique Identity Number of the applicant is mentioned in the tax invoice; and

(c) such other restrictions or conditions as may be specified in the notification are satisfied.

(4) The provisions of rule 92 shall, mutatis mutandis, apply for the sanction and payment of refund under this rule.

(5) Where an express provision in a treaty or other international agreement, to which the President or the Government of India is a party, is inconsistent with the provisions of this Chapter, such treaty or international agreement shall prevail.

96. Refund of integrated tax paid on goods or services exported out of India.-(1) The shipping bill filed by an exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:-

(a) the person in charge of the conveyance carrying the export goods duly files an export manifest or an export report covering the number and the date of shipping bills or bills of export; and

(b) the applicant has furnished a valid return in FORM GSTR-3or FORM GSTR3B, as the case may be;

(2) The details of the relevant export invoices in respect of export of goods contained in FORM GSTR-1 shall be transmitted electronically by the common portal to the system designated by the Customs and the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.

Provided that where the date for furnishing the details of outward supplies in FORM GSTR-1 for a tax period has been extended in exercise of the powers conferred under section 37 of the Act, the supplier shall furnish the information relating to exports as specified in Table 6A of FORM GSTR-1 after the return in FORM GSTR-3B has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs:

Provided further that the information in Table 6A furnished under the first proviso shall be auto-drafted in FORM GSTR-1 for the said tax period.

(3) Upon the receipt of the information regarding the furnishing of a valid return in FORM GSTR-3or FORM GSTR-3B, as the case may be from the common portal, the system designated by the Customs or the proper officer of Customs, as the case may be, shall process the claim of refund in respect of export of goods and an amount equal to the integrated tax paid in respect of each shipping bill or bill of export shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.

(4) The claim for refund shall be withheld where,-

(a) a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of sub-section (10) or sub-section (11) of section 54; or

(b) the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962.

(5) Where refund is withheld in accordance with the provisions of clause (a) of sub-rule (4), the proper officer of integrated tax at the Customs station shall intimate the applicant and the jurisdictional Commissioner of central tax, State tax or Union territory tax, as the case may be, and a copy of such intimation shall be transmitted to the common portal.

(6) Upon transmission of the intimation under sub-rule (5), the proper officer of central tax or State tax or Union territory tax, as the case may be, shall pass an order in Part B of FORM GST RFD-07.

(7) Where the applicant becomes entitled to refund of the amount withheld under clause (a) of sub-rule (4), the concerned jurisdictional officer of central tax, State tax or Union territory tax, as the case may be, shall proceed to refund the amount after passing an order in FORM GST RFD-06.

(8) The Central Government may pay refund of the integrated tax to the Government of Bhutan on the exports to Bhutan for such class of goods as may be notified in this behalf and where such refund is paid to the Government of Bhutan, the exporter shall not be paid any refund of the integrated tax.

(9) The application for refund of integrated tax paid on the services exported out of India shall be filed in FORM GST RFD-01 and shall be dealt with in accordance with the provisions of rule 89

(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have - (a) received supplies on which the benefit of the Government of India, Ministry of Finance notification No. 48/2017-Central Tax, dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E), dated the 18th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme or notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rd October, 2017 has been availed; or

(b) availed the benefit under notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/2017Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E), dated the 13th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme.

96A. Refund of integrated tax paid on export of goods or services

under bond or Letter of Undertaking.- (1) Any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in FORM GST RFD-11 to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest specified under sub-section (1) of section 50 within a period of —

(a) fifteen days after the expiry of three months, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India; or

(b) fifteen days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange.

(2) The details of the export invoices contained in FORM GSTR-1 furnished on the common portal shall be electronically transmitted to the system designated by Customs and a confirmation that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from the said system.

Provided that where the date for furnishing the details of outward supplies in FORM GSTR-1 for a tax period has been extended in exercise of the powers conferred under section 37 of the Act, the supplier shall furnish the information relating to exports as specified in Table 6A of FORM GSTR-1 after the return in FORM GSTR-3B has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs:

Provided further that the information in Table 6A furnished under the first proviso shall be auto-drafted in FORM GSTR-1 for the said tax period.

(3) Where the goods are not exported within the time specified in sub-rule (1) and the registered person fails

to pay the amount mentioned in the said sub-rule, the export as allowed under bond or Letter of Undertaking shall be withdrawn forthwith and the said amount shall be recovered from the registered person in accordance with the provisions of section 79.

(4) The export as allowed under bond or Letter of Undertaking withdrawn in terms of sub-rule (3) shall be restored immediately when the registered person pays the amount due.

(5) The Board, by way of notification, may specify the conditions and safeguards under which a Letter of Undertaking may be furnished in place of a bond.

(6) The provisions of sub rule (1) shall apply, mutatis mutandis, in respect of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit without payment of integrated tax.";

97. Consumer Welfare Fund.-(1) All amounts of duty/central tax/ integrated tax /Union territory tax/cess and income from investment along with other monies specified in subsection (2) of section 12C of the Central Excise Act, 1944 (1 of 1944), section 57 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), section 21 of the Union Territory Goods and Services Tax Act, 2017 (14 of 2017) and section 12 of the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017) shall be credited to the Fund:

Provided that an amount equivalent to fifty per cent. of the amount of integrated tax determined under sub-section (5) of section 54 of the Central Goods and Services Tax Act, 2017, read with section 20 of the Integrated Goods and Services Tax Act, 2017, shall be deposited in the Fund:

Provided further that an amount equivalent to fifty per cent. of the amount of cess determined under sub-section (5) of section 54 read with section 11 of the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017), shall

be deposited in the Fund.

(2) Where any amount, having been credited to the Fund, is ordered or directed to be paid to any claimant by the proper officer, appellate authority or court, the same shall be paid from the Fund.

(3) Accounts of the Fund maintained by the Central Government shall be subject to audit by the Comptroller and Auditor General of India.

(4) The Government shall, by an order, constitute a Standing Committee (hereinafter referred to as the 'Committee') with a Chairman, a Vice-Chairman, a Member Secretary and such other members as it may deem fit and the Committee shall make recommendations for proper utilisation of the money credited to the Fund for welfare of the consumers.

(5) (a) The Committee shall meet as and when necessary, generally four times in a year;

(b) the Committee shall meet at such time and place as the Chairman, or in his absence, the Vice-Chairman of the Committee may deem fit;

(c) the meeting of the Committee shall be presided over by the Chairman, or in his absence, by the Vice-Chairman;

(d) the meeting of the Committee shall be called, after giving at least ten days' notice in writing to every member;

(e) the notice of the meeting of the Committee shall specify the place, date and hour of the meeting and shall contain statement of business to be transacted thereat;

(f) no proceeding of the Committee shall be valid, unless it is presided over by the Chairman or Vice-Chairman and attended by a minimum of three other members.

(6) The Committee shall have powers -

(a) to require any applicant to get registered with any authority as the Central Government may specify;

(b) to require any applicant to produce before it, or before a duly authorised officer of the Central Government or the State Government, as the case may be, such books, accounts, documents, instruments, or commodities in custody and control of the applicant, as may be necessary for proper evaluation of the application;

(c) to require any applicant to allow entry and inspection of any premises, from which activities claimed to be for the welfare of consumers are stated to be carried on, to a duly authorised officer of the Central Government or the State Government, as the case may be;

(d) to get the accounts of the applicants audited, for ensuring proper utilisation of the grant;

(e) to require any applicant, in case of any default, or suppression of material information on his part, to refund in lump-sum along with accrued interest, the sanctioned grant to the Committee, and to be subject to prosecution under the Act;

(f) to recover any sum due from any applicant in accordance with the provisions of the Act;

(g) to require any applicant, or class of applicants to submit a periodical report, indicating proper utilisation of the grant;

(h) to reject an application placed before it on account of factual inconsistency, or inaccuracy in material particulars;

(i) to recommend minimum financial assistance, by way of grant to an applicant, having regard to his financial status, and importance and utility of the nature of activity under pursuit, after ensuring that the financial assistance provided shall not be misutilised;

(j) to identify beneficial and safe sectors, where investments

out of Fund may be made, and make recommendations, accordingly;

(k) to relax the conditions required for the period of engagement in consumer welfare activities of an applicant;

(l) to make guidelines for the management, and administration of the Fund.

(7) The Committee shall not consider an application, unless it has been inquired into, in material details and recommended for consideration accordingly, by the Member Secretary.

(8) The Committee shall make recommendations:-

(a) for making available grants to any applicant;

(b) for investment of the money available in the Fund;

(c) for making available grants (on selective basis) for reimbursing legal expenses incurred by a complainant, or class of complainants in a consumer dispute, after its final adjudication;

(d) for making available grants for any other purpose recommended by the Central Consumer Protection Council (as may be considered appropriate by the Committee);

(e) for making available up to 50% of the funds credited to the Fund each year, for publicity/ consumer awareness on GST, provided the availability of funds for consumer welfare activities of the Department of Consumer Affairs is not less than twenty five crore rupees per annum. Explanation.- For the purposes of this rule,

(a) 'Act' means the Central Goods and Services Tax Act, 2017 (12 of 2017), or the Central Excise Act, 1944 (1 of 1944) as the case may be;

(b) 'applicant' means,

(i) the Central Government or State Government;

(ii) regulatory authorities or autonomous bodies constituted under an Act of Parliament or the Legislature of a State or Union Territory;

(iii) any agency or organization engaged in consumer welfare activities for a minimum period of three years, registered under the Companies Act, 2013 (18 of 2013) or under any other law for the time being in force;

(iv) village or mandal or samiti or samiti level co-operatives of consumers especially Women, Scheduled Castes and Scheduled Tribes;

(v) an educational or research institution incorporated by an Act of Parliament or the Legislature of a State or Union Territory in India or other educational institutions established by an Act of Parliament or declared to be deemed as a University under section 3 of the University Grants Commission Act, 1956 (3 of 1956) and which has consumers studies as part of its curriculum for a minimum period of three years; and

(vi) a complainant as defined under clause (b) of sub-section (1) of section 2 of the Consumer Protection Act, 1986 (68 of 1986), who applies for reimbursement of legal expenses incurred by him in a case instituted by him in a consumer dispute redressal agency.

(c) 'application' means an application in the form as specified by the Standing Committee from time to time;

(d) 'Central Consumer Protection Council' means the Central Consumer Protection Council, established under sub-section (1) of section 4 of the Consumer Protection Act, 1986 (68 of 1986), for promotion and protection of rights of consumers;

(e) 'Committee' means the Committee constituted under sub-rule (4);

(f) 'consumer' has the same meaning as assigned to it in clause (d) of sub-section (1) of section 2 of the Consumer Protection Act, 1986 (68 of 1986), and includes consumer of goods on which central tax has been paid;

(g) 'duty' means the duty paid under the Central Excise Act, 1944 (1 of 1944) or the Customs Act, 1962 (52 of 1962);

(h) 'Fund' means the Consumer Welfare Fund established by the Central Government under sub-section (1) of section 12C of the Central Excise Act, 1944 (1 of 1944) and section 57 of the Central Goods and Services Tax Act, 2017 (12 of 2017);

(i) 'proper officer' means the officer having the power under the Act to make an order that the whole or any part of the central tax is refundable

97A. Manual filing and processing. – Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules.

4 Chapter
Notifications & Circulars

Notification - 54/2018 Central Tax

Seeks to make amendments (Twelfth Amendment, 2018) to the CGST Rules, 2017.

This notification amends rule 96(10) to allow exporters who have received capital goods under the EPCG scheme to claim refund of the IGST paid on exports and align rule 89(4B) to make it consistent with rule 96(10).

Date – 09.10.2018

Where the person claiming refund of unutilised input tax credit on account of zero rated supplies without payment of tax has –

(a) received supplies on which the supplier has availed the benefit of the Government of India, notification No. 40/2017-Central Tax (Rate), dt. 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dt. 23rd October, 2017,

(b) availed the benefit of notification No. 78/2017-Customs, dt. 13th October, 2017 or notification No. 79/2017-Customs, dt. 13th October, 2017 the refund of input tax credit, availed in respect of inputs received under the said notifications for export of goods and the input tax credit availed in respect of other inputs or input services to the extent used in making such export of goods, shall be granted.".

For detailed explanation, please follow- http://www.cbic.gov.in/ resources//htdocs-cbec/ gst/notfctn-54-central-tax- english-2018.pdf

Notification - 05/2017- Central Tax (Rate)

Supplies of goods in respect of which no refund of unutilised input tax credit shall be allowed under section 54 (3)

Date – 28.06.2017

The Government has prescribed Supplies of goods in respect of which no refund of unutilised input tax credit shall be allowed under section 54 (3)

SN	Description of Goods
1	Woven fabrics of silk or of silk waste
2	Woven fabrics of wool or of animal hair
3	Woven fabrics of cotton
4	Woven fabrics of other vegetable textile fibres, paper yarn
5	Woven fabrics of manmade textile materials
6	Woven fabrics of manmade staple fibres
7	Knitted or crocheted fabrics [All goods]
8	Rail locomotives powered from an external source of electricity or by electric accumulators
9	Other rail locomotives; locomotive tenders; such as Diesel-electric locomotives, Steam locomotives and tenders thereof
10	Self-propelled railway or tramway coaches, vans and trucks, other than those of heading 8604
11	Railway or tramway maintenance or service vehicles, whether or not self-propelled (for example, workshops, cranes, ballast tampers, trackliners, testing coaches and track inspection vehicles)
12	Railway or tramway passenger coaches, not self-propelled; luggage vans, post office coaches and other special purpose railway or tramway coaches, not self-propelled (excluding those of heading 8604)

13	Railway or tramway goods vans and wagons, not self-propelled
14	Parts of railway or tramway locomotives or rolling-stock; such as Bogies, bissel-bogies, axles and wheels, and parts thereof
15	Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical) signalling, safety or traffic control equipment for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields; parts of the foregoing

Notification - 15/2017- Central Tax (Rate)

To notify the supplies not eligible for refund of unutilized under CGST Act

Date – 28.06.2017

The Government has notified that, no refund of unutilised Input Tax Credit shall be allowed in relation to taxes paid on supply of services, relating to construction of complex, building, civil structure or part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate.

Notification - 29/2017- Central Tax (Rate)

Seeks to amend notification no. 5/2017- central tax(rate) dated 28.06.2017 to

give effect to GST council decisions regarding restriction of refund on corduroy fabrics.

Date – 22.09.2017

Goods on which no refund of Input Tax Credit shall be allowed - Corduroy fabrics.

Notification - 44/2017- Central Tax (Rate)

seeks to amend notification no. 5/2017- Central tax(rate) dated 28.06.2017 to

give effect to GST council decisions regarding restriction of ITC on certain fabrics.

Date – 14.11.2017

This Notification is regarding disallowance of refund of unutilized input tax credit, where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on the output supplies of such goods (other than nil rated or fully exempt supplies).

Tariff item, heading, subheading or Chapter	Description of Goods
5608	Knotted netting of twine, cordage or rope; made up fishing nets and other made up nets, of textile materials
5801	Corduroy fabrics
5806	Narrow woven fabrics, other than goods of heading 5807; narrow fabrics consisting of warp without weft assembled by means of an adhesive (bolducs)"

Notification - 12/2017- Integrated Tax (Rate)

To notify the supplies not eligible for refund of unutilized ITC under IGST Act

Date – 28.06.2017

Notifies that in case of the supply of services specified in sub-item(b) of Item 5 of Schedule II of CGST Act no refund of unutilized ITC shall be allowed under IGST Act

Notification - 29/2017- Integrated Tax (Rate)

Seeks to amend notification no. 5/2017- integrated tax(rate) dated 28.06.2017 to give effect to GST council decisions regarding restriction of refund on corduroy fabrics.

Date – 22.09.2017

Supplies relating to Corduroy Fabrics will not be allowed refund

of excess ITC,where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on the output supplies of such goods (other than nil rated or fully exempt supplies).

Notification - 46/2017- Integrated Tax (Rate)

Seeks to amend notification no. 5/2017- Integrated tax(rate) dated 28.06.2017 to give effect to GST council decisions regarding restriction of ITC on certain fabrics.

Date – 14.11.2017

Disallowance of refund of unutilized input tax credit, where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on the output supplies of such goods (other than nil rated or fully exempt supplies).

Tariff item, heading, subheading or Chapter	Description of Goods
5608	Knotted netting of twine, cordage or rope; made up fishing nets and other made up nets, of textile materials
5801	Corduroy fabrics
5806	Narrow woven fabrics, other than goods of heading 5807; narrow fabrics consisting of warp without weft assembled by means of an adhesive (bolducs)"

Circular - 16/16/2017-GST

Clarifications regarding applicability of GST and availability of ITC in respect of certain services.

Date – 15.11.2017

Applicability of GST on warehousing of agricultural produce such as tea, processed coffee beans or powder, pulses, jaggery, processed spices, processed dry fruits, processed cashew nuts etc.

As per the Exemption Notification No. 11/2017-CT(R) dated 28th June 2017-w.e.f 1.7.2017, GST rate on loading, unloading,

packing, storage or warehousing of agricultural produce is NIL. Agricultural produce in the notification has been defined to mean "any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done, or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market".

Tea used for making the beverage, such as black tea, green tea, white tea is a processed product made in tea factories after carrying out several processes, such as drying, rolling, shaping, refining, oxidation, packing etc. on green leaf and is the processed output of the same.

Thus, green tea leaves and not tea is the "agricultural produce" eligible for exemption available for loading, unloading, packing, storage or warehousing of agricultural produce. Same is the case with coffee obtained after processing of coffee beans. Similarly, processing of sugarcane into jaggery changes its essential characteristics. Thus, jaggery is also not an agricultural produce.

Pulses commonly known as dal are obtained after dehusking or splitting or both. The process of de-husking or splitting is usually not carried out by farmers or at farm level but by the pulse millers. Therefore pulses (dehusked or split) are also not agricultural produce. However whole pulse grains such as whole gram, rajma etc. are covered in the definition of agricultural produce.

In view of the above, it has been clarified that processed products such as tea (i.e. black tea, white tea etc.), processed coffee beans or powder, pulses (de-husked or split), jaggery, processed spices, processed dry fruits, processed cashew nuts etc. fall outside the definition of agricultural produce given in Notification No. 11/2017- Central Tax (Rate) and 12/2017-Central Tax (Rate) dated 28th June 2017.

Applicability of GST on inter-state transfer of aircraft engines, parts and accessories for use by their own airlines

Under Schedule I of the CGST Act, 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, even if, without consideration, attracts GST.

It was clarified that credit of GST paid on aircraft engines, parts & accessories will be available for discharging GST on inter–state supply of such aircraft engines, parts & accessories by way of inter-state stock transfers between distinct persons as specified in section 25 of the CGST Act, notwithstanding that credit of input tax charged on consumption of such goods is not allowed for supply of service of transport of passengers by air in economy class at GST rate of 5%.

Circular - 18/18/2017-GST
Clarification on refund of utilized input tax credit of GST paid on inputs in respect of exporters of fabrics.
Date – 16.11.2017

Manufacturer of fabrics will be eligible for refund of unutilized Input Tax Credit of GST paid on INPUTS (other than the Input Tax Credit of GST paid on Capital Goods) in respect of fabrics manufactured and exported by him.

Circular - 38/12/2018-GST

Issues on Job Work provisions under GST from perspective of manufacturers – mainly the Engineering and Automobile sectors.

Date – 26.03.2018

Availability of input tax credit to the principal and job worker:

The input tax credit would be available to the principal, irrespective of the fact whether the inputs or capital goods are received by the principal and then sent to the job worker for processing, etc. or whether they are directly received at the job worker's place of business/premises, without being brought to the premises of the principal. It is also clarified that the job worker is also eligible to avail ITC on inputs, etc. used by him in supplying the job work services if he is registered.

Circular - 56/2018-GST
Clarification on removal of restriction on refund of accumulated
Input Tax Credit on fabrics
Date – 24.08.2018

In the 28th GST Council meeting, it was decided to remove the restriction of not allowing refund of ITC accumulated on account of inverted duty structure on fabrics.

Please follow the link to get the circular in detail-

http://www.cbic. gov.in/resources//htdocscbec/gst/Circular_No.56.pdf;jsessionid= 58C394AB89C0A8241A464 E65671794D7

Circular - 70/2018-GST
Clarification on certain issues related to refund.
Date – 26.10.2018

GST RFD-04/06) in cases where refund application is not resubmitted after the issuance of a deficiency memo (in FORM GST RFD- 03). It was also clarified that once a deficiency memo has been issued against an application for refund, the amount of Input Tax Credit debited is required to be recredited to the electronic credit ledger of the applicant by using FORM GST RFD-01B and the taxpayer is expected to file a fresh application for refund.

Further, Exporters who are importing goods in terms of notification Nos. 78/2017- Customs and 79/2017-Customs both dated 13th October, 2017 would not be eligible for refund of IGST paid on exports as provided in the said sub-rule. However, exporters who are receiving capital goods under the EPCG scheme, either through import in terms of notification No. 79/2017-Customs dated 13th October, 2017 or through domestic procurement in terms of notification No. 48/2017-Central Tax, dated 18th October, 2017, shall continue to be eligible to claim refund of IGST paid on exports and would not be hit by the restrictions provided in the said sub-rule.

For more clarification, please follow -http://www.cbic. gov.in/resources// htdocs-cbec/gst/Circular-No70_New. pdf;jsessionid= FC10609B119FA54 9356DACE23E73654C

5 Chapter
Case Laws

No Input Tax Credit on Goods not Resold within a Period of 6 Months: Bombay HC
Axis Mutual Fund vs. The State of Mah48
arashtra Sales Tax Tribunal
Case No. - 710 of 2018
Date – 6.08.2018

Fact of the Case:-

1. Axis Mutual Fund is the petitioner in the present case.
2. As per terms of the Scheme Information Document, the investment objective of the Gold ETF Scheme launched by the petitioner is to generate returns that are in line with the performance of gold.
3. In the A.Y. 2012-13, the petitioner purchased gold worth Rs.522,48,59,036/- from a registered dealer located in the State of Maharashtra.
4. On purchase of the gold, the petitioner has claimed set-off of the tax amount of Rs.5,17,31,276/- under the provisions of section 48 of the MVAT Act
5. The petitioner duly adjusted the set-off claimed of Rs.3,10,79,343/- against its output VAT liabilities in accordance with the provisions of Rule 55 of the MVAT Rules.
6. Consequently, the petitioner applied for refund of excess input tax credit amounting to Rs.2,06,51,993/-.

Decision of the case:-

1. During the course of assessment, the assessing authority has alleged that the petitioner is not eligible to claim any input tax credit as the goods purchased by the petitioner on which input tax credit is claimed are not resold within a period of six months from the date of purchase.

2. The petitioner was levied with interest and penalty and hence has preferred the present appeal.

Input Tax Credit cannot be granted If Registration of Selling Dealer was cancelled: Kerala HC
C P Rasheed vs. State of Kerala
Case No. - 104 of 2015
Date:- 10.08.2018

Fact of the Case

1. The assessee, a dealer in chicken, had filed the returns for the year 2005-2006. The department conducted an audit visit in the premises of the assessee and found that the purchase disclosed in the returns were far lesser than the purchase seen from the Delivery Notes recovered.

2. The Revenue estimated the additional turnover on the basis of the value shown in the Delivery Note. Also, the input tax credit was denied to the assessee.

3. Before the High Court, the assessee contended that the cancellation of registration with respect to the three dealers was after the purchase made by the petitioner and that too was in the subsequent year.

4. It was also contended that the petitioner had made the purchases based on the registration granted by the Department.

Decision of the Case

1. The First Appellate Authority & the Tribunal stated that input tax credit is a concession permitted to avoid the cascading effect in the value added tax regime.

2. What is paid as tax at an earlier instance has to be set off in the later instance, wherein the taxation is only on the value addition.

3. While avoiding the cascading effect to the dealers, it is ensured that the State gets its dues on the rates fixed for each commodity.

4. In the instant case the selling dealer at the first instance does not pay the amounts to the Government, there can be no input tax credit claimed.

5. Obviously, the dealer at the first instance had, collected tax and not remitted the same to the Department. The State is deprived of the tax to that extent and hence there is no question of input tax credit.

6. The assessee could definitely file a suit for recovery from the entity from whom they made the purchase.

7. Having not received the tax at the first instance of sale, there is no obligation on the State to grant input tax credit.

8. The Division Bench rejected the contention of the appellant.

No Input Tax Credit for purchase of Motor Vehicles used for Cash Management Business and supplied post usage as Scrap: AAAR
M/S CMS Info Systems Ltd. vs. Maharashtra AAR
Case No. – MAH/AAR/SS-RJ/04/2018-19
Date:- 06.08.2018

Fact of the Case

1. The appellant is having cash management network pan India. As part of the business, the appellants purchased security vans popularly known as "cash carry vans" for transportation of cash. The appellant purchased raw motor vehicles and requisite fabrication, get them converted to cash carry vans. The appellant also pays GST on fabrication.

2. For this purpose, the appellant purchases the motor vehicle and pays GST. The credit of GST is not availed by the

appellant presently.

3. The appellants approached the AAR seeking clarification with regard to the GST liability on supply of such motor vehicles as scrap after its usage and the availability of input Tax Credit on purchase of motor vehicles.

4. Before the appellate authority, the appellants contended that although in general understanding, what is being transported by the appellants is currency or cash or money, from the Appellant's point of view or for the appellant, what is transported is 'goods' and not 'money', does not support their cause.

5. If 'Money' is not covered as 'Goods' in the definition of 'Goods' under CGST Act, then it is not 'goods' for everyone.

Decision of the Case

1. The authority was deciding the issue whether the money being transported by the Appellant in the cash carry vans is "goods" or otherwise for the purposes of availing Input Tax Credit under the GST law.

2. The Appellate Authority, finally ruled that Input Tax Credit is not available to CMS Info Systems Limited on purchase of motor vehicles i.e. cash carry vans, which are purchased and used for cash management business and supplied post usage as scrap.

3. The Appellate Authority for Advance Ruling (AAAR), Maharashtra ruled that the input tax credit cannot be allowed on the purchase of motor vehicles used for cash management business and supplied post usage as scrap.

ITC on Motor Vehicles

Fact of the Case

1. In the present case the Appellant is the Purchaser of Motor Vehicles i.e cash carry vans & supplied post usage as scrape.

2. The issue here is whether the money being transported by

the Appellant in the cash carry vans is "goods" or otherwise for the purposes of availing Input Tax Credit under the GST law.

3. Appellant's point of view what is transported is "goods" and not "money". But it is not supposed by the definition of "Goods" under CGST Act.

4. Hence, Input Tax Credit is not available on purchase of motor vehicles i.e. cash carry vans, which are purchased and used for cash management business.

Decision of the Case

Section 18, input tax credit shall not be available in respect of the following, namely:-

(a) motor vehicles and other conveyance except when they are used-

(i) for making the following taxable supplies, namely:-

(A) further supply of such vehicles or conveyances; or

(B) Transportation of passenger; or

(C) Imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods.

So, no Input Tax Credit is available.

ITC recoverable on 'Telecom Equipments' installed on Mobile Towers: AAR
Vindhya Telelinks Ltd. vs. Uttarakhand AAR
Case No. -01/2018-19
Date -28.08.2018

Fact of the Case

1. In the instant case, Vindhya Telelinks Ltd. is the applicant.

2. The applicant was registered as infrastructure provider

category I where the scope of his activities are limited to establish and maintain assets on lease / rent/ sale basis only to licensed telecom service provider.

3. The issue before the AAR was the determination of availability of ITC of goods & services used for the erection of infrastructure for the telecommunication service providers since the infrastructure provided by the applicant is different from "Telecommunication Tower".

Decision of the Case

1. The authority examined the background of telecommunication service by differentiating between the types of telecommunication towers.

2. In the opinion of the authority it is stated that according to law ITC is available neither in "Works Contract Service" for construction of immovable property nor in "Telecommunication Towers" under explanation to section 17(6).

3. Installation of Telecommunication Tower is to some extent different in the present situation. It is neither constitute of the required components nor belongs to immovable property since it can be easily be moved to another place for use without any damage to the entire infrastructure.

4. So the Authority held that the applicant can avail ITC on GST in terms of section 16(1) of CGST, SGST Act 2017.

Input Tax Credit not available for Lease Rent paid during Pre-operative Period for Leasehold Land: GST AAR
GGL HOTEL & RESORT COMPANY LIMITED VS. GST AAR
CASE NO. – 32 OF 2018
DATE- 11.10.2018

Facts of the case:

1. The Applicant, engaged in the hospitality and real estate business and is contemplating a new project on a leasehold land.

2. The applicant sought sought for a ruling as to whether Input Tax Credit is available for lease rent paid during pre-operative period for the leasehold land on which the resort is being constructed to be used for furtherance of business, when the same is capitalized and treated as capital expenditure.

Decision of the Case

1. The Authority observed the following facts;-

   - The cost of constructing the immovable asset, therefore, includes the lease rental paid for the right to use the land on which the asset is built.

   - The Authority noted that the property is, admittedly being constructed on the Applicant's own account and treated as a fixed asset, including the lease rental paid.

   - It is held that the lease rental paid during the pre-operative period should be treated as part of the cost of goods and services received for the purpose of constructing an immovable property on the Applicant's own account.

   - The input tax credit is, therefore, not admissible on such lease rental in terms of section 17(5)(d) of the GST Act.

ITC not available for GST paid for Hotel Stay on Rent-free Accommodation provided to Company Director and Manager: AAR

Fact of the case

1. In the present case the company is the applicant.

2. The MD and the GM are provided accommodation in a hotel and the cost of the same is part of the cost to the Applicant and is included as perquisites in the salary as per the provisions of Income Tax Act, 1961.

3. The Applicant would like to know whether they can claim

ITC in respect of the GST charged by the hotel on the stay expenses of the MD/GM as per the provisions of the GST Law.

Decision of the Case

1. It was observed that the MD/GM could have been provided with any other residential accommodation and still would have performed their duties for the applicant. In the case of residential accommodation, as per the provision of the GST laws, GST is not liable to be paid on the rent received.

2. It is the intention of the Govt. not to tax the rent paid by any person when the rent is paid for any place of residence. In this case, if the MD/GM were staying at any residential place or society, the applicant would have paid only rent without GST.

3. It is found that the Hotel Accommodation is being used by the applicant as a residential premises of their MD/GM which is for the personal comfort of both and therefore in view of the provisions of Section 17(5)(g) we hold that they are not eligible to claim the ITC for the same.

4. The Authority for Advance Ruling (AAR), Maharashtra has held that the input tax credit not available for GST paid for the hotel stay in case of rent-free hotel accommodation provided to General Manager and Managing Director of the company.

ITC not admissible on ambulances purchased for employees benefit: AAR
Nipha Exports Pvt Ltd vs. West Bengal AAR
Case No. - 43/WBAAR/2018-19
Date - 26/02/2019

Fact of the Case

- Nipha Exports Pvt. Ltd. Is the applicant and engaged in manufacturing of agricultural machinery, seeks a Ruling on whether input tax credit is admissible on ambulances purchased for the benefit of the employees under legal requirement of the Factories Act, 1948.

- The concerned officer from the revenue has raised no objection to the admission of the application and admitted the said application.

Decision of the Case

The Authority observed the followings-

- Eligibility for claiming input tax credit under section 16(1) is subject to the provisions of law at the time of occurrence of the taxable event, irrespective of when the claim is made.
- Second proviso to section 1 7(5)(b) of the GST Act, as it stands post amendment effective from 01/02/2019, is not applicable to a transaction made in November 2018.
- It is evident from above that input tax credit on inward supply of ambulance, being a motor vehicle, is not admissible under Section 1 7(5)(a) of the GST Act.
- The exception carved out under Section 17(5)(b)(iii)(A) of the GST Act for services which are obligatory for an employer to provide to its employees under any law for the time being in force is limited only to rent-a-cab, life insurance and health insurance.
- Therefore, Input tax credit is not admissible on the ambulance purchased in November 2018, as Section 17(5) of the GST Act, as it stood in the relevant period, blocks any such enjoyment, even if provisioning of ambulance service to the employees is obligatory under the Factories Act, 1948.

Action Plan:

1. Successful conduct of Certificate Course on GST.
2. Publication and Circulation of Tax bulletin (both in electronic and printed formats) for the awareness and knowledge updation of stakeholders, members, traders, Chambers of Commerce, Universities.
3. Publication of Handbooks on Taxation related topics helping stakeholders in their job deliberations.
4. Carry out webinars for the Capacity building of Members - Trainers in the locality to facilitate the traders/ registered dealers.
5. Conducting Seminars and workshops on industry specific issues, in association with the Trade associations/ Traders/ Chamber of commerce in different location on practical issues/aspects associated with GST.
6. Tendering representation to the Government on practical difficulties faced by the stakeholders in Taxation related matters.
7. Updating Government about the steps taken by the Institute in removing the practical difficulties in implementing various Tax Laws including GST.
8. Facilitating general public other than members through GST Help-Desk opened at Head quarter of the Institute and other places of country.
9. Introducing advance level courses for the professionals on GST and Income Tax.
10. Extending Crash Courses on Taxation to Corporates, Universities, Trade Associations etc.

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