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## **FOOD FOR THOUGHT – CLOSING BALANCE OF INPUT TAX CREDIT TREATMENT ON BUSINESS CLOSURE**

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**G**oods and Service Tax is a tax reform that minimizes the complexity and makes it more taxpayer and business-friendly. Input Tax Credit availability across the supply chain is one of the major features of GST. The provisions of GST state that Input Tax Credit is available if the taxpayers if the following conditions are met at as per provisions of Section 16 of the CGST Act 2017

- The supplier has issued a tax invoice/debit note
- The receipt has received the Goods and Services
- The Returns have been filed
- The inputs are used for making taxable supply.

Once the recipient of goods or services claims the input tax credit, there is no time limit on the utilization. The unutilized Input Tax Credit can be transferred on account of merger or demerger or takeover. The provisions are very clear in these cases also.

The question comes in the case of business closure on the treatment of closing balance of Input Tax Credit in Electronic Credit Ledger. There can be a balance of input tax credit at the time of business closure for any business reasons. The inputs were brought at a higher price and sold at a lower price due to the market dynamics beyond the taxpayer's control.

In such cases, the closing balance of the input tax credit should be returned to the taxpayer by following any of the following

- (a) Final Return
- (b) Refund Application under "Any Other"

### **(a) Final Return**

Final Return is required to be filed by the taxpayers on the closure of business for any reason. It has to be filed within 3 months from the date of cancellation of the registration or order of cancellation as prescribed in Section 49 of the CGST Act 2017.

Section 29(5) of the CGST Act 2017 lays down the details to be furnished while filing the Final Return by the taxpayer.

*Every registered person whose registration is cancelled 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 or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:*

*Provided that in case of capital goods or plant and machinery, the taxable 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 under section 15, whichever is higher.*

As per the provisions of Section 29(5), there is no mention of the treatment of input tax credit balances in the Electronic Credit Ledger. It only prescribes the payment of taxes on the closing stock of goods and on capital goods lying in the books of accounts as on the date of cancellation.

In the Final Return, there should be a provision for the taxpayer to update the closing balance of Input Tax Credit as per the Electronic Credit Ledger while submitting it in cases where there is no closing stock and any other liabilities to be discharged. In the absence of such provision, the taxpayer who had an inward supply of goods or services or both where he has used in the course or furtherance of business cannot utilize the same till cancellation of registration under GST.

#### **(b) Refund Application under “Any Other”**

The other alternative that the taxpayer can explore in such cases is to claim a refund on the closing balance/ unutilized of Input Tax Credit in the Electronic Credit Ledger as on the date of cancellation of GST Registration.

As per the provisions of Section 54 (3) reads “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.*

Taxpayers can avail the refund basis on the citations given in the case of Union of India Vs. Slovak India Trading Co. Pvt Ltd, there the bench has stated that as per the provisions of Rule 5 of the CENVAT Credit Rules 2014, nothing is mentioned explicitly that input tax credit cannot be given a refund if they are not used for manufacturing on account of closure of business.

The provisions of Rule 5 of CENVAT Credit Rules 2014 reads as

*Rule 5. Refund of CENVAT Credit: When any inputs are used in the final products which are cleared for export under bond or letter of undertaking, as the case may be, or used in the intermediate products cleared for export, the CENVAT credit in respect of the inputs so used shall be allowed to be utilized by the manufacturer towards payment of duty of excise on any final products cleared for home consumption or for export on payment of duty and where for any reason such adjustment is not possible, the manufacturer shall be allowed refund of such amount subject to such safeguards, conditions and limitations as may be specified by the Central Government by notification.*

*Provided that no refund of credit shall be allowed if the manufacturer avails of drawback allowed under the Customs and Central Excise. Duties Drawback Rules, 1995, or claims a rebate of duty under the Central Excise Rules, 2002, in respect of such duty*

*There is no express prohibition in terms of Rule 5. Even otherwise, it refers to a manufacturer as we see from Rule 5 itself. Admittedly, in the case on hand, there is no manufacture in the light of closure of the Company. Therefore, Rule 5 is not available for the purpose of rejection as rightly ruled by the Tribunal. The Tribunal has noticed various case laws in which similar claims were allowed. The Tribunal, in our view, is fully justified in ordering refund particularly in the light of the closure of the factory and in the light of the assessee coming out of the Modvat Scheme. In these circumstances, we answer all the three questions as framed in para 17 against the Revenue and in favour of the assessee.*

Jurisprudence can be drawn from the above case as the verbatim used in Section 54 is similar to the one used in Rule 5 of the CEVNAT Credit Rules. The judgment passed in the Union of India Vs. Slovak India Trading CO. Pvt Ltd is used by the Honorable High Court of Mumbai in the case of CCE Nasik Vs. Jain Vanguard Polybutylene Ltd.

**Given the above citing, the closing balance of the Input Tax Credit in the Electronic Credit Ledger can be given back to the taxpayer as a Refund.**

The author's view is that the taxpayer has legitimate rights on the closing balance/unutilized Input Tax Credit in the Electronic Credit Ledger as on the date of cancellation of GST Registration if the taxpayer has used the inputs/services/capital goods in the course and furtherance of business only. The same can be passed on to the taxpayer using the refund route. The taxpayer can select "Any Other Reason" and submit the refund application. The sanctioning officer should also take due care to ensure that the same provision is not mis utilized by a section of the errant taxpayers. And, also the provisions of the law should be amended to address the case as it will ensure that there is no ambiguity for the taxpayers or the sanctioning officer. This amendment will definitely bring in ease of doing business and also increase the confidence of the trade and industry.

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