ITC RULES MISMATCH IN RESULTS

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(Sale of used capital goods and ITC in special circumstances u/s 18 of CGST Act, 2017)
Section 18(6)

(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.

Rule 40(2)

The amount of credit in the case of supply of capital goods or plant and machinery, for the purposes of sub-section (6) of section 18, shall be calculated by reducing the input tax on the said goods at the rate of five percentage points for every quarter or part thereof from the date of the issue of the invoice for such goods.

Rule 44(6)

The amount of input tax credit for the purposes of sub-section (6) of section 18 relating to capital goods shall be determined in the same manner as specified in clause (b) of sub-rule (1) and the amount shall be determined separately for input tax credit of central tax, State tax, Union territory tax and integrated tax:

Provided that where the amount so determined is more than the tax determined on the transaction value of the capital goods, the amount determined shall form part of the output tax liability and the same shall be furnished in ***FORM GSTR-1****.*

Rule 44(1)(b) *for capital goods held in stock, the input tax credit involved in the remaining useful life in months shall be computed on pro-rata basis, taking the useful life as five years.*

If we go by CGST Rules, two provisions talked about the above section i.e Sec. 18(6) where in methods for calculating the input tax credit is described.

First method is under Rule 40(2) of the CGST Rules which states that input tax credit in the case of supply of capital goods and plant and machinery shall be calculated by **reducing five percentage point for every quarter or part thereof** from the date of issue of invoice.

Secondly, Rule 44(6) read with Rule 44(1)(b) of the CGST Rules also prescribes the method of determining an amount for Section 18(6), where in it states that input tax credit involved in the remaining useful life in months shall be computed on pro rata basis, **taking useful life as five years.**

We would like to mention that these two methods calculate different amount when quantum of ITC reversal is done. Let us understand this issue with the help of an example:

Suppose, M/s. ABC Ltd sold its machinery for Rs. 1,65,000/- (inclusive of GST at the rate of 18% of **Rs. 25169**/-) on 25.05.2019 which he purchased on 01.07.2017 for Rs. 3,00,000/- (inclusive of **Rs. 45762**/- as GST @ 18%).

As per Section 18(6) of the CGST Act, M/s ABC Ltd has to pay an amount **equivalent to higher of the following:**

1. an amount equal to the GST levied on transaction value on supply (sale) of the machinery, that is of Rs. 25169/-, or
2. An amount of input tax credit as reduced by such percentage point as prescribed under the rules:

As per Rule 40(2), the amount to be determined is as follows:	As per Rule 44(6) read with Rule 44(1)(b), the amount to be determined is as follows:
Machinery has been used for total 1 year, 10 months and 25 days which constitutes 8 quarters.	Machinery has been used for total 1 year, 10 months and 25 days which constitutes 23 months.
Percentage amount to be reduced:8 quarters x 5% = 40%	Useful life left for use (according to CGST rules) is 37 months
The amount to be reversed = 45762- (45762 x 40%) = Rs. 27457/- (60% of ITC availed)	The amount to be reversed:45762 x (37/60) = Rs. 28220/-
Amount payable (ITC to be reversed / Output liability) = **Rs. 27457/-** (Being higher of Rs. 25169/- and Rs. 27457/-)	Amount payable (ITC to be reversed / Output liability) = **Rs. 28220/-(**Being higher of Rs. 25169/- and Rs. 28220/-)

Case:2

Suppose, M/s. ABC Ltd sold its machinery for Rs. 22,50,000/- (inclusive of GST at the rate of 18% of **Rs. 3,43,220**/-) on 15.08.2019 which it has purchased on 01.07.2017 for Rs. 50,00,000/- (inclusive of **Rs. 7,62,712**/- as GST @ 18%).

As per Rule 40(2), the amount to be determined is as follows:	As per Rule 44(6) read with Rule 44(1)(b), the amount to be determined is as follows:
Machinery has been used for total 2 years, 1 month and 15 days which constitute 9 quarters.	Machinery has been used for total 2 years, 1 month and 15 days which constitute 26 months.
Percentage amount to be reduced:9 quarters x 5% = 45%	Useful life left for use (according to CGST rules) is 34 months
The amount to be reversed = 7,62,712- (7,62,712 x 45%) = Rs. 3,43,220/- (55% of ITC availed)	The amount to be reversed:7,62,712 x (26/60) = Rs. 3,30,508/-
Amount payable (ITC to be reversed / Output liability) = **Rs. 4,19,492/-** (Being higher of Rs. 3,43,220/- and Rs. 4,19,492/-)	Amount payable (ITC to be reversed / Output liability) = **Rs. 4,32,203/-(**Being higher of Rs. 3,43,220/- and Rs. 4,32,203/-)

The above calculation proved that there is some issue with respective rules or the methods adopted which cab a cause of concern and lead to litigation unnecessary.