



## INPUT TAX CREDIT – GST LAW

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### 1. Introduction

W.e.f July 1, 2017, India's new Indirect tax regime in the form of GST laws on the track of "One Nation - One Tax with minimal diversions..!!". The new regime recently completed its 18 months (or 500 days) of implementation, no dispute that GST is a game changer as far as Indian economy concerned. As an evident, India has jumped to 77<sup>th</sup> rank in the 'Index of Ease of Doing Business after implementation of GST'. However, it is appropriate to admit that the country's economy has seen chaos all over such as reduction in domestic industrial output, fall in employment and exports during the transitional period. GSTN, a common portal provides return filing utility and online platform to comply due compliances under GST Laws by filing regular 'Returns'. In its pre-mature days, the compliance levels were very low due to confusion; lack of knowledge coupled with technical glitches, the said online platform crashed many times resulted in waiving of the late fee. Non-availability of 'Edit' function made issues even worsen. Later a facility to view and reset values has been provided. As a positive note and by end of December, 2018, the compliance rate increased gradually on account of various anti-evasion measures undertaken by the Central and State Governments. The idea of GST was first mooted by the then Union Finance Minister in his Union Budget for the financial year 2006-07, where it was proposed to be implemented from April 1, 2010. To carry forward, an Empowered Committee of State Finance Ministers was constituted to design a structure and a roadmap. One more Joint Working group was set up to examine various aspects of the GST laws such as exemptions, thresholds, etc. The Empowered Committee had come out with its First Discussion Paper on November 10<sup>th</sup> 2009. During February 2010 the Finance Ministry initiated the nationwide computerization of commercial tax departments in the states, to lay the foundation for GST rollout. The Union Government in March, 2011, tables 115<sup>th</sup> Constitution Amendment Bill in the Lok Sabha for bringing GST. However, GST Bill referred to Parliamentary Standing Committee

on Finance. The Standing Committee on Finance clears the GST Bills, however, due to the dissolution of the Lok Sabha, the said Bills have lapsed. The new Government on December, 19, 2014, introduces the 122<sup>nd</sup> Constitution Amendment Bill to GST. Except certain Provisions relating to new Registrations and migration of previous regime's registrants which were much before 'Appointed Date' to enable easy transition, other provisions were implemented with effect from July 1<sup>st</sup> 2017.

### 2. Constitutional amendment

Constitution of India is the foundation to legislate all laws and tax laws are no exception the said universal law. The authority to levy tax has been provided in Article 246. The said Article distributes the power to levy taxes between the Central Government and the State Governments. Prior to GST, the Central Government had the powers to levy a tax on the manufacture of goods while State Governments had the power to levy a tax on the sale of goods. In the case of Inter-State sales, the Centre had the power to levy Central Sales Tax. As far as services concerned the Central Government alone was empowered to levy a tax on services. To address the said issues and distribute concurrent power to levy between Central Government and States Governments, the Constitution (122<sup>nd</sup> Amendment) Bill was introduced in the 16<sup>th</sup> Lok Sabha on December 19, 2014, which provides concurrent power to levy taxes by the Central Government, the States and the Union Territories. The Lok Sabha passed the Constitutional Amendment Bill in May, 2015. The Bill was referred to the Select Committee of Rajya Sabha. Subsequently, the Bill with certain amendments as recommended by the Select Committee was passed in the Rajya Sabha and later by the Lok Sabha in August 2016. Thereafter, the Bill was ratified by the required number of States and finally received the Presidential Assent on September 8, 2016, and has since been enacted as Constitution (101<sup>st</sup> Amendment) Act, 2016 w.e.f. September 16, 2016.

There are four major Acts, besides GST Acts for each States, namely –

- a. The Central Goods and Services Tax Act, 2017
- b. The Integrated Goods and Services Tax Act, 2017
- c. The Union Territory Goods and Services Tax Act, 2017
- d. The Goods and Services Tax (Compensation to States) Act, 2017

The Central Goods and Services Tax Act, 2017 confers power upon the Central Government to levy a tax on supply of goods and/or services which takes place within the States. Likewise, the Integrated Goods and Services Tax Act, 2017 confers power upon the Central Government to levy a tax on supplying of goods and /or services which takes place between two states. The Union Territory GST Act, 2017 confer powers upon all Union Territories for levying a tax on supply of goods or services or both which takes place within the Union Territory. The Goods and Services Tax (Compensation to States) Act, 2017 confers power on the Central Government to levy compensation cess on certain items such as pan masala, coal, aerated drinks etc. subject to certain caps. The amount received by the said Cess is to be used for compensating the States for any loss in revenue following the implementation of GST for a period of five years.

### 3. Input Tax

Input Tax is one of the core concepts under GST Laws. Since GST is a 'Destination Based Tax' avoids erstwhile regime's cascading effect of taxes to a greater extent and also ensures that the tax is collected from the consumption of goods or services or both. Section 2(62) of the Central GST Act, 2017 defines the term as ' Central GST, State GST, Integrated GST or Union Territory GST charged on any supply of goods or services or both made to a registered person including Integrated GST on import of goods, tax payable under Reverse Charge Mechanism under all the three Laws. However, the Law exempted the tax paid under 'Composition Scheme'.

### 4. Input Tax Credit

A service provider or supplier of goods will be entitled to an Input tax credit. In other words, he will be eligible to get the credit of input services availed by him or tax on goods which he has purchased for resale or furtherance of his business. According to Section 2(56) of the Central GST Act, 2017, Input Tax Credit means the credit of 'Input tax'. Most importantly, the burden of proving such claim lies on such

registered person as provided under Section 155 of the Central GST Act, 2017. However, not all inputs available as a 'Credit' such as petroleum products, liquor, motor spirit, etc.

### 5. Salient features of Input Tax Mechanism

The key salient features are –

1. Supplier of goods and services can avail Input Tax Credit.
2. Instant availability of credit or no need to such service to be consumed or goods sold.
3. Input Tax Credit of State GST can be utilised for payment of Integrated GST and thereafter for payment of State GST on outward supply.
4. Input Tax Credit of Central GST can be utilised for payment of Integrated GST and thereafter for payment of Central GST on outward supply.
5. Similarly, Input Tax Credit of Integrated GST can be utilised for payment of Integrated GST, Central GST and State GST in that order.
6. However, under any circumstances, Input Tax Credit of Central GST and State GST or Union Territory GST is not interchangeable.
7. Input Tax credit of State GST and Union Territory GST can be utilised for payment of Integrated GST only in the case of non-availability of Central GST.
8. Input Tax Credit will be available only in the case of business transactions or occurred in the course of furtherance of business.

### 6. Procedure to claim Input Tax Credit

Every registered person including Input service distributor, subject to such conditions, will be allowed take the 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 by crediting such amount to the electronic credit ledger. Section 16(1) of the Central GST Act, 2017

### 7. Conditions and requisite documents to claim the Input Tax Credit

A Registered person including Input service distributor can avail the Input Tax on the basis of following documents –

- An Invoice issued by the supplier of goods or service or both. (Section 31 of the Central GST Act, 2017)

- An invoice issued under the Reverse charge mechanism. (Section 31 (3) (f) of the Central GST Act, 2017)
- A Debit Note issued by the supplier – Section 34 of the Central GST Act, 2017).
- A Bill of Entry or similar document under Integrated GST Act, Customs Act and Rules.
- A Credit Note issued by Input Service Distributor Rule 54(1) of Central GST Rules, 2017.
- Input goods and services used for the construction of office, motor vehicles related services, life including health Insurance, food, health services, beauty treatment, cosmetic & plastic surgery, rent-a-cab are not eligible to claim the credit.
- Such Supplier of goods and services shall pay the due tax amount fully.
- In any case, if payment is not made by the recipient to the supplier of goods and services or both within 180 days, the Input tax credit with due interest shall be reversed.
- Financial Institutions and Banks are allowed to claim only 50 per cent.
- Capital Goods - Since goods, the entire Input tax credit of GST paid on capital goods will be available in the first year itself. Capital Goods include plant and machinery.

## 8. Reversal of Input Tax Credit

Where a recipient fails to pay to the supplier of goods or services or both (excluding RCM supply), 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 including an equal amount of Input tax credit availed by him shall be reversed. Section 16(2) of the Central GST Act, 2017 In case of supply without consideration –The amount shall be deemed to have been paid Rule 37(1) of Central GST Rules. However, the credit of Input so reversed can be taken back after settling the dues. Further, the said time limit of 1 year will not apply to such re-credits.

### Other Circumstances – In the case of

- Taxable person switched to Composition Scheme
- Goods or services wholly exempted
- GST registration cancelled
- Wrongly availed

In the first three said cases, the taxable person is required to reverse input tax credit of GST paid on stock, work-in-progress, finished goods and capital goods after availing 5 per cent

deduction per quarter. Section 18(4), Section 29(5) of the Central GST Act, 2017 read with Rule 44 of Central GST Rules, 2017 and respective State GST Rules, 2017. In the last case, such as, if the taxable person wrongly availed, the Department will demand back by issuing due showing cause notices under Section 73 and 74 of Central GST Act, 2017.

## 9. Input Service Distributor (ISD)

A supplier of goods and services may have a head office and regional offices at different locations. The service may be received at head office but these services will be indirectly used for manufacture or providing output services. Such head office can be registered under GST as 'Input Service Distributor' and can issue invoice on its branches, depots, factories, etc. Separate registration is required even if he is otherwise registered under GST.

Compliance – The Input Service Distributor has to file monthly Return in GSTR – 6 by 20<sup>th</sup> of the following month under Rule 65 of Central GST Rules, 2017. However, in the case of absence of a transaction, he needs not to file such return. An Input service distributor shall distribute input tax credit in the manner and subject to the conditions specified – Rule 39(1) of Central GST Rules & respective State GST Rules, 2017.

## 10. Few Interesting Judicial Pronouncements

- *Krishi Kalyan Cess not allowed - GST Appellate Authority for Advance Ruling, Maharashtra*  
M/s. Kansai Nerolac Paints Ltd filed an application for Advance Ruling to avail erstwhile Krishi Kalyan Cess as an input tax credit. The said Authority for Advance Ruling held that the erstwhile cess could not be carried forward under GST Regime. Aggrieved by this Order, the applicant has approached the Appellate Authority. However, the Maharashtra Appellate Authority upheld that cess and duty are separate levies and cannot be equated. The credit of Krishi Kalyan Cess can only be utilised for payment of the same.
- *Clean Environment (Energy) Cess - GST Authority for Advance Ruling, Andhra Pradesh*

M/s. Sino Resources, an importer of coal and also dealt in trading of coal sought an advance ruling on the question whether input tax credit was available on 'Clean Environment (Energy) Cess

paid at the time of import of coal. The said Authority for Advance Ruling after relying on the definition of 'Input Tax' and disputed Cess paid under erstwhile Clean Energy Cess under the Finance Act, 2010, held that it was beyond the domain of Section 97(2) of the Central GST Act, 2017 i.e. admissibility of questions for Advance Ruling.

- *Penalty for not passing on the benefit of Input Tax Credit – National Anti-Profitteering Authority*

More than 100 home buyers had filed an application against M/s. Pyramid Infratech for not passing on the Input Tax Credit of the GST paid on construction services. The National Anti-profitteering Authority directed the company to refund or reduce Rs 8.22 crore from the buyers' last instalment along with 18% interest per annum. Currently, the issue is pending with the Delhi High Court.

- *Input Tax Credit cannot be denied merely on the ground of mismatch of annexures – Madras High Court*

The Hon'ble Madras High Court in M/s. Western Thomson India Limited quashed the Order of Tamil Nadu VAT Authorities denying the Input Tax Credit claim of the assessee solely on the ground of mismatch of annexures.

- *No Input Tax Credit for purchase of Motor vehicles used for Cash management business - GST Appellate Authority for Advance Ruling, Maharashtra*

The Maharashtra Appellate Authority 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.

- *Last Day of availing Input Tax Credit – Gujarat High Court*

The Hon'ble Gujarat High Court recently accepts application challenging the last day of availing Input Tax Credit for invoices pertaining to July 2017 to March 2018.

## Conclusion

With effect from 1<sup>st</sup> February, 2019, number of amendments have been introduced to the Central GST Act, 2017, vide GST (Amendment) Act, 2018 vide Notification 2/2019 Central Tax Dated 29.01.2019 and to the Integrated GST Act, 2017, vide Integrated GST (Amendment) Act, 2018, vide Notification 1/2019 Integrated Tax Dated 29.01.2019. Further, it is very much necessary that all State Governments concerned shall bring in similar amendments to their respective State GST Acts either by passing such amendments through Legislative or through Ordinance route. Due to the said latest Amendments, Input Tax Credit will be available to –

- Most of the activities or transactions specified in Schedule III.
- Motor vehicles for transportation of persons having seating capacity of more than thirteen (including driver), vessels and aircraft;
- Services of general insurance, repair and maintenance in respect of motor vehicles,
- vessels and aircraft on which credit is available; and
- Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force.

Due to fall in GST revenue, the tax officials are examining the input tax claimed by the trade and businesses. Recently, the Group of Ministers (GoM) had a detailed discussion on the said issue. According to GoM, about 80 per cent of the total GST liability is being settled by Input Tax Credit and remaining by depositing of the cash. Once, the proposed 'New Return Filing Mechanism' is in place, it will be easy to compare the Input Tax Credit claims and due taxes paid on a 'Real Time Basis'.