

ICMAI

The Institute of Cost Accountants of India

(Statutory Body under an Act of Parliament)

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PRACTICAL GUIDE ON

How to Avail Input Tax Credit

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

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CMA Bhawan, 3, Institutional Area, Lodhi Road, New Delhi - 110003

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Indirect Tax

Behind Every Successful Business Decision, there is always a **CMA**

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Institute Motto

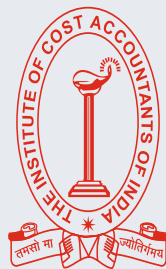
असतोमा सदगमय
तमसोमा ज्योतिर् गमय
मृत्योर्मा मृतं गमय
ॐ शान्ति शान्ति शान्तिः

From ignorance, lead me to truth
From darkness, lead me to light
From death, lead me to immortality
Peace, Peace, Peace

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Introduction

History of Indirect Taxes in India:

1.0 Value Added Tax at the Central and the State level: -

Prior to the introduction of VAT in the Centre and in the States, there was a burden of multiple taxation in the pre-existing Central excise duty and the State sales tax systems. Before any commodity was produced, inputs were first taxed, and then after the commodity got produced with input tax load, output was taxed again. This was causing a burden of multiple taxation (i.e. "tax on tax") with a cascading effect. Moreover, in the sales tax structure, when there was also a system of multi-point sales taxation at subsequent levels of distributive trade, then along with input tax load, burden of sales tax paid on purchase at each level was also added, thus aggravating the cascading effect further.

When VAT is introduced in place of Central excise duty, a set-off is given, i.e., a deduction is made from the overall tax burden for input tax. In the case of VAT in place of sales tax system, a set-off is given from tax burden not only for input tax paid but also for tax paid on previous purchases. With VAT, the problem of "tax on tax" and related burden of cascading effect is thus removed. Furthermore, since the benefit of set-off can be obtained only if tax is duly paid on inputs (in the case of Central VAT), and on both inputs and on previous purchases (in the case of State VAT), there is a built-in check in the VAT structure on tax compliance in the Centre as well as in the States, with expected results in terms of improvement in transparency and reduction in tax evasion.

In India, VAT was introduced at the Central level for a selected number of commodities in terms of MODVAT with effect from March 1, 1986, and in a step-by-step manner for all commodities in terms of CENVAT in 2002-03. Subsequently, after Constitutional Amendment empowering the Centre to levy taxes on services, these service taxes were also added to CENVAT in 2004-05. Although the growth of tax revenue from the Central excise has not always been specially high, the revenue growth of combined CENVAT and service taxes has been significant.

Introduction of VAT in the States has been a more challenging exercise in a federal country like India, where each State, in terms of Constitutional provision, is sovereign in levying and collecting State taxes. Before introduction of VAT, in the sales tax regime, apart from the problem of multiple taxation and burden of adverse cascading effect of taxes as already mentioned, there was also no harmony in the rates of sales tax on different commodities among the States. Not only were the rates of sales tax numerous (often more than ten in several States), and different from one another for the same commodity in different States, but there was also

an unhealthy competition among the States in terms of sales tax rates – so-called “rate war” – often resulting in, revenue-wise, a counter-productive situation.

It is in this background that attempts were made by the States to introduce a harmonious VAT in the States, keeping at the same time in mind the issue of sovereignty of the States regarding the State tax matters. The first preliminary discussion on State-level VAT took place in 1995. In this meeting, the basic issues on VAT were discussed in general terms and this was followed up by periodic interactions of State Finance Ministers. Thereafter, in a significant meeting of all the Chief Ministers, convened on November 16, 1999 by Shri Yashwant Sinha, the then Union Finance Minister, two important decisions, among others, were taken.

First, before the introduction of State-level VAT, the unhealthy sales tax “rate war” among the States would have to end, and sales tax rates would need to be harmonised by implementing uniform floor rates of sales tax for different categories of commodities with effect from January 1, 2000.

Secondly, on the basis of achievement of the first objective, steps would be taken by the States for introduction of State-level VAT after adequate preparation. For implementing these decisions, a Standing Committee of State Finance Ministers was formed which was then made an Empowered Committee of State Finance Ministers.

Why Goods and Service Tax (GST)?

*Despite this success with VAT, there are still certain shortcomings in the structure of VAT both at the Central and at the State level. The shortcoming in CENVAT of the Government of India lies in non-inclusion of several Central taxes in the overall framework of CENVAT, such as additional customs duty, surcharges, etc., and thus keeping the benefits of comprehensive input tax and service tax set-off out of reach for manufacturers/dealers. Moreover, no step has yet been taken to capture the value-added chain in the distribution trade below the manufacturing level in the existing scheme of CENVAT. **The introduction of GST at the Central level will not only include comprehensively more indirect Central taxes and integrate goods and service taxes for the purpose of set-off relief, but may also lead to revenue gain for the Centre through widening of the dealer base by capturing value addition in the distributive trade and increased compliance.***

In the existing State-level VAT structure there are also certain shortcomings as follows. There are, for instance, even now, several taxes which are in the nature of indirect tax on goods and services, such as luxury tax, entertainment tax, etc., and yet not subsumed in the VAT. Moreover, in the present State-level VAT scheme, CENVAT load on the goods remains included in the value of goods to be taxed under State VAT, and contributing to that extent a cascading effect on account of CENVAT element. This CENVAT load needs to be removed. Furthermore, any commodity, in general, is produced on the basis of physical inputs as well as services, and there should be integration of VAT on goods with tax on services at the State level as well, and at the

same time there should also be removal of cascading effect of service tax. In the GST, both the cascading effects of CENVAT and service tax are removed with set-off, and a continuous chain of set-off from the original producer's point and service provider's point upto the retailer's level is established which reduces the burden of all cascading effects.

This is the essence of GST, and this is why GST is not simply VAT plus service tax but an improvement over the previous system of VAT and disjointed service tax.

The GST at the State-level is, therefore, justified for:

- (a) additional power of levy of taxation of services for the States,*
- (b) system of comprehensive set-off relief, including set-off for cascading burden of CENVAT and service taxes,*
- (c) subsuming of several taxes in the GST and*
- (d) removal of burden of CST.*

Because of the removal of cascading effect, the burden of tax under GST on goods will, in general, fall. The GST at the Central and at the State level will thus give more relief to industry, trade, agriculture and consumers through a more comprehensive and wider coverage of input tax set-off and service tax set-off, subsuming of several taxes in the GST and phasing out of CST. With the GST being properly formulated by appropriate calibration of rates and adequate compensation where necessary, there may also be revenue/resource gain for both the Centre and the States, primarily through widening of tax base and possibility of a significant improvement in tax compliance. In other words, the GST may usher in the possibility of a collective gain for industry, trade, agriculture and common consumers as well as for the Central Government and the State Governments. The GST may, indeed, lead to the possibility of collectively positive-sum game.

(Extract from: 'First Discussion Paper on Goods and Services Tax In India'
by Empowered committee of state Finance Ministers published in November, 2009).

1.1 Introduction of Goods and Service Tax (GST) :

In line with the recommendations of First Discussion Papers on GST, acknowledged by the Task Force on Goods and Services Tax, Thirteenth Finance Commission, GST was introduced in the country wef 01.07.2017. Accordingly, GST laws ensured removal of cascading effects of taxes, seamless flow of ITC, one-nation-one-market, subsumed various taxes into GST, abolished Octroi, IT driven compliance system etc.

Having said all, GST imposed many challenges also to the stake holders such as:

- Frequent amendments in laws
- Wrong Interpretation of GST provisions
- Compliance cost and IT infrastructure with industry
- Complexity of Indian markets
- Lack of awareness among stake holder
- Technical glitches at GST portal

On the other side, Industry, Consumers and Government have been benefited from GST on various grounds as listed below:

- Central taxes and States taxes have been calculated and levied on same base price, which has reduced the cost of goods and services
- Working Capital Cost of Industry have come down as cascading effects of taxes has been eliminated to an extent which has increased the margins
- One-nation-one Market has reduced logistic costs of industry which ultimately enhance the growth of economy.
- GST abolished Octroi systems in the country
- Uniformity in tax rates of goods and services and reduction in number of tax slabs
- Compliance cost on account of C, E, H & F Forms has been eliminated completely
- Information technology driven plat form which can be operated from any-where any-time
- Consumers get protection under laws and also get cheaper goods and services
- More transparency in the system resulted increase in revenue
- Better co-ordination among Centre and States which has resulted in effective outcomes as far as indirect taxation is concerned.
- GST also helped in increase of direct taxes revenue for the government.

In spite of all such big and effective steps, GST has proved to be failure at many fronts. Fake invoicing, wrong availment of ITC, Fake GST registrations, retrospective amendments in provisions, baseless grounds for litigation etc are still challenge for the stakeholders. Huge amount of GST revenue is being evaded by some culprits and because of such people genuine industrialist, traders and consumers are suffering.



In this booklet, we have addressed the issue of Input Tax Credit (ITC) being availed and utilized by the industry and trade. As we have seen huge litigation for wrong availment and utilization of ITC, it needs to be addressed with utter care. ITC involved huge stake of Industry as well as of Government. So, it's appropriate and effective availment and utilization is important. Provisions under the laws need to be understood in true spirit. Wrong availment and utilization of ITC leads to unnecessary litigation and misutilization of national resources. On the other side non-availment of ITC increases working capital cost and also increase the cost of Goods and Services which impact the pocket of consumers straightway. Availment and utilization of ITC needs critical analysis and when one is confident and clear about the provisions of the law, only than ITC should be availed and utilized otherwise it has huge cost in form of Interest and Penalties.



Concept of Input Tax Credit under GST

2.1 What is Input Tax Credit (ITC) under GST?

For a layman, Input Tax Credit (ITC) is a tax paid on goods purchased and input services consumed, which is not included in cost of goods purchased or expenses incurred and said tax is available to set-off against outward tax liability on *supplies* made by any business entity. To avail and utilize said ITC, business entities are supposed to fulfill some conditions as laid down under the GST laws.

As per the GST provisions, ITC means a credit available to business entity for taxes paid on goods purchased and input services consumed. So, ITC ensure elimination of cascading impact of taxes in supply chain and reduces the cost of goods produced and services rendered which was the objective of introduction of GST in the country.

Further, as per Value added Tax principle, input tax credit can be availed and utilised only if the outward supplies are taxable and can be utilised for payment of outward taxes on output. Therefore, ITC cannot be availed if tax is not payable on output supply ie. on exempt supply. The only exemption is zero-rated supply where ITC is available even if no tax is payable on output supply as zero-rated supply.

To understand the term ITC in better way, one must know about *Business, Capital Goods, Goods, Inputs, Input Services, Input taxes, Input Tax Credit, Inward supplies, Output Taxes, Outward Supplies, Taxable Supplies, Supplies as defined under GST Laws.*

Section-2 of CGST Act, 2017 has carried the definitions of such terms and are reproduced as under:

(17) "*business*" includes -

- (a) *any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;*
- (b) *any activity or transaction in connection with or incidental or ancillary to sub-clause (a);*
- (c) *any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;*
- (d) *supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;*

- (e) *provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members admission, for a consideration, of persons to any premises;*
 - (g) *services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;*
 - (h) *activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and*
 - (i) *any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;*
- (19) *"capital goods" means goods, the value of which is capitalised 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***"*
- (47) *"exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply*
- (52) *"goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;*
- (59) *"input" means any goods other than capital goods used or intended to be used by a supplier in the course or **furtherance of business***;*
- (60) *"input service" means any service used or intended to be used by a supplier in the course or **furtherance of business***;*
- (62) *"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-*
- (a) *the integrated goods and services tax charged on import of goods;*
 - (b) *the tax payable under the provisions of sub-sections (3) and (4) of section 9;*
 - (c) *the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;*
 - (d) *the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or*
 - (e) *the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,*

but does not include the tax paid under the composition levy;

(63) "input tax credit" means the credit of input tax;

(67) "inward supply" in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without consideration

(82) "output tax" in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis.

(83) "outward supply" in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or **furtherance of business**

(102) "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

Explanation.- For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities

(105) "supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

Provided that a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner, and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims;

(108) "taxable supply" means a supply of goods or services or both which is leviable to tax under this Act;

Section 7, "supply" includes-

- (1) (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or **furtherance of business***;

(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation.- For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]

(b) import of services for a consideration whether or not in the course or **furtherance of business***; and

(c) the activities specified in **Schedule I**, made or agreed to be made without a consideration;

(d) [****].

(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in **Schedule II**.

(2) Notwithstanding anything contained in sub-section (1),-

(a) activities or transactions specified in **Schedule III**; or

(b) such activities or transactions undertaken by the Central Government, a

State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1), (1A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as:

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods

***Furtherance of Business:** The term furtherance of business not defined under GST laws but it is important to know, otherwise ITC is not available to the recipient. It is one of the conditions that all Capital goods, Inputs and Input services must be procured/purchased for a consideration by a person to be used or intended to be used in furtherance of business. In the absence of clarification under GST laws, one may refer the course of general principle of interpretation to understand the same. As per the general reading of



the expression it is to be said that any transaction undertaken by a person in connection with or having close proximity or nexus to his business, is in furtherance of business.

(Schedule I, II & III are attached as per Annexure-“A” at the end of this chapter)

Section 16 (1) of IGST Act, 2017:

Zero rated supplies:As per section 16(1) of IGST Act “zero rated supply” means any of the following supplies of goods or services or both, namely: –

- a) export of goods or services or both; or
- b) supply of goods or services or both for authorized operations to a Special Economic Zone developer or a Special Economic Zone unit.

All the above terms or definitions need to be understood in true spirit so that ITC and its related provisions may be compliance without a litigation at later stage. As mentioned above, Input Tax Credit is a credit or benefit available to business entity to pay its tax liability.

The same can be understood with an example as under:

ABC Ltd., having manufacturing facilities for men footwears at Ghaziabad. ABC Ltd is a registered taxable person supplies footwears for Rs. 500.00 lakh during the FY 2024-25 which are subject to Outward Tax (GST) @18%.

During the year ABC Ltd., have purchased Capital Goods, Raw material and other Inputs and Input Services as under:

- Machinery for leather cutting purchased on 30.05.2024 for Rs. 100.00 lakh plus GST @5%
- Leather for Rs. 210.00 lakh plus GST@5%
- Stores component for Rs. 5.50 lakh plus GST @18%
- Stores consumables for Rs. 3.56 lakh plus GST @12%
- Packing material for Rs. 6.45 lakh plus GST@12%
- Technical, Design and engineering services for Rs. 2.20 lakh plus GST@18%

Work out the ITC available to ABC Ltd and also output tax liability for the FY 2024-25.

Solution:

Total Outward Supplies/sale of foot wear = Rs. 500.00 lakh

Tax liability/Output tax liability @18%gst = " 90.00 " (Rs. 500 *18/100)

Input Tax Credit available to ABC Ltd.,

Sr No	Particulars/Inputs	Value (Rs in Lakh)	GST paid (Rs in Lakh)	ITC Available (Rs in Lakh)
1	Leather Cutting Machine	100.00	5.00	5.00
2	Leather (Raw Material)	210.00	10.50	10.50
3	Stores Component	5.50	0.99	0.99
4	Stores consumables	3.56	0.43	0.43
5	Packing material	6.45	0.77	0.77
6	Technical Services	2.20	0.40	0.40
	Total ITC available			18.09

In above case, ABC Ltd shall pay its output tax liability/Outward Tax Liability of Rs. 90.00 lakh after adjustment/set-off of ITC of Rs. 18.09 lakh available to it. So net Cash shall be paid as tax of Rs. 71.91 lakh (Rs. 90.00 lakh minus Rs. 18.09 lakh).

ABC Ltd. shall pass journal entries for said transactions in its books of accounts as under:

1. Sale of foot wear for Rs. 500.00 lakh plus GST@18%

Cash/Bank/Buyers A/cs	Dr.	Rs. 590.00
To Sales A/s	Cr.	Rs. 500.00
To GST Output Tax	Cr	Rs. 90.00

(Being sale of footwear during FY 2024-25 on cash/bank/credit basis @18% GST)

2. Purchase of Capital Goods, goods and input services

Leather cutting Machine A/cs Dr		Rs. 100.00
Raw Material (Leather) A/cs	Dr.	Rs. 210.00
Stores component A/cs	Dr.	Rs. 5.50
Stores consumables A/cs	Dr.	Rs. 3.56
Packing material A/cs	Dr.	Rs. 6.45
Technical, Design serviceA/cs Dr		Rs. 2.20

ITC A/cs	Dr.	Rs. 18.09
To Bank/Suppliers	Cr	Rs. 345.80

(Being purchase of capital goods, goods and other input services during FY 2024-25)

3. Payment of Output Taxes during FY 2024-25

GST Output Tax A/c	Dr.	Rs. 90.00
To ITC A/cs	Cr.	Rs. 18.09
To Bank A/cs	Cr.	Rs. 71.91

(Being amount of Output Tax paid after adjustment of ITC available for the FY 2024-25)

By going through the concept of ITC, following important points have emerged:

- GST paid on Capital Goods, Goods and Inputs services is not part of cost of procurement of such goods/services,
- It eliminates tax-on-tax by avoiding cascading effects of taxation on cost of products manufactured or services rendered,
- ITC has reduced cost of procurements and also of final products sold,

- Seem less flow of ITC across business supply chain,
- ITC is available for adjustment/set-off at the time of payment of Output/Outward taxes which helps in reduction of working capital requirement, hence reduces finance cost.

2.2 Limitation of Input Tax Credit (ITC) mechanism under GST in India:

- It is not adopted across complete chain supply and many products are still not covered under GST
- ITC on some of the goods and services not allowed which has cascading impact of taxes on cost of the products and services
- Cross adjustment of Centre taxes with that of State taxes or vice-a-versa not allowed which impact working capital cost of the trade and industry
- Some of the conditions imposed to avail the ITC are not practical in business
- ITC mechanism failed to eliminate fake invoicing and evasion of taxes.

2.3 Legal provisions of Input Tax Credit (ITC)

Section 16 to Section 21 of CGST Act, 2017 deals with how to avail ITC. All these sections prescribed the eligibility criteria, conditions to avail ITC, goods and services on the procurement of which ITC is not allowed, special provisions regarding specified transaction to avail or reverse ITC etc.

Further, rule 36 to 45 of CSGT Act, 2017 along with relevant forms have been prescribed under CGST Act, 2017 to compliance with the provisions of ITC under GST laws.

All said provisions and rules with suitable examples and comments have been discussed in following chapters of this booklet so that business entities or stakeholders can understand the concept of ITC in better way before availing and utilizing the same to avoid any type of litigation at later stage.



Annexure-“A”

SCHEDULE I

[See section 7]

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION :

- (1) Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
- (2) 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:

Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

- (3) Supply of goods-
 - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
 - (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
- (4) Import of services by a 1[person] from a related person or from any of his other establishments outside India, in the course or furtherance of business.



SCHEDULE II

[See section 7]

ACTIVITIES 2[OR TRANSACTIONS] TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

1. Transfer

- (a) any transfer of the title in goods is a supply of goods;
- (b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;
- (c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.

2. Land and Building

- (a) any lease, tenancy, easement, licence to occupy land is a supply of services;
- (b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

3. Treatment or process

Any treatment or process which is applied to another person's goods is a supply of services.

4. Transfer of business assets

- (a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, 3[****] such transfer or disposal is a supply of goods by the person;
- (b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, 3[****] the usage or making available of such goods is a supply of services;

(c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless-

- (i) the business is transferred as a going concern to another person; or
- (ii) the business is carried on by a personal representative who is deemed to be a taxable person.

5. Supply of services

The following shall be treated as supply of services, namely:-

- (a) renting of immovable property;
- (b) construction of a complex, building, civil structure or a 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, where required, by the competent authority or after its first occupation, whichever is earlier.

Explanation. -For the purposes of this clause-

(1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:-

- (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or
- (ii) a chartered engineer registered with the Institution of Engineers (India); or
- (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software;



(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and

(f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

6. Composite supply

The following composite supplies shall be treated as a supply of services, namely:-

(a) works contract as defined in clause (119) of section 2; and

(b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

7. [****]



SCHEDULE III

[See section 7]

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services by any court or Tribunal established under any law for the time being in force.
3. (a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
(b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
(c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
6. Actionable claims, other than 5[specified actionable claims].
7. Supply of goods from a place in the non-taxable territory to another place in the non- taxable territory without such goods entering into India.
8. (a) Supply of warehoused goods to any person before clearance for home consumption;
8(aa) Supply of goods warehoused in a Special Economic Zone or in a Free Trade Warehousing Zone to any person before clearance for exports or to the Domestic Tariff Area
(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.
9. Activity of apportionment of co-insurance premium by the lead insurer to the co-insurer for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured in coinsurance agreements, subject to the condition that the lead insurer pays the central tax, the



State tax, the Union territory tax and the integrated tax on the entire amount of premium paid by the insured.

10. Services by insurer to the reinsurer for which ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer, subject to the condition that the central tax, the State tax, the Union territory tax and the integrated tax is paid by the reinsurer on the gross reinsurance premium payable by the insurer to the reinsurer, inclusive of the said ceding commission or the reinsurance commission.

Explanation 1.- For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.

Explanation 2.- For the purposes of 12[clause (a) of] paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962 (50 of 1962).

Explanation 3.- For the purposes of clause (aa) of paragraph 8, the expressions "Special Economic Zone", "Free Trade Warehousing Zone" and "Domestic Tariff Area" shall have the same meanings respectively as assigned to them in section 2 of the Special Economic Zones Act, 2005.

Eligibility and Conditions to avail and utilize ITC

3.0 Eligibility and Conditions to avail and utilize ITC

Though the Goods and Service tax (GST) model adopted in the country promises free flow of ITC in complete supply chain but GST laws impose some restriction and conditions to avail ITC in business. Such restriction do not eliminate the cascading impact of taxes on goods supplied and services rendered which is against the spirit of GST model for the country we talked about.

Section 16 of CSGT Act 2017 deals with eligibility criteria and conditions to avail the ITC. As per the provisions of law, every registered person who has been charged with 'input tax' on goods or services supplied to him, is entitled to take credit of such input tax if such supplies are to be used in business. Provisions of law also imposed some conditions to avail such credits and the same are described below.

3.1 Conditions to avail ITC:

A registered person who wants to avail ITC on goods or services supplied to him for business purposes must full fill the following basic conditions:

- He must have copy of valid Tax Invoice/revised Tax Invoiceas prescribed under section 31 read with rule 36 or Debit Note (in original) as prescribed under section 34 or Bill of Entry as per Custom Act, 1962 or Invoice issued by Input Service Distributor under Rule 54(1) SD of goods purchased or services consumed from the supplier,
- Details of said tax invoice or Debit Note must be depicted in GSTR-2A or GSTR-2B of respective month,
- He has received the goods physically at his business premises or has received and consumed said services for which he has received said tax invoice, including if said goods or services are delivered to third party on his direction,
- The supplier of said goods or service or both must be compliant of relevant provisions/conditions laid down u/s 38 of CSGT Act, 2017
- The supplier of said goods or services has paid the taxes charged in said tax invoice to the government through his monthly/quarterly returns,
- He (registered person) has submitted his monthly/quarterly returns for respective tax periods claiming his ITC on said taxable invoice or Debit Note.

Apart from the above conditions provisions of law also state that:

- If goods or services are being received in lots, ITC is available only after last lot received,
- Recipient (registered person) of said goods or services must have paid the consideration including taxes to supplier within 180 days from the date of tax invoice or Debit Note,
- In case of Capital goods and Plant & Machinery, if recipient capitalised the 'input tax' paid on said items, then ITC on tax component is not available,
- ITC on 'input taxes' paid on 'tax invoice' of a FY cannot be availed after 30th of Nov, of next financial year or after the date of filing of annual returns (GSTR-9 & GSTR-9C) of said FY year to which such invoice pertains, **whichever is earlier**,

However, for the FY 2017-18 to FY 2020-21 there is relaxation to the above condition if 'input tax' on said invoice is claimed in monthly/quarterly returns of respective FYs and such returns have been filed on or before 30th November, 2021.

- If a registered person could not avail ITC within the time frame as laid down in law, because his registration was cancelled and the same was revoked later on in pursuance to any order passed by appellate authorities, Tribunals or Courts he may avail such ITC if he files his all-pending returns **within thirty days** of such order passed.

3.2 For the convenience of the readers, provisions of section 16 of CSGT Act, 2017 as amended till April, 2025 are reproduced as under:

Section 16. Eligibility and conditions for taking input tax credit.

*(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**;*

(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37; (wef. 01.01.2022)

(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 or, as the case may be, services-

(i) 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;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;

*(ba) the details of input tax credit in respect of the said supply communicated to such registered person **under section 38+has not been restricted;** (w.e.f 01.10.2022)*

(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 paid by him along with interest payable under section 50, 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 to the supplier 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 (43 of 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 **[thirtieth day of November]***following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, **whichever is earlier.**

Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such 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 the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.

***wef 01.10.2022, up to 30.09.2022 date was 20th of Oct following the end of FY**

******(5) Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017- 18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take input tax credit in any return under section 39 which is filed upto the thirtieth day of November, 2021.

******(6) Where registration of a registered person is cancelled under section 29 and subsequently the cancellation of registration is revoked by any order, either under section 30 or pursuant to any order made by the Appellate Authority or the Appellate Tribunal or court and where availment of input tax credit in respect of an invoice or debit note was not restricted under sub-section (4) on the date of order of cancellation of registration, the said person shall be entitled to take the input tax credit in respect of such invoice or debit note for supply of goods or services or both, in a return under section 39,—



(i) filed upto thirtieth day of November following the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier; or

*(ii) for the period from the date of cancellation of registration or the effective date of cancellation of registration, as the case may be, till the date of order of revocation of cancellation of registration, where such return is **filed within thirty days** from the date of order of revocation of cancellation of registration,*

whichever is later.

*****sub-section (5) & (6) inserted through Finance Act, 2024.***

+ Section 38 discussed in following pages of this chapter

{Please refer rule 36 to Rule 37A also}

3.3

Communication of details of inward supplies and input tax credit:

Wef 01.10.2022, Section 38 has been re-drafted completely and it has made mandatory to communicate the details of supplies to recipient through GST portal with in prescribed time line in prescribed manner.

Section 38 also imposed some more conditions to avail ITC such as:

- time when registration under GST was obtained by the supplier,
- taxes paid or not by supplier for supplies made, with in the time line as prescribed,
- if tax liability of registered person (recipient) as declared under Outward supplies statements (GSTR-1) is in excess of tax paid in GSTR-3B,
- if there is any difference in ITC availed in GSTR-3B with GSTR-2A/B of tax period, and
- maximum amount of ITC which can be used from Credit Ledgers to pay output taxes by class of registered persons as may be prescribed.

Considering the increase in cases of tax evasion through fake invoices, fake GST registrations and many other reasons, government has taken many such steps to curb the tax evasion but it has become nightmare for the agencies.



Section 38 is reproduced as under:

Section 38. Communication of details of inward supplies and input tax credit:

(1) The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and a statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.

(2) The statement referred in sub-section (1) shall consist of—

(a) details of inward supplies in respect of which credit of input tax may be available to the recipient;

(b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient section 37,— including, on account of the details of the said supplies being furnished under sub-section (1) of section 37

(i) by any registered person within such period of taking registration as may be prescribed; or

(ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or

(iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or

(iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or

(v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of subject to such conditions and restrictions as may be prescribed; or section 49

vi) by such other class of persons as may be prescribed.]

(c) such other details as may be prescribed.]

3.4 Input Tax Credit is a self-assessed availment:

In addition to the conditions as narrated u/s 16 of CGST Act, 2017, Section 41 CGST ACT, 2017 also mandate that such ITC as availed by the registered person is availed as self-assessed ITC. If taxes as charged to registered person by his supplier, not paid to government at all, ITC availed by the registered person shall be reversed with interest @18% of the ITC amount availed and utilized.

So, when supplier pays the taxes to government, registered person may re-avail said ITC in his returns.

In such situations where supplier does not pay tax to government within prescribed time limits, Interest paid by registered person on reversal of such ITC is a cost to registered person which may impact his profitability on goods sold by him.

The spirit of the law is that buyers must take all precautions while selecting their suppliers otherwise they may land into trouble and goods or services supplied by their supplier may be a costly-affairs later on.

Section 41 of CGST Act, 2017 is reproduced as under:

Section 41. Availment of input tax credit

1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:

Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.

3.5. Payment of tax, interest, penalty and other amounts:

Section 49 of CGST Act, 2017 prescribe the procedure to pay outward tax liability by utilising ITC and paying cash. As per the provisions of section 49:

- Every registered person who has made supplies during any tax period has to pay taxes on its outward supplies at the rates applicable of such supplies through any mode of payment such as Internet banking, by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other

mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the **electronic cash ledger** maintained at GST portal.

- The amount available in the **electronic cash ledger** may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.
- The input tax credit as self-assessed in the return of a registered person shall be credited to his **electronic credit ledger**, in accordance with section 41. The amount available in the **electronic credit ledger** may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and restrictions and within such time as may be prescribed.

In other words, amount available in **electronic credit ledger shall not be used for the payment of Interest, penalty and fee etc. It can be used for the payment of CGST, SGST AND IGST only.**

- The amount of input tax credit available in the electronic credit ledger of the registered person on account of-
 - i. integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax/UT Tax
 - ii. the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax
 - iii. the State tax/UT tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax

Provided that the input tax credit on account of State tax/UT Tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;

 - iv. the central tax shall not be utilized towards payment of State tax or Union territory tax; and
 - v. the State tax or Union territory tax shall not be utilized towards payment of central tax

3.6 Section 155. Burden of proof. -

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.

In recent past GST departments from CGST AND SGST/UT GST have rejected ITC claims of taxable persons on various ground and passed the order asking taxable person to prove their claims u/s 155.

So, it becomes difficult for the taxable person to prove their claim of ITC if taxable person does not maintain proper records of its business operations such as :

- Maintain books of accounts related with its supplies i.e taxable invoices, copies Debit Notes, Credit Notes, Sale register, buyers' ledgers, relevant bank statements etc
- Invoice copies, Credit notes, Debit Notes from suppliers, ledgers, bank statements, payment history for each invoice received, periodicals reconciliations,
- Complete track records for inputs, input services and capital goods procured, used for business operations and stock in hand for raw material, WIP, Finishedstock, material sent on Job work and received back,
- Goods or other items disposed off, sold, destroyed etc
- Monthly/Quarterly/Annual GST returns filed,
- Exports and refunds under GST obtained,
- Cost Audit reports or Cost records maintained for each product manufactured, traded and inputs such as raw material, labour, electricity, consumables, inputs services etc used to manufacture such goods

3.7 Frequently asked questions(FAQs):

1. **M/s. Subhash Sons bought furniture from M/S. Prajata Furniture's. The invoice was raised by M/s. Prajata Furniture's on 04/04/2024 for which the payment was made by M/S Subhash on 26/10/2024 i.e. after 205 days from the date of issuance of invoice. Is M/s Subhash Sons eligible to avail the ITC on such purchase? Further, will M/S Subhash be able to re-avail the ITC?**

Answer:

No, M/s. Subhash Sons not eligible to avail ITC on such purchase. Mr. Subhash will be required to reverse the ITC availed on such purchases on which payment is made after



180 days from the invoice date. He is also be liable to pay interest @18% on the said amount.

Yes, Re-availment of ITC is possible once payment is made to the supplier.

(Section 16(2), 2nd proviso restricts such ITC)

2. **M/s Electricals Ltd, bought cable drums and other electrical fittings to execute a project in Himachal from M/s Karma Electricals Ltd., which were sent in eight lots over a period of ten months. When will Electrical Ltd, be able to claim the ITC on such goods received in lots?**

M/S Electricals will be able to claim the ITC only after the receipt of last lot of goods.

(Refer 1st proviso to Section 16(2))

3. **M/S Abhinav Eengineering Projects purchased plant and machinery costing Rs. 48,00,000/- for their manufacturing unit at Raigarh and paid GST of Rs. 8,64,000/-. Considering the nature of transactions, the GST component has been capitalized in the books of accounts. Will M/s Abhinav Engineering Projects be able to claim the ITC for taxes paid thereon?**

No. ITC will not be available in case the tax part has been capitalized in the books. Although depreciation can be availed on whole amount i.e Cost and GST (Rs. 56,64,000/-).

(Refer sub-section 3 of Section 16)

4. **Ahuja Collections, a registered person under GST purchased ready-made garments for his shop on 22nd July 2023, but due to over sight the ITC on said purchases was not claimed in GSTR-3B filed in August 2023. The annual return was filed on 19th October, 2024. What was the permissible dates to avail this Input Tax Credit (ITC)?**

ITC on such purchases can be claimed by Ahuja Collection on or before 19th October, 2024 i.e earlier of the date of filing the annual return for FY 2023-24 or 30th November 2024. **(Refer Section 16(4))**

Apportionment of Input Tax Credit (ITC) and Block Credits

Eligible and Ineligible credits:

Goods and Services Tax aims at providing smooth flow of availing credit of taxes paid on Inputs, Input services and Capital goods procured. The entire Input tax credit (ITC) accumulated by the taxpayer is not allowed which can be availed and utilized for Outward tax liability. Section 17 of the CGST Act 2017 put some restrictions, where input tax credit cannot be availed and utilised fully. Section 17 divided the whole ITC available into two categories as mentioned below:

1. Apportionment of Input Tax Credit
2. Blocked Input Tax Credit

Apportionment of ITC means ITC need to be apportioned between business and non-business purposes. In other words, whatever ITC is available to taxable person on his inputs, input services and capital Goods need to be apportioned to business and non-business purposes.

After apportionment of ITC to Business purposes it will be further divided into two parts i.e ITC pertains to *taxable supplies* including *zero rated supplies* and ITC pertains to *exempted supplies*. It means only ITC which is attributable to taxable supplies of goods or services or both shall be allowed and ITC attributed to *exempted supplies* shall not be available to taxable person.

Further, section 17 has also specified some of the Inputs, Input services and Capital goods though procured for business purposes and such Inputs, Input services and Capital goods are directly used for *taxable supplies*, but taxes paid for such supplies are not allowed as ITC.

Meaning there by, from whole of the ITC available to taxable person, we need to exclude ITC pertaining to other than business purposes, ITC pertaining to *exempted supplies* and then from left over ITC, we need to identify ITC which is not allowed and are covered under **Blocked Credits**.

In GST laws, the term Blocked Credit has not been defined anywhere but as per section 17(5) some of the transactions have been listed out on which ITC is not allowed at all unless said transaction are undertaken for of business of same category of goods or services or both.

Section 17 of CGST Act, 2017 is reproduced as under:

Section 17. Apportionment of credit and blocked credits

Apportionment of Credit:

- (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**.

As per Value added Tax principle, input tax credit can be availed and utilised only if the outward supplies are taxable and can be utilised for payment of outward taxes on output. Therefore, ITC cannot be availed if tax is not payable on output supply i.e. on exempt supply. The only exemption is **zero rated supply** where ITC is available even if no tax is payable on output supply as **zero rated supply**.

If common inputs are used for taxable as well as exempt supply, only proportionate ITC attributable to the business purpose is available.

- (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.

Explanation: For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, {except:—

- (i) the value of activities or transactions specified in paragraph 5 of the said Schedule; and
 - (ii) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule}.
- (w.e.f. 1st October 2023)

For the purpose of Section 17(3), **exempt supplies** includes supplies which are covered under **reverse charge mechanism** (RCM) and also include transactions in **securities** and sale of land subject to clause (b) of paragraph 5 of Schedule II, sale of building. It also prescribes the determination of value of **exempt supply** for the purpose of section 17(2).

From above para it is clear that transactions which are covered under RCM or supplies on which taxes are paid by the recipient, Taxable person (supplier) shall not get ITC pertains

to Inputs, Input services and Capital goods used for such supplies which is otherwise a loss to the taxable person.

The manner for the calculation of the proportionate ITC for the purpose of Section 17(1) and Section 17(2) are elaborated in **Rules 42 and Rule 43** of Central Goods and Services Tax (CGST) Rules, 2017 are narrated as under:

Rule 42: Manner of determination of input tax credit in respect of inputs or input services and reversal thereof. -

(1) The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

(a) the total input tax involved on inputs and input services in a tax period, be denoted as 'T';

*(b) the amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for the purposes **other than business**, be denoted as 'T1';*

*(c) the amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for effecting **exempt supplies**, be denoted as 'T2';*

(d) the amount of input tax, out of 'T', in respect of inputs and input services on which credit is not available under sub-section (5) of section 17, be denoted as 'T3';

(e) the amount of input tax credit credited to the electronic credit ledger of registered person, be denoted as 'C1' and calculated as- $C1 = T - (T1 + T2 + T3)$;

(f) the amount of input tax credit attributable to inputs and input services intended to be used exclusively for effecting supplies other than exempted but including zero rated supplies, be denoted as 'T4';

Explanation : For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the said Act, value of T4 shall be zero during the construction phase because inputs and input services will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.

(g) 'T1', 'T2', 'T3' and 'T4' shall be determined and declared by the registered person at summary level in FORM GSTR-3B.

(h) input tax credit left after attribution of input tax credit **under clause (f)** shall be called common credit, be denoted as 'C2' and calculated as- $C2 = C1 - T4$

(i) the amount of input tax credit attributable towards exempt supplies, be denoted as 'D1' and calculated as- $D1 = (E \div F) \times C2$ where,

'E' is the aggregate value of **exempt supplies** during the tax period, and

'F' is the **total turnover** in the State of the registered person during the tax period:

Provided that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the value of E/F for a tax period shall be calculated for each project separately, taking value of E and F as under:-

E = aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;

F = aggregate carpet area of the apartments in the project;

Explanation 1: In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

Explanation 2 : Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (i), (ia), (ib), (ic) or (id), against serial number 3 of the Table in the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of 'E' in view of Explanation (iv) in paragraph 4 of the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 690 (E) dated 28th June, 2017, as amended.]

Provided further that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

Explanation: For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or

tax levied under entry 84 7[and entry 92A] of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

(j) the amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as 'D2' and shall be equal to five per cent of C2 ; and

(k) the remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as 'C 3', where,-

$$C 3 = C 2 - (D 1 + D 2)$$

(l) the amount 'C3', 'D 1' and 'D2 ' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in **FORM GSTR-3B** or through **FORM GST DRC-03**

(m) the amount equal to aggregate of ' D1' and 'D2 ' shall be reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03**

Provided that where the amount of input tax relating to inputs or input services used partly for the purposes other than business and partly for effecting exempt supplies has been identified and segregated at the invoice level by the registered person, the same shall be included in 'T 1' and 'T 2' respectively, and the remaining amount of credit on such inputs or input services shall be included in 'T 4'.

- (2) Except in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the input tax credit] determined under sub-rule (1) shall be calculated finally for the financial year before the due date for furnishing of the return for the month of September following the end of the financial year to which such credit relates, in the manner specified in the said sub-rule and-

(a) where the aggregate of the amounts calculated finally in respect of 'D 1' and 'D 2' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D1 ' and 'D2 ', such excess shall be 11[reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03**]in the month not later than the month of September following the end of the financial year to which such credit relates and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or

(b) where the aggregate of the amounts determined under sub-rule (1) in respect of 'D 1 'and 'D 2' exceeds the aggregate of the amounts calculated finally in respect of 'D 1' and 'D 2', such excess amount shall be claimed as credit by the registered person in his

return for a month not later than the month of September following the end of the financial year to which such credit relates.

- (3) In case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the input tax determined under sub-rule (1) shall be calculated finally, for each ongoing project or project which commences on or after 1st April, 2019, which did not undergo or did not require transition of input tax credit consequent to change of rates of tax on 1st April, 2019 in accordance with notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690 (E) dated the 28th June, 2017, as amended for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, in the manner prescribed in the said sub-rule, with the modification that value of E/F shall be calculated taking value of E and F as under:

E = aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier:

F = aggregate carpet area of the apartments in the project;

and -

(a) where the aggregate of the amounts calculated finally in respect of 'D1' and 'D2' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2', such excess shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation of the project takes place and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or

(b) where the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2' exceeds the aggregate of the amounts calculated finally in respect of 'D1' and 'D2', such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

- (4) In case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the input tax determined under sub-rule (1) shall be calculated finally, for



commercial portion in each project, other than residential real estate project (RREP), which underwent transition of input tax credit consequent to change of rates of tax on the 1st April, 2019 in accordance with Notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690 (E) dated the 28th June, 2017, as amended for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, in the following manner.

(a) The aggregate amount of common credit on commercial portion in the project (C 3 aggregate_comm) shall be calculated as under,

$C\ 3\ aggregate_comm = [aggregate\ of\ amounts\ of\ C3\ determined\ under\ sub- rule\ (1)\ for\ the\ tax\ periods\ starting\ from\ 1st\ July,\ 2017\ to\ 31st\ March,\ 2019,\ x\ (A\ C / A\ T)] + [aggregate\ of\ amounts\ of\ C3\ determined\ under\ sub- rule\ (1)\ for\ the\ tax\ periods\ starting\ from\ 1st\ April,\ 2019\ to\ the\ date\ of\ completion\ or\ first\ occupation\ of\ the\ project,\ whichever\ is\ earlier]$

Where,-

A C = total carpet area of the commercial apartments in the project

A T = total carpet area of all apartments in the project

(b) he amount of final eligible common credit on commercial portion in the project (C 3 final_comm)shall be calculated as under

$C\ 3\ final_comm = C\ 3\ aggregate_comm \times (E / F)$

Where, -

E = total carpet area of commercial apartments which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

F = AC = total carpet area of the commercial apartments in the project

(c) where, C 3 aggregate_comm exceeds C 3 final_comm, such excess shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project and the said person shall be liable to pay interest on the said excess amount at the rate specified in subsection (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment;

(d) where, C 3 final_comm exceeds C 3 aggregate_comm, such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

- (5) *Input tax determined under sub- rule (1) shall not be required to be calculated finally on completion or first occupation of an RREP which underwent transition of input tax credit consequent to change of rates of tax on 1st April, 2019 in accordance with notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690 (E) dated the 28th June,2017, as amended.*
- (6) *Where any input or input service are used for more than one project, input tax credit with respect to such input or input service shall be assigned to each project on a reasonable basis and credit reversal pertaining to each project shall be carried out as per sub-rule (3).*

The input tax credit of goods or services or both attributable only to *business* and to *taxable supplies* can be availed by a registered person. The manner of calculation of eligible credit is provided in Rule 42 as above.

To make the calculation simple following steps may be adopted to work out ITC pertaining to **Taxable supplies including zero rated supplies, exempt supplies, non-business ITC** and Common ITC.

Step 1: Computation of Common Input Tax Credit:

Total ITC on inputs and input services	T	As per rule 42(1)(a)
Less: ITC on supplies exclusively for non-business purposes	(T1)	As per rule 42(1)(b)
Less: ITC on supplies exclusively used for providing exempt supplies	(T2)	As per rule 42(1)(c)
Less: ITC on supplies ineligible/not available for credit (blocked credit Sec 17(5))	(T3)	As per rule 42(1)(d)
ITC which are used to supply taxable as well as exempted output supplies (ITC credited to Electronic credit ledger)	C1	As per rule 42(1)(e)
ITC on input supplies which are intended to be used exclusively for taxable and zero rated supplies (ie, ITC on Normal supplies)	(T4)	As per rule 42(1)(f)
Common ITC available for apportionment (ie. ITC used to supply taxable as well as exempted output supplies)	C2	As per rule 42(1)(h)

As per Rule 42(1)(g) of the CGST Rules 2017, information relating to Rule 42(1)(b),(c),(d) and (f) shall be determined and declared by the registered person at the invoice level.

Step 2: Computation of credit applicable to exempt supplies (Ineligible credit) by apportionment of common credit, Rule 42(1)(g) of CGST Rules 2017 “(D1)”:

$$D1 = (E/F) \times C2$$

Where,

E = Aggregate value of exempt supplies during the Tax period

F = Total turnover in the state during the Tax period

C2 = Common ITC which are used to supply taxable as well as exempted output supply

If the registered person does not have any turnover during the said tax period, or the above information is not available, the values of the last tax period may be used.

The ITC so availed by the recipient of deemed export supplies would not be subjected to provisions of Sec 17 of the CGST Act, 2017. (vide CBIC Circular no. 172/04/2022-GST, dated 6th July 2022)

Step 3: Computation of Eligible Credits

Compute C3 attributable to business purposes and taxable supplies including zero rated supplies as below: Rule 42(1)(k)

$$C3 = C2 - (D1 + D2)$$

Where Credit attributable to non-business purposes D2 is 5% of Common credit. Rule 42(1)(j) of the CGST Rules 2017.

$$D2 = 5\% \text{ of } C2 \text{ (Common Credit)}$$

Eligible ITC to be separately computed for different taxes. Rule 42(1)(l) of the CGST Rules 2017.

Step 4: Restriction of ineligible credits

$$= \text{Reverse } D1 + D2$$

Adjustment at the year end: Rule 42(2) of the CGST Rules 2017:

- Compute C3 (eligible ITC) separately for ITC of CGST, SGST/UGST and IGST.
- Compute (D1+D2) i.e non-business and exempted supplies, for the whole financial year, by taking exempted turnover and aggregate turnover for the whole financial year, before the due date for filing the return for September in the following Financial year.
- If (D1+D2) for the whole year > the amount already reversed in every month, the differential amount has to be reversed in any month till September in the following financial year and interest @18% should be paid on that differential amount from 1st April of succeeding year till the date of payment.
- If the amount reversed every month > (D1+D2) for the whole year, the additional amount paid has to be claimed back as credit in the return of the month not later than September in the next financial year.

Rule 43. Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases.-

(1) Subject to the provisions of sub-section (3) of section 16, the input tax credit in respect of capital goods, which attract the provisions of sub-sections (1) and (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

*(a) the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in [****]FORM GSTR-3B and shall not be credited to his electronic credit ledger;*

*(b) the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero-rated supplies shall be indicated in [****]FORM GSTR-3B and shall be credited to the electronic credit ledger;*

Explanation: *For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the said Act, the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies, shall be zero during the construction phase because capital goods will be commonly used for construction of apartments booked on or before the date of issuance of completion*

certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.

(c) the amount of input tax in respect of capital goods not covered under clauses (a) and (b), denoted as 'A', being the amount of tax as reflected on the invoice, shall credit directly to the electronic credit ledger and the validity of the useful life of such goods shall extend up to five years from the date of the invoice for such goods:

Provided that where any capital goods earlier covered under clause (a) is subsequently covered under this clause, input tax in respect of such capital goods denoted as 'A' shall be credited to the electronic credit ledger subject to the condition that the ineligible credit attributable to the period during which such capital goods were covered by clause (a), denoted as 'T_{ie}', shall be calculated at the rate of five percentage points for every quarter or part thereof and added to the output tax liability of the tax period in which such credit is claimed:

Provided further that the amount 'T_{ie}' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in **FORM GSTR-3B**.

Explanation. - An item of capital goods declared under clause (a) on its receipt shall not attract the provisions of sub-section (4) of section 18, if it is subsequently covered under this clause.

(d) the aggregate of the amounts of 'A' credited to the electronic credit ledger under clause (c) in respect of common capital goods whose useful life remains during the tax period, to be denoted as 'T_c', shall be the common credit in respect of such capital goods:

Provided that where any capital goods earlier covered under clause (b) are subsequently covered under clause (c), the input tax credit claimed in respect of such capital good(s) shall be added to arrive at the aggregate value 'T_c';

(e) the amount of input tax credit attributable to a tax period on common capital goods during their useful life, be denoted as 'T_m' and calculated as-

$$T_m = T_c / 60$$

Explanation. - For the removal of doubt, it is clarified that useful life of any capital goods shall be considered as five years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods.

(f) [omitted w.e.f 1.4.2020]

(g) the amount of common credit attributable towards exempted supplies, be denoted as ' T_e ', and calculated as-

$$T_e = (E / F) \times T_r$$

where ,

'E' is the aggregate value of exempt supplies, made, during the tax period , and

'F' is the total turnover⁷[in the State]of the registered person during the tax period:

Provided that in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the value of 'E/F' for a tax period shall be calculated for each project separately, taking value of E and F as under:

E = aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;

F = aggregate carpet area of the apartments in the project;

Explanation 1 : In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

Explanation 2 : Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (i), (ia),(ib), (ic) or (id), against serial number 3 of the Table in notification No. 11/2017-Central Tax (Rate) published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR No. 690 (E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of 'E' in view of Explanation (iv) in paragraph 4 of the notification No. 11/2017-Central Tax (Rate) published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated the 28th June, 2017 vide GSR No. 690 (E) dated 28th June, 2017, as amended.

Provided further that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

Explanation. - For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84⁸ [and entry 92A] of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

(h) the amount T_e along with the applicable interest shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit.

(i) The amount T_e shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in **FORM GSTR-3B**.

(2) In case of supply of services covered by clause (b) of paragraph 5 of schedule II of the Act, the amount of common credit attributable towards exempted supplies (T_e^{final}) shall be calculated finally for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, for each project separately, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, as under:

$$T_e^{final} = [(E_1 + E_2 + E_3) / F] \times T_c^{final},$$

Where,-

E_1 = aggregate carpet area of the apartments, construction of which is exempt from tax

E_2 = aggregate carpet area of the apartments, supply of which is partly exempt and partly taxable, consequent to change of rates of tax on 1st April, 2019, which shall be calculated as under, -

$$E_2 = [\text{Carpet area of such apartments}] \times [V_1 / (V_1 + V_2)], -$$

Where,-

V_1 is the total value of supply of such apartments which was exempt for tax ; and

V_2 is the total value of supply of such apartments which was taxable

E_3 = aggregate carpet area of the apartments, construction of which is not exempt from tax, but have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier:

F = aggregate carpet area of the apartments in the project;

Tc^{final} = aggregate of A^{final} in respect of all capital goods used in the project and A^{final} for each capital goods shall be calculated as under,

$A^{final} = A \times (\text{number of months for which capital goods is used for the project} / 60)$ and,-

(a) where value of Te^{final} exceeds the aggregate of amounts of Te determined for each tax period under sub-rule (1), such excess shall be reversed by the registered person in **FORM GSTR-3B** or through **FORM GST DRC-03** in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or

(b) where aggregate of amounts of Te determined for each tax period under sub-rule (1) exceeds Te^{final} , such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

Explanation .- For the purpose of calculation of Tc^{final} , part of the month shall be treated as one complete month.

(3) The amount Te^{final} and dc^{final} shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.

(4) Where any capital goods are used for more than one project, input tax credit with respect to such capital goods shall be assigned to each project on a reasonable basis and credit reversal pertaining to each project shall be carried out as per sub-rule (2).

(5) Where any capital goods used for the project have their useful life remaining on the completion of the project, input tax credit attributable to the remaining life shall be availed in the project in which the capital goods is further used;

Explanation :-For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude: -

(a) [omitted wef 01.02.2029]

(b) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of 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; and

(c) [Omitted vide Notification No. 38/2023 - CT dated 04.08.2023]

(d) the value of supply of Duty Credit Scrips specified in the notification of the Government of India, Ministry of Finance, Department of Revenue No. 35/2017-Central Tax (Rate), dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1284(E), dated the 13th October, 2017.

Explanation 2 : *For the purposes of rule 42 and this rule,-*

(i) the term "apartment" shall have the same meaning as assigned to it in clause (e) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(ii) the term "project" shall mean a real estate project or a residential real estate project;

(iii) the term "Real Estate Project (REP)" shall have the same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(iv) the term "Residential Real Estate Project (RREP)" shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP;

(v) the term "promoter" shall have the same meaning as assigned to it in in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(vi) "Residential apartment" shall mean an apartment intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority;

(vii) "Commercial apartment" shall mean an apartment other than a residential apartment;

(viii) the term "competent authority as mentioned in definition of "residential apartment", means the local authority or any authority created or established under any law for the time being in force by the Central Government or State Government or Union Territory Government, which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;

(ix) the term "Real Estate Regulatory Authority" shall mean the Authority established under sub- section (1) of section 20 (1) of the Real Estate (Regulation and Development) Act, 2016 (No.16 of 2016) by the Central Government or State Government;

(x) the term "carpet area" shall have the same meaning assigned to it in in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);

(xi) an apartment booked on or before the date of issuance of completion certificate or first occupation of the project shall mean an apartment which meets all the following three conditions, namely-

(a) part of supply of construction of the apartment service has time of supply on or before the said date; and

(b) consideration equal to at least one installment has been credited to the bank account of the registered person on or before the said date; and

(c) an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the said date.

(xii) The term "ongoing project" shall have the same meaning as assigned to it in notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended;

(xiii) The term "project which commences on or after 1st April, 2019" shall have the same meaning as assigned to it in notification No. 11/2017- Central Tax (Rate),dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended;

Explanation 3:- *For the purpose of rule 42 and this rule, the value of activities or transactions mentioned in sub-paragraph (a) of paragraph 8 of Schedule III of the Act which is required to be included in the value of exempt supplies under clause (b) of the Explanation to sub-section (3) of section 17 of the Act shall be the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers.*

So, as narrated above, Rule 43 provides methodology for apportionment of ITC on capital goods and reversal of ineligible credit.

w.e.f.1-4-2020, it is clarified that useful life of any capital goods shall be considered as 5 years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods.

To work out ITC on capital goods commonly used for taxable as well as exempted supplies, following steps are to be undertaken:

Step 1: Determination of Common Credit 'Tc' on Capital goods

- i. workout the amount of ITC on capital goods used /intended to be used exclusively for **non-business** purpose or for effecting **exempt supplies** shall be indicated in Form GSTR 3B and **shall not be credited to electronic credit ledger** of tax payer.
- ii. Identify the amount of ITC on capital goods used /intended to be used exclusively for taxable supplies and including zero rated supplies indicated in GSTR 3B and **shall be credited to Electronic Credit Ledger**.
- iii. Identify the amount of ITC on Capital goods not covered under (i) and (ii) and denote the same as 'A'. Such amount, as reflected on the invoice, will be credited to Electronic Credit Ledger. The useful life of such capital goods will be taken as five years from the date of Invoice.

In case capital goods use changes from exclusive use for non-business purpose/exempt supplies to common use: Where capital goods which were initially covered under (i) above gets subsequently covered under (iii), ITC in respect of the same, denoted as 'A' in the Electronic Credit ledger.

Also, compute the **ineligible credit** attributable to the period during which such capital goods were used for **non-business purpose/making exempt** supplies @ 5% per quarter or part thereof and denote the same as 'T ie' Add such 'T ie' to the output tax liability of the tax period in which credit on such capital goods is claimed.

- iv. Add the amount of 'A' credited to Electronic credit Ledger in respect of common capital goods whose useful life remains during the tax period to arrive at common credit 'Tc'

Similarly, in case capital goods are changed from exclusive use for taxable including zero rated supplies to common use: where capital goods which are initially covered under (ii) above gets subsequently covered under (iii), add ITC claimed in respect of aggregate value of 'Tc'.

- v. **Step 2: Determination of Common credits for the useful life of capital goods for a tax period', 'Tm':**

$$T_m = T_c/60$$

- vi. **Step 3: Apportionment of Common credit attributable to exempt supplies, 'Te':**

$$T_e = (E/F) \times T_r$$

where,

'E' is the aggregate value of exempt supplies made during the tax period, and

'F' is the total turnover in the State of the registered person during the tax period.

- vii. **Step 4: Ineligible Credit**

Add 'Te' to the output tax liability along with applicable interest during every tax period of the useful life of the capital goods considered.

Exempted supply for the purpose of Rule 42 and Rule 43

<u>Includes</u>	<u>Excludes</u>
i) output supplies on which recipient is liable to pay tax under RCM	i) Activities specified in schedule III (except sale of land & building and w.e.f. 1 st October 2023 supply of warehoused goods to any person before clearance for home consumption)
ii) Transaction in securities (value of supply can be taken as 1% of sale value of such securities)	ii) Interest earned on deposits, loans and advances (except banks/NBFCs)
iii) Sale of land (Value shall be taken as same as adopted for the purpose of paying stamp duty) value shall be taken as same as adopted for the purpose of paying stamp duty	iii) Supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.
iv) Sale of building value shall be taken as same as adopted for the purpose of paying stamp duty (except construction of complex where supply is made before obtaining completion certificate)	iv) Excise Duty, Sales tax
v) Nil rate of supply	v) Nil rate of supply
vi) Non taxable supply	vi) Value of supply of duty credit scrips like MEIS, RoDTEP's, SEIS & EPCG (NT No. 14/2022 CT Dt 5 th July 2022

(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 subsection (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.

Rule 38: Claim of credit by a banking company or a financial institution.-

A banking company or a financial institution, including a non-banking financial company, engaged in the supply of services by way of accepting deposits or extending loans or advances that chooses not to comply with the provisions of sub-section (2) of section 17, in accordance with the option permitted under sub-section (4) of that section, shall follow the following procedure, namely, -

- (a) the said company or institution shall not avail the credit of, -
 - (i) the tax paid on inputs and input services that are used for non-business purposes; and
 - (ii) the credit attributable to the supplies specified in sub-section (5) of section 17 ;
- (b) the said company or institution shall avail the credit of tax paid on inputs and input services referred to in the second proviso to sub-section (4) of section 17 and not covered under clause (a);
- (c) fifty per cent. of the remaining amount of input tax shall be the input tax credit admissible to the company or the institution and the balance amount of input tax credit shall be reversed in **FORM GSTR-3B**.

Example:

Bank of Punjab Ltd., has availed ITC of ₹35,00,000/- lakhs in the month of May 2024. Out of said total ITC, ITC for ₹15,00,000/- pertains to non-GST purpose and ₹7,00,000/- pertains to credit availed from other branches of the under 2nd proviso of Sec 17(4). Rs. 2,00,000/- ITC was for staff welfare service consumed during the month. Find the total eligible ITC available to the bank.

Solution:

AS per the provisions of the law Banking, FIS and NBFC have two options as under:

- avail ITC as per section 17(2)
- avail ITC as per section 17(4)

In above example Bank has opted for 2nd option i.e section 17(4) i.e 50% of eligible ITC for the month.

Particulars	ITC Amount in ₹	Remarks
ITC attributable to non-business purpose Rs. 5.00 lakh	Nil	ITC not allowed
ITC from its other branches/offices	₹7,00,000	ITC fully allowed
ITC related with staff welfare services	₹2,00,000	Blocked Credit u/s 17(5)
Other ITC	₹5,50,000	(35,00,000–7,00,000)- 15,00,000-2,00,000 = (11,00,000*50%)
Total eligible ITC allowed	₹12,50,000	

Blocked credits:

(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 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; or*

(aa) 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 in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

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 (aa) 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 , vessels or aircraft insured by him.

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

(i) 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 (aa) 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;

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

(iii) 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 the same to its employees under any law for the time being in force.]*

(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;

(fa) goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013;

(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 section 74 in respect of any period up to Financial Year 2023-24

(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.

Case Study 1:

M/s ABC Ltd a registered person under GST law having business of sales/purchase of Cars and purchased Ten cars for ₹ 45 lakhs plus 28% IGST plus Cess @ 15%. M/s ABC Ltd sold eight cars for ₹ 55 lakhs plus 28% GST.

i) GST Liability if M/s ABC Ltd is a dealer of motor vehicles:

Value of 08 cars sold	=	₹ 55.00 lakh
GST on supply of 08 cars = ₹ 55 lakhs x 28%	=	₹ 15.40 Lakh
Cess @15% = ₹ 55 lakh @15%	=	₹ 8.25 lakh
Total GST Liability (CGST @14%+SGST@14%)	=	Rs 15.40 lakh
Less: ITC available (₹ 45 lakhs x 28%)	=	₹ 12.60 lakhs
Net GST to be paid in cash	=	₹ 2.80 lakh

Similarly, Cess for Rs. 1.50 lakh (Rs 8.25-Rs. 6.75) shall be paid in cash.

ii) GST Liability if M/s ABC Ltd is not a dealer of motor vehicles and is a manufacturing company who has purchased cars for own business purposes:

Purchase value of ten cars	=	₹ 45.00 lakh.
GST paid on purchase of cars (₹ 45 lakhs x 28%)	=	₹ 12.60 Lakhs
Cess Paid	=	₹ 6.75 lakh

ITC available (₹ 45 lakhs x 28%) = ₹ 12.60 lakhs **(But Not Allowed u/s 17(5))**

Net GST Liability = NIL

Net Cess liability = NIL

*In this case Company can capitalised such vehicles as assets inclusive of taxes and cess paid and can claim depreciation of full value.

Case Study 2:

Yash Handlooms in Himachal Pradesh sells beautifully painted vases (taxable under GST) and handmade cotton rugs (exempt from GST). They pay GST on their office rent, which is used for both the products of their business. If sales of vases is ₹ 30,00,000/- and sale of cotton rugs is ₹ 2,00,000/-, how do they determine the amount of Input Tax Credit (ITC) they can claim on the office rent assuming GST paid on electricity was ₹ 80,000/- ?

Taxable turnover of Yash Handlooms in proportion to total turnover is:

- Taxable Turnover (Vases): ₹ 30,00,000
- Exempt Turnover (Cotton Rugs): ₹ 2,00,000
- **Total Turnover** : ₹ 30,00,000 + ₹ 2,00,000 = ₹ 32,00,000

The percentage of taxable turnover is $(₹ 30,00,000 / ₹ 32,00,000) * 100 = 93.75\%$.

Therefore, Yash Handlooms can claim 93.75% of the GST paid on their office rent as

ITC. The ITC they can claim would be 93.75% of ₹ 80,000, ie ₹ 75,000. The remaining GST (₹ 80,000 - ₹ 75,000 = ₹ 5,000) is not eligible for ITC as it relates to their exempt supplies of cotton rugs.

Case Study 3:

M/s Rajhans Pvt Ltd being registered person under GST availed works contract service for repair of office building. Amount of repair for Rs. 5.00 lakh is debited in the profit and loss account. Comment and availed ITC for GST paid on said services @12%?

The GST paid on works contract for carrying out repair of factory building/ office building shall be available for ITC to the extent to which the said expense is not capitalized to the immovable property as per section 16(1), but subject to provision under section 17(5)

In this case M/s Rajhans Pvt Ltd is eligible to avail ITC.

Case Study 4

Prabhat Lt. purchases a vehicle for ₹ 24,00,000/- and pays GST of ₹ 6,72,000/-. What will be the total cost considered for depreciation, if the Input Tax Credit (ITC) on this vehicle is blocked?

Input Tax Credit (ITC) on the vehicle is blocked, u/s 17(5)(a) hence, ITC cannot be claimed. In that case, the GST amount is added to the cost of the asset for the purpose of depreciation. On other way GST paid shall be capitalized in books of accounts.

Therefore, the total cost considered for depreciation will be:

$$₹ 24,00,000 \text{ (Purchase Price)} + ₹ 6,72,000 \text{ (GST)} = ₹ 30,72,000/-$$

Frequently Asked Questions (FAQ):

1. **DHL courier purchased vehicles (ie. two wheelers) for ₹20 lakhs plus GST @28% for transport of goods. Whether ITC is allowed on two wheelers?**

No. Since two wheelers cannot be registered as goods transport vehicles under Motor Vehicles Act. **As per Section 17(5)(b), ITC not allowed.**

2. **Fluffy Ltd., a manufacturing company in Rajasthan area, incurs expenses on providing meals and refreshments to its employees at the factory premises. Per meal cost to the company is Rs. 100/- plus GST @5%. Annual budget is around Rs. 500.00 lakh. Is Fluffy Ltd. eligible to claim ITC on said input services consumed?**

No. Fluffy Ltd. will not be able to claim the ITC on the said expense as are covered u/s 17(5)(b)(1) as blocked credits.

3. **How does the GST law mandate banks and NBFC to avail ITC for providing both taxable as well as exempt services under banking operations?**

Banks can choose either of two methods as under:

- to claim ITC to the extent attributable to taxable supplies including “zero rated supplies” or
- avail every month 50% of the eligible ITC on inputs, input services and capital goods purchased. **(Refer Section 17(4))**

4. **Candy Cotton Ltd. in Haryana has a stock of ₹ 40,000/- of raw cotton in their one of the stores and availed ITC of ₹ 7,200/-. One day due to fire in said store ₹ 10,000/- worth of cotton was ruined for which insurance claim was filed. Does Candy Cotton Ltd. need to reverse sum of the ₹ 7,200/- ITC availed ?**

Yes, Candy Cotton needs to reverse part of the ITC availed. Because ₹ 10,000 worth of cotton was ruined, they can't claim ITC on that stock. The ITC on damaged cotton will be required to be reversed as ITC is blocked on destroyed goods.

Availability of Input Tax Credit (ITC) in special circumstances

5.1 Input Tax Credit (ITC) in special circumstances:

Section 18 of CGST Act, 2017 deals with some of the special cases to avail the ITC. Such cases are important as the same do not occur on daily basis in normal business practices and need special treatment. Such cases are listed as under:

- A person who is in business or any commercial activity where GST is applicable and 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 (ITC)** 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;

For example: If M/s RamLal Sham Lal a proprietary firm having business of manufacturing of yarn/textile items in Ludhiana and it's sales on 30.09.2024 crosses the threshold limit of Rs. 20.00 lakh, applied for GST registration on 15.10.2024, then they are entitled to avail ITC on the stock held on 29.09.2024.

- If any person who takes registration voluntarily (sub-section (3) of section 25) whose sale turnover in a year is less than threshold limit of Rs. 20.00 lakh, 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.
- where any registered person opted or ceases to pay tax under section 10 as composite dealer, 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 as a regular tax payer,
- 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 relating 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,

Explanation: *If during business of goods or services rendered which were exempted under GST, comes under the net of GST and supplier is supposed to charged tax on such goods or services after the notification is issued by the government from a particular date, he will charge tax accordingly and shall be entitled for ITC on the stock held one day before the date from where he started charging tax in invoices.*

(For all above said cases rule 40 and rule 44 may also be referred for other compliances such as declaration of stock held in stocks, reduction of ITC availed in case of Capital goods by five percentage per quarter or in other cases along with conditions specified.)

- 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.

For Example: If ABC Pvt Ltd company merged with XYZ Ltd on 15.09.2024 as per the provisions of the laws, then ABC Pvt Ltd is entitled to transfer any unutilised ITC lying in its records to XYZ Ltd.,

{Also refer Rule 40 & 41 of CGST Act, 2017 for above said provisions}

5.2 Availability of ITC if Inputs or Capital Goods sent for Job work:

For the convenience of the industry and trade, Section 19 of CGST Act, 2017 has laid down the provisions to send inputs and capital goods for job work purposes and the principle can avail the benefits of ITC of GST taxes paid on their procurement. It helps to reduce the logistics cost and time of industry which has ultimate impact on overall efficiency of the economy of the country. As per law the principle of taxable person can send his inputs or capital goods for job work, subject to certain terms and conditions, directly from his buyer, railway yards, transport area, ports and from any other place from where he procured/received such inputs or capital goods directly to job worker, if needed, without bringing such inputs or capital goods first to his place of businesses. He will be eligible for ITC for such inputs or capital goods sent for job work though not physical received by him at his business premises subject to conditions laid down under law.

Example: *Tatabirla Pvt Ltd, from Ludhiana purchased 1000 MT channel steel on 01.07.2024 from SAIL Jamshedpur for Rs. 500.00 lakh and paid GST @5%. Before received said consignment at Ludhiana, on 30.09.2024, Tatabirla Pvt Ltd., need to get some specified job work as per the drawings provided by foreign buyer. For said job work the said consignment*

was sent to Railsteel Ltd., Rajkot (Gujarat) directly from SAIL Jamshedpur, as job worker has specialization in said jobs.

In said case, Tatabirla Ludhiana may subject to conditions as laid down u/s 16 and section 19 of CGST Act, 2017 may avail and utilize ITC of Rs. 25.00 lakh for GST paid for said consignment during the month of July, 2024.

Further, for procedural compliance and other conditions Rule 45 of CGST rules 2017 along with master **Circular No.38/12/2018 dt 26.03.2018** may also be referred).

{Refer Rule 45 of CGST Rules 2017}

5.3 Reversal of ITC in specific cases:

Section 18(6) talked about cases where ITC need to be reversed on capital goods if sold out after their use. As per the provisions of law:

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.

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. _Rule 44(1)(b)

Illustration:

Capital goods have been in use for 3 years, 9 month and 15 days.

The useful remaining life in months= 15 months ignoring a part of the month

Further rule 44(6) says, 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) of rule 44, 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.

{Also Refer Rule 44 of CGST Rules 2017}

5.4 Case Study:

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(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.

Illustration:

Capital goods have been in use for 4 years, 6 month and 15 days.

The useful remaining life in months= 5 months ignoring a part of the month

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**.*

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. 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 indicated that there is some issue with respective rules or the methods adopted which is a cause of concern and may lead to litigation unnecessary.

Important Circulars

6.0 Important Circulars:

Circular No. 72/46/2018-GST

**F. No. CBEC/20/16/04/2018-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing**

New Delhi, Dated the 26th October, 2018

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/
Commissioners of Central Tax (All)

The Principal Directors General/Directors General (All)

Madam/Sir,

Subject: Circular to clarify the procedure in respect of return of time expired drugs or medicines - Reg.

Various representations have been received seeking clarification on the procedure to be followed in respect of return of time expired drugs or medicines under the GST laws. The issues raised in the said representations have been examined and to ensure uniformity in the implementation of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "CGST Act") hereby clarifies the issue in succeeding paragraphs.

2. The common trade practice in the pharmaceutical sector is that the drugs or medicines (hereinafter referred to as "goods") are sold by the manufacturer to the wholesaler and by the wholesaler to the retailer on the basis of an invoice/bill of supply as case may be. It is significant to mention here that such goods have a defined life term which is normally referred to as the date of expiry. Such goods which have crossed their date of expiry are colloquially referred to as time expired goods and are returned back to the manufacturer, on account of expiry, through the supply chain.

3. It is clarified that the retailer/ wholesaler can follow either of the below mentioned procedures for the return of the time expired goods:

Circular No. 72/46/2018-GST**(A) Return of time expired goods to be treated as fresh supply:**

- a) In case the person returning the time expired goods is a registered person (other than a composition taxpayer), he may, at his option, return the said goods by treating it as a fresh supply and thereby issuing an invoice for the same (hereinafter referred to as the, “return supply”). The value of the said goods as shown in the invoice on the basis of which the goods were supplied earlier may be taken as the value of such return supply. The wholesaler or manufacturer, as the case may be, who is the recipient of such return supply, shall be eligible to avail Input Tax Credit (hereinafter referred to as “ITC”) of the tax levied on the said return supply subject to the fulfilment of the conditions specified in Section 16 of the CGST Act.
- b) In case the person returning the time expired goods is a composition taxpayer, he may return the said goods by issuing a bill of supply and pay tax at the rate applicable to a composition taxpayer. In this scenario there will not be any availability of ITC to the recipient of return supply.
- c) In case the person returning the time expired goods is an unregistered person, he may return the said goods by issuing any commercial document without charging any tax on the same.
- d) Where the time expired goods which have been returned by the retailer/wholesaler are destroyed by the manufacturer, he/she is required to reverse the ITC availed on the return supply in terms of the provisions of clause (h) of sub-section (5) of section 17 of the CGST Act. It is pertinent to mention here that the ITC which is required to be reversed in such scenario is the ITC availed on the return supply and not the ITC that is attributable to the manufacture of such time expired goods.

***Illustration:** Supposedly, manufacturer has availed ITC of Rs. 10/- at the time of manufacture of medicines valued at Rs. 100/-. At the time of return of such medicine on the account of expiry, the ITC available to the manufacturer on the basis of fresh invoice issued by wholesaler is Rs. 15/-. So, when the time expired goods are destroyed by the manufacturer he would be required to reverse ITC of Rs. 15/- and not of Rs. 10/-.*

(B) Return of time expired goods by issuing Credit Note:

- a) As per sub-section (1) of Section 34 of the CGST Act the supplier can issue a credit note where the goods are returned back by the recipient. Thus, the manufacturer or the wholesaler who has supplied the goods to the wholesaler or retailer, as the case may be, has the option to issue a credit note in relation to the time expired goods returned by the wholesaler or retailer,

Circular No. 72/46/2018-GST

as the case may be. In such a scenario, the retailer or wholesaler may return the time expired goods by issuing a delivery challan. It may be noted that there is no time limit for the issuance of a credit note in the law except with regard to the adjustment of the tax liability in case of the credit notes issued prior to the month of September following the end of the financial year and those issued after it.

b) It may further be noted that if the credit note is issued within the time limit specified in sub-section (2) of section 34 of the CGST Act, the tax liability may be adjusted by the supplier, subject to the condition that the person returning the time expired goods has either not availed the ITC or if availed has reversed the ITC so availed against the goods being returned.

c) However, if the time limit specified in sub-section (2) of section 34 of the CGST Act has lapsed, a credit note may still be issued by the supplier for such return of goods but the tax liability cannot be adjusted by him in his hands. It may further be noted that in case time expired goods are returned beyond the time period specified in the sub-section (2) of section 34 of the CGST Act and a credit note is issued consequently, there is no requirement to declare such credit note on the common portal by the supplier (i.e. by the person who has issued the credit note) as tax liability cannot be adjusted in this case.

d) Further, where the time expired goods, which have been returned by the retailer/wholesaler, are destroyed by the manufacturer, he/she is required to reverse the ITC attributable to the manufacture of such goods, in terms of the provisions of clause (h) of sub-section (5) of section 17 of the CGST Act. This has been illustrated in table below:

	Date of Supply of goods from manufacturer/ wholesaler to wholesaler/ retailer	Date of return of time expired goods from retailer / wholesaler to wholesaler / manufacturer	Treatment in terms of tax liability & credit note
Case 1	1 st July, 2017	20 th September, 2018	Credit note will be issued by the supplier (manufacturer / wholesaler) and the same to be uploaded by him on the common portal.

Circular No. 72/46/2018-GST

			Subsequently, tax liability can be adjusted by such supplier provided the recipient (wholesaler / retailer) has either not availed the ITC or if availed has reversed the ITC.
Case 2	1 st July, 2017	20 th October, 2018	Credit note will be issued by the supplier (manufacturer / wholesaler) but there is no requirement to upload the same on the common portal. Subsequently tax liability cannot be adjusted by such supplier.

3. It may be noted that though this circular discusses the scenarios in relation to return of goods on account of expiry of the same, it may be applicable to such other scenarios where the goods are returned on account of reasons other than the one detailed above.

4. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

5. Difficulty if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Upender Gupta)
Commissioner (GST)



Circular No. 183/15/2022-GST

F. No. CBIC-20001/2/2022 - GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 27th December, 2022

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/
Commissioners of Central Tax (All)/
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19 – reg.

Section 16 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”) provides for eligibility and conditions for availing Input Tax Credit (ITC). During the initial period of implementation of GST, during the **financial years 2017-18 and 2018-19**, in many cases, the suppliers have failed to furnish the correct details of outward supplies in their FORM GSTR-1, which has led to certain deficiencies or discrepancies in FORM GSTR-2A of their recipients. However, the concerned recipients may have availed input tax credit on the said supplies in their returns in FORM GSTR-3B. The discrepancies between the amount of ITC availed by the registered persons in their returns in FORM GSTR-3B and the amount as available in their FORM GSTR-2A are being noticed by the tax officers during proceedings such as scrutiny/ audit/ investigation etc. due to such credit not flowing to FORM GSTR-2A of the said registered persons. Such discrepancies are considered by the tax officers as representing ineligible ITC availed by the registered persons, and are being flagged seeking explanation from the registered persons for such discrepancies and/or for reversal of such ineligible ITC.

2. It is mentioned that FORM GSTR-2A could not be made available to the taxpayers on the common portal during the initial stages of implementation of GST. Further, restrictions regarding availment of ITC by the registered persons upto certain specified limit beyond the

ITC available as per FORM GSTR-2A were provided under rule 36(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “CGST Rules”) only with effect from 9th October 2019. However, the availability of ITC was subjected to restrictions and conditions specified in Section 16 of CGST Act from 1st July, 2017 itself. In view of this, various representations have been received from the trade as well as the tax authorities, seeking clarification regarding the manner of dealing with such discrepancies between the amount of ITC availed by the registered persons in their FORM GSTR-3B and the amount as available in their FORM GSTR-2A during **FY 2017-18 and FY 2018-19**.

3. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, hereby clarifies as follows:

S. No.	Scenario	Clarification
a.	Where the supplier has failed to file FORM GSTR-1 for a tax period but has filed the return in FORM GSTR-3B for said tax period, due to which the supplies made in the said tax period do not get reflected in FORM GSTR-2A of the recipients.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.
b.	Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but has failed to report a particular supply in FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the recipient.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.
c.	Where supplies were made to a registered person and invoice is issued as per Rule 46 of CGST Rules containing GSTIN of the recipient, but supplier has wrongly reported the said supply as B2C	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.

S. No.	Scenario	Clarification
	supply, instead of B2B supply, in his FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the said registered person.	
d.	Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has declared the supply with wrong GSTIN of the recipient in FORM GSTR-1.	<p>In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.</p> <p>In addition, the proper officer of the actual recipient shall intimate the concerned jurisdictional tax authority of the registered person, whose GSTIN has been mentioned wrongly, that ITC on those transactions is required to be disallowed, if claimed by such recipients in their FORM GSTR-3B. However, allowance of ITC to the actual recipient shall not depend on the completion of the action by the tax authority of such registered person, whose GSTIN has been mentioned wrongly, and such action will be pursued as an independent action.</p>

4. The proper officer shall first seek the details from the registered person regarding all the invoices on which ITC has been availed by the registered person in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A. He shall then ascertain fulfillment of the following conditions of Section 16 of CGST Act in respect of the input tax credit availed on such invoices by the said registered person:

- i) that he is in possession of a tax invoice or debit note issued by the supplier or such other tax paying documents;
- ii) that he has received the goods or services or both;
- iii) that he has made payment for the amount towards the value of supply, along with tax payable thereon, to the supplier.

Besides, the proper officer shall also check whether any reversal of input tax credit is required to be made in accordance with section 17 or section 18 of CGST Act and also whether the said input tax credit has been availed within the time period specified under sub-section (4) of section 16 of CGST Act.

4.1 In order to verify the condition of clause (c) of sub-section (2) of Section 16 of CGST Act that tax on the said supply has been paid by the supplier, the following action may be taken by the proper officer:

4.1.1 In case, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year exceeds Rs 5 lakh, the proper officer shall ask the registered person to produce a certificate for the concerned supplier from the Chartered Accountant (CA) or the Cost Accountant (CMA), certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. Certificate issued by CA or CMA shall contain UDIN. UDIN of the certificate issued by CAs can be verified from ICAI website <https://udin.icaai.org/search-udin> and that issued by CMAs can be verified from ICAI website <https://icmai.in/udin/VerifyUDIN.aspx>.

4.1.2 In cases, where difference between the ITC claimed in FORM GSTR-3B and that available in FORM GSTR 2A of the registered person in respect of a supplier for the said financial year is upto Rs 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

4.2 However, it may be noted that for the period FY 2017-18, as per proviso to section 16(4) of CGST Act, the aforesaid relaxations shall not be applicable to the claim of ITC made in the FORM GSTR-3B return filed after the due date of furnishing return for the month of September, 2018 till the due date of furnishing return for March, 2019, if supplier had not furnished details of the said supply in his FORM GSTR-1 till the due date of furnishing FORM GSTR 1 for the month of March, 2019.

5. It may also be noted that the clarifications given hereunder are case specific and are applicable to the *bonafide* errors committed in reporting during FY 2017-18 and 2018-19. Further, these guidelines are clarificatory in nature and may be applied as per the actual



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facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.

6. These instructions will apply only to the ongoing proceedings in scrutiny/audit/investigation, etc. for FY 2017-18 and 2018-19 and not to the completed proceedings. However, these instructions will apply in those cases for FY 2017-18 and 2018-19 where any adjudication or appeal proceedings are still pending.

7. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

Sanjay Mangal
Principal Commissioner (GST)



Circular No. 193/05/2023-GST

File No. CBIC-20001/5/2023-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 17th July, 2023

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/
Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period 01.04.2019 to 31.12.2021.

Attention is invited to Circular No. 183/15/2022-GST dated 27th December, 2022, vide which clarification was issued for dealing with the difference in Input Tax Credit (ITC) availed in **FORM GSTR-3B** as compared to that detailed in **FORM GSTR-2A** for FY 2017-18 and 2018-19, subject to certain terms and conditions.

2. Even though the availability of ITC was subjected to restrictions and conditions specified in Section 16 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") from 1st July, 2017 itself, restrictions regarding availment of ITC by the registered persons up to certain specified limit beyond the ITC available as per **FORM GSTR-2A** were provided under rule 36(4) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") only with effect from 9th October 2019. W.e.f. 09.10.2019, the said rule allowed availment of Input tax credit by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in **FORM GSTR-1** or using the invoice furnishing facility (IFF), to the extent not exceeding 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 of CGST Act in **FORM GSTR-1** or using the IFF. The said limit was brought down to 10% w.e.f. 01.01.2020 and further reduced to 5% w.e.f. 01.01.2021. The said rule was intended to allow availment of due credit in cases where the suppliers may have delayed in furnishing the details of outward supplies. Further, w.e.f. 01.01.2022, consequent to insertion of clause (aa) to sub-section (2) of section 16 of the CGST Act, ITC can be availed only up to the extent communicated in **FORM GSTR-2B**.

3.1 As discussed above, rule 36(4) of CGST Rules allowed additional credit to the tune of 20%, 10% and 5%, as the case may be, during the period from 09.10.2019 to 31.12.2019,

01.01.2020 to 31.12.2020 and 01.01.2021 to 31.12.2021 respectively, subject to certain terms and conditions, in respect of invoices/supplies that were not reported by the concerned suppliers in their **FORM GSTR-1** or IFF, leading to discrepancies between the amount of ITC availed by the registered persons in their returns in **FORM GSTR-3B** and the amount as available in their **FORM GSTR-2A**. It may, however, be noted that such availment of input tax credit was subject to the provisions of clause (c) of sub-section (2) of section 16 of the CGST Act which provides that ITC cannot be availed unless tax on the said supply has been paid by the supplier. In this context, it is mentioned that rule 36(4) of CGST Rules was a facilitative measure and availment of ITC in accordance with rule 36(4) was subject to fulfilment of conditions of section 16 of CGST Act including those of clause (c) of sub-section (2) thereof regarding payment of tax by the supplier on the said supply.

3.2. Though the matter of dealing with difference in Input Tax Credit (ITC) availed in **FORM GSTR-3B** as compared to that detailed in **FORM GSTR-2A** has been clarified for FY 2017-18 and 2018-19 vide Circular No. 183/15/2022-GST dated 27th December, 2022, various representations have been received seeking clarification regarding the manner of dealing with such discrepancies between the amount of ITC availed by the registered persons in their **FORM GSTR-3B** and the amount as available in their **FORM GSTR-2A** during the period from 01.04.2019 to 31.12.2021.

4. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, hereby clarifies as follows:

(i) Since rule 36(4) came into effect from 09.10.2019 only, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable, *in toto*, for the period from **01.04.2019 to 08.10.2019**.

(ii) In respect of period from **09.10.2019 to 31.12.2019**, rule 36(4) of CGST Rules permitted availment of Input tax credit by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in **FORM GSTR-1** or using IFF to the extent not exceeding 20 per cent. of the eligible credit available in respect of invoices or debit notes, the details of which have been furnished by the suppliers under sub-section (1) of section 37 in **FORM GSTR-1** or using IFF. Accordingly, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable for verification of the condition of clause (c) of sub-section (2) of Section 16 of CGST Act for the said period, subject to the condition that availment of Input tax credit by the registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in **FORM GSTR-1** or using IFF shall not exceed 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in **FORM GSTR-1** or using IFF. This is clarified through an illustration below:

Illustration:

Consider a case where the total amount of ITC available as per **FORM GSTR-2A** of the registered person was Rs. 3,00,000, whereas, the amount of ITC availed in **FORM GSTR-**

3B by the said registered person during the corresponding tax period was Rs. 5,00,000. However, as per rule 36(4) of CGST Rules as applicable during the said period, the said registered person was not allowed to avail ITC in excess of an amount of Rs 3,00,000*1.2 = Rs.3,60,000.

In the above case, the ITC of Rs 1,40,000 which has been availed in excess of Rs. 3,60,000 shall not be admissible as per rule 36(4) of CGST Rules as applicable during the said period even if the requisite certificate as prescribed in Circular No. 183/15/2022-GST dated 27.12.2022 is submitted by the registered person. Therefore, ITC availed in **FORM GSTR-3B** in excess of that available in **FORM GSTR-2A** up to an amount of Rs 60,000 only (i.e. 3,60,000-3,00,000) can be allowed subject to production of the requisite certificates as per Circular No. 183/15/2022-GST dated 27.12.2022.

(iii) Similarly, for the period from **01.01.2020 to 31.12.2020**, when rule 36(4) of CGST Rules allowed additional credit to the tune of 10% in excess of the that reported by the suppliers in their **FORM GSTR-1** or IFF, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable, for verification of the condition of clause (c) of sub-section (2) of Section 16 of CGST Act for the said period, subject to the condition that availment of Input tax credit by the registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in **FORM GSTR-1** or using the IFF shall not exceed 10 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in **FORM GSTR-1** or using the IFF.

(iv) Further, for the period from **01.01.2021 to 31.12.2021**, when rule 36(4) of CGST Rules allowed additional credit to the tune of 5% in excess of that reported by the suppliers in their **FORM GSTR-1** or IFF, the guidelines provided by Circular No. 183/15/2022-GST dated 27th December, 2022 shall be applicable, for verification of the condition of clause (c) of sub-section (2) of Section 16 of CGST Act for the said period, subject to the condition that availment of Input tax credit by the registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in **FORM GSTR-1** or using the IFF shall not exceed 5 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in **FORM GSTR-1** or using the IFF.

5. It is further clarified that consequent to insertion of clause (aa) to sub-section (2) of section 16 of the CGST Act and amendment of rule 36(4) of CGST Rules w.e.f. 01.01.2022, no ITC shall be allowed for the period 01.01.2022 onwards in respect of a supply unless the same is reported by his suppliers in their **FORM GSTR-1** or using IFF and is communicated to the said registered person in **FORM GSTR-2B**.

6. Further, it may be noted that proviso to rule 36(4) of CGST Rules was inserted vide Notification No. 30/2020-CT dated 03.04.2020 to provide that the condition of rule 36(4) shall be applicable cumulatively for the period February to August, 2020 and ITC shall be adjusted on cumulative basis for the said months in the return for the tax period of September 2020. Similarly, second proviso to rule 36(4) of CGST Rules was substituted vide Notification No. 27/2021-CT dated 01.06.2021 to provide that the condition of rule 36(4) shall be applicable



cumulatively for the period April to June, 2021 and ITC shall be adjusted on cumulative basis for the said months in the return for the tax period of June 2021. The same may be taken into consideration while determining the amount of ITC eligibility for the said tax periods.

7. It may also be noted that these guidelines are clarificatory in nature and may be applied as per the actual facts and circumstances of each case and shall not be used in the interpretation of the provisions of law.

8. These instructions will apply only to the ongoing proceedings in scrutiny/ audit/ investigation, etc. for the period 01.04.2019 to 31.12.2021 and not to the completed proceedings. However, these instructions will apply in those cases during the period 01.04.2019 to 31.12.2021 where any adjudication or appeal proceedings are still pending.

9. Difficulty, if any, in the implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

Sanjay Mangal

Principal Commissioner (GST)



Circular No. 195/07/2023-GST

F. No. CBIC-20001/5/2023-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the 17th July, 2023

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/
 Commissioners of Central Tax (All)
 The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period.

Representations have been received from trade and industry that as a common trade practice, the original equipment manufacturers /suppliers offer warranty for the goods / services supplied by them. During the warranty period, replacement goods /services are supplied to customers free of charge and as such no separate consideration is charged and received at the time of replacement. It has been represented that suitable clarification may be issued in the matter as unnecessary litigation is being caused due to contrary interpretations by the investigation wings and field formations in respect of GST liability as well as liability to reverse ITC against such supplies of replacement of parts and repair services during the warranty period without any consideration from the customers.

2. The matter has been examined. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act), hereby clarifies as follows:

S. No.	Issue	Clarification
1.	There are cases where the original equipment manufacturer offers warranty for the goods supplied by him to the customer and provides replacement of parts and/ or repair services to the customer during the warranty	The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and / or repair services to be incurred during the warranty period, on which tax would have already been paid at the time of original supply of goods.

	<p>period, without separately charging any consideration at the time of such replacement/ repair services.</p> <p>Whether GST would be payable on such replacement of parts or supply of repair services, without any consideration from the customer, as part of warranty?</p>	<p>As such, where the manufacturer provides replacement of parts and/ or repair services to the customer during the warranty period, without separately charging any consideration at the time of such replacement/ repair services, no further GST is chargeable on such replacement of parts and/ or repair service during warranty period.</p> <p>However, if any additional consideration is charged by the manufacturer from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.</p>
2.	<p>Whether in such cases, the manufacturer is required to reverse the input tax credit in respect of such replacement of parts or supply of repair services as part of warranty, in respect of which no additional consideration is charged from the customer?</p>	<p>In such cases, the value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of parts and/ or repair services to be incurred during the warranty period.</p> <p>Therefore, these supplies cannot be considered as exempt supply and accordingly, the manufacturer, who provides replacement of parts and/ or repair services to the customer during the warranty period, is not required to reverse the input tax credit in respect of the said replacement parts or on the repair services provided.</p>
3.	<p>Whether GST would be payable on replacement of parts and/ or repair services provided by a distributor without any consideration from the customer, as part of warranty on behalf of the manufacturer?</p>	<p>There may be instances where a distributor of a company provides replacement of parts and/ or repair services to the customer as part of warranty on behalf of the manufacturer and no separate consideration is charged by such distributor in respect of the said replacement and/ or repair services from the customer.</p> <p>In such cases, as no consideration is being charged by the distributor from the customer, no GST would be payable by the distributor on the said activity of providing replacement of parts and/ or repair services to the customer.</p> <p>However, if any additional consideration is charged by the distributor from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.</p>
4.	<p>In the above scenario where the distributor provides</p>	<p>(a) There may be cases where the distributor replaces the part(s) to the customer under warranty</p>

	<p>replacement of parts to the customer as part of warranty on behalf of the manufacturer, whether any supply is involved between the distributor and the manufacturer and whether the distributor would be required to reverse the input tax credit in respect of such replacement of parts?</p>	<p>either by using his stock or by purchasing from a third party and charges the consideration for the part(s) so replaced from the manufacturer, by issuance of a tax invoice, for the said supply made by him to the manufacturer. In such a case, GST would be payable by the distributor on the said supply by him to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of CGST Act. In such case, no reversal of input tax credit by the distributor is required in respect of the same.</p> <p>(b) There may be cases where the distributor raises a requisition to the manufacturer for the part(s) to be replaced by him under warranty and the manufacturer then provides the said part(s) to the distributor for the purpose of such replacement to the customer as part of warranty.</p> <p>In such a case, where the manufacturer is providing such part(s) to the distributor for replacement to the customer during the warranty period, without separately charging any consideration at the time of such replacement, no GST is payable on such replacement of parts by the manufacturer. Further, no reversal of ITC is required to be made by the manufacturer in respect of the parts so replaced by the distributor under warranty.</p> <p>(c) There may be cases where the distributor replaces the part(s) to the customer under warranty out of the supply already received by him from the manufacturer and the manufacturer issues a credit note in respect of the parts so replaced subject to provisions of sub-section (2) of section 34 of the CGST Act. Accordingly, the tax liability may be adjusted by the manufacturer, subject to the condition that the said distributor has reversed the ITC availed against the parts so replaced.</p>
5.	<p>Where the distributor provides repair service, in addition to replacement of parts or otherwise, to the customer without any</p>	<p>In such scenario, there is a supply of service by the distributor and the manufacturer is the recipient of such supply of repair services in accordance with the provisions of sub-clause (a) of clause (93) to section 2 of the CGST Act, 2017.</p>

	consideration, as part of warranty, on behalf of the manufacturer but charges the manufacturer for such repair services either by way of issue of tax invoice or a debit note, whether GST would be payable on such activity by the distributor?	Hence, GST would be payable on such provision of service by the distributor to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to other conditions of CGST Act.
6.	Sometimes companies provide offers of Extended warranty to the customers which can be availed at the time of original supply or just before the expiry of the standard warranty period. Whether GST would be payable in both the cases?	<p>(a) If a customer enters in to an agreement of extended warranty with the manufacturer at the time of original supply, then the consideration for such extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly.</p> <p>(b) However, in case where a consumer enters into an agreement of extended warranty at any time after the original supply, then the same is a separate contract and GST would be payable by the service provider, whether manufacturer or the distributor or any third party, depending on the nature of the contract (i.e. whether the extended warranty is only for goods or for services or for composite supply involving goods and services)</p>

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

Sanjay Mangal

Principal Commissioner (GST)



Circular No. 211/5/2024-GST

**F. No. CBIC-20001/4/2024-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

North Block, New Delhi
Dated the 26th June, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/
Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on time limit under Section 16(4) of CGST Act, 2017 in respect of RCM supplies received from unregistered persons – reg.

Representations have been received from trade and industry seeking clarity on the applicability of time limit specified under section 16(4) of Central Goods & Services Tax Act, 2017 (hereinafter referred to as the “CGST Act”) for the purpose of availment of input tax credit (ITC) by the recipient on the tax paid by him under reverse charge mechanism (RCM) in respect of supplies received from unregistered persons. It has been represented that in some cases, where tax is payable on reverse charge basis by the recipient, such as, where an activity is performed by the overseas related person for the entity located in India and no consideration is involved, such an activity may not be considered as supply of services by the concerned recipient in India and accordingly, no invoice is issued as well as no tax is paid by the said recipient under RCM in respect of the same. However, later on, either on their own on the basis of some clarification issued by the department or on the basis of some court judgement or on being pointed out by the tax authorities during scrutiny or audit or otherwise, the said recipient issues the invoice and pays the tax under RCM, along with interest, and claims input tax credit on such tax paid.

1.2 It has been represented that some of the field formations are taking the view that in such cases, the relevant year of the invoice for the purpose of section 16(4) of CGST Act is

the year in which the said supply was received and accordingly, the time limit for availment of ITC under section 16(4) of CGST Act is only upto the September/ November of the following financial year, i.e. the financial year following the financial year in which the said services was received. On the other hand, industry has represented that as the invoice in respect of such supplies received from unregistered supplier, where tax has to be paid by the recipient on RCM basis, is to be issued by the recipient as per section 31(3)(f) of CGST Act, the relevant year of invoice for the purpose of section 16(4) of CGST Act is the financial year in which such invoice has been issued and accordingly, ITC should be available on the said invoice under section 16(4) of CGST Act till the September/ November of the financial year following the financial year in which such invoice has been issued. Request has been made to issue clarification in the matter to avoid litigation.

2. The matter has been examined. In order to ensure uniformity in the implementation of the provisions of the law across the field formations, the Board, in exercise of its powers conferred under section 168(1) of the CGST Act, hereby clarifies the issue as follows.

2.1 As per section 16(2)(a) of CGST Act, 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 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.

2.2 Rule 36(1)(b) of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the CGST Rules) prescribes that input tax credit shall be availed by a registered person *inter alia* on the basis of an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31 of CGST Act, subject to the payment of tax.

2.3 Further, clause (f) of sub-section (3) of section 31 of CGST Act provides that a registered person, who is liable to pay tax under sub-section (3) or sub-section (4) of section 9, shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both. Accordingly, where the supplier is unregistered and recipient is registered, and the recipient is liable to pay tax on the said supply on RCM basis, the recipient is required to issue invoice as per section 31(3)(f) of CGST Act and pay the tax in cash on the same under RCM.

2.4 Section 16(4) of CGST Act, as amended vide the Finance Act, 2022, deals with time limit to avail ITC, and is reproduced below-

*“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 thirtieth day of November following the end of financial year to which such invoice or debit note pertains** or furnishing of the relevant annual return, whichever is earlier.”*

Section 16(4) of CGST Act, before the said amendment vide the Finance Act, 2022, provided as follows:

*“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 debit note pertains** or furnishing of the relevant annual return, whichever is earlier.”*

2.5 It can be seen that section 16(4) of CGST Act links the time limit for ITC availment with the financial year to which the invoice or debit note pertains. As discussed in Para 2.3 above, in case of supplies where the supplier is unregistered and recipient is registered and the tax has to be paid by the recipient on RCM basis, the recipient is required to issue invoice in terms of the provisions of section 31(3)(f) of CGST Act and pay the tax on the same in cash under RCM. Further, as discussed in Para 2.1 above, ITC cannot be availed by a registered person in respect of any supply of goods or services or both received by him, as per the provisions of section 16(2)(a) of CGST Act, unless he is in possession of a tax invoice or debit note or such other tax paying documents as may be prescribed.

2.6 A combined reading of the above provisions leads to a conclusion that as ITC can be availed by the recipient only on the basis of invoice or debit note or other duty paying document, and as in case of RCM supplies received by the recipient from unregistered supplier, invoice has to be issued by the recipient himself, the relevant financial year, to which invoice pertains, for the purpose of time limit for availment of ITC under section 16(4) of CGST Act in such cases shall be the financial year of issuance of such invoice only. In cases, where the recipient issues the said invoice after the time of supply of the said supply and pays tax accordingly, he will be required to pay interest on such delayed payment of tax.

2.7 Accordingly, it is clarified that in cases of supplies received from unregistered suppliers, where tax has to be paid by the recipient under reverse charge mechanism (RCM) and where invoice is to be issued by the recipient of the supplies in accordance with section 31(3)(f) of CGST Act, the relevant financial year for calculation of time limit for availment

of input tax credit under the provisions of section 16(4) of CGST Act will be the financial year in which the invoice has been issued by the recipient under section 31(3)(f) of CGST Act, subject to payment of tax on the said supply by the recipient and fulfilment of other conditions and restrictions of section 16 and 17 of CGST Act. In case, the recipient issues the invoice after the time of supply of the said supply and pays tax accordingly, he will be required to pay interest on such delayed payment of tax. Further, in cases of such delayed issuance of invoice by the recipient, he may also be liable to penal action under the provisions of Section 122 of CGST Act.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of this Circular may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)



Circular No. 241/35/2024-GST

F. No. CBIC-20001/14/2024-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

North Block, New Delhi,

Dated the 31st December, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam / Sir,

Subject: Clarification on availability of input tax credit as per clause (b) of sub-section (2) of section 16 of the Central Goods and Services Tax Act, 2017 in respect of goods which have been delivered by the supplier at his place of business under Ex-Works Contract-reg.

Reference has been received from automobile sector seeking clarification on availability of input tax credit (hereinafter referred to as "ITC") as per clause (b) of sub-section (2) of section 16 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act") in respect of goods which have been delivered by the supplier at his place of business under Ex-Works Contract.

1.2 It has been stated that in automobile sector, the contract between the automobile dealers and the Original Equipment Manufacturers (OEMs) is generally an Ex-Works (EXW) contract, and as per the terms of the contract, the property in goods (i.e. vehicles) passes to the dealer at the factory gate of the OEM, when the goods are handed over to the transporter at the instance of the dealer, and the delivery on the part of the OEM is complete at his factory gate. The transport may be arranged by the OEM on behalf of the dealer and where insurance is arranged, it may also be done on behalf of the dealer. Any claim in case of loss has to be lodged by the dealer. The dealer also duly accounts for the invoice in his books of accounts on such delivery of the vehicles at the factory gate of the OEM. The dealer avails

ITC on the date the vehicles are billed to him and handed over to the transporter by the OEM at his factory gate. However, some field formations are taking a view that ITC can be availed by the dealer only after the vehicles are physically received by him at his business premises and show cause notices have been issued to a number of dealers, demanding tax for wrongful availment of ITC for contravention of provisions of clause (b) of sub-section (2) of section 16 of the CGST Act.

2. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by sub-section (1) of section 168 of the CGST Act, hereby clarifies the issue as below.

3. Sub-section (2) of section 16 of the CGST Act is a non-obstante clause to section 16 of the CGST Act which enlists the conditions, failing which the registered person is not entitled to ITC in respect of supply of goods or services or both. One of the conditions as per clause (b) of the said sub-section (reproduced below) is that a registered person is not entitled to claim ITC in respect of any supply of goods or services or both unless he has “received” the said goods or services or both. The Explanation to the said clause provides for deemed receipt of goods and services in certain scenarios.

“Section 16. Eligibility and conditions for taking input tax credit.

...

(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, -

...

*(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 or, as the case may be, services-

(i) 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;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;

...

3.1 From a plain reading of the clause (b) of sub-section (2) of section 16 of the CGST Act, it is quite apparent that there is no reference of any particular place where goods are required to be “received” by the registered person. This is in contrast to the erstwhile Central Excise regime, where the provisions contemplated physical receipt of the goods at the factory of the manufacturer for taking CENVAT credit on the said goods. In most of the State VAT Acts, the provisions related to credit of the input tax did not have any explicit mention of physical receipt of goods at any particular place and input tax credit was allowed on purchase of goods.

3.2 Explanation to clause (b) of sub-section (2) of section 16 of the CGST Act provides that the goods would be deemed to have been “received” by the registered person for the purpose of this clause, where:

- a) the goods are delivered by the supplier to a recipient or to any other person on the direction of such registered person, whether acting as an agent or otherwise;
- b) such direction may be given before or during movement of goods; and
- c) the goods may be delivered either by way of transfer of documents of title to goods or otherwise.

3.2.1 The said Explanation provides that where goods are delivered by the supplier to any other person, whether acting as an agent or not, upon the direction of the registered person, and where such delivery occurs either through transfer of documents of title to goods or otherwise, the registered person is deemed to have “received” such goods for the purpose of the clause (b) of sub-section (2) of section 16 of CGST Act. Accordingly, in cases where goods are delivered by the supplier to the registered person, either directly or to any other person on the directions of the said registered person, the registered person shall be considered to have “received” the said goods for the purpose of clause (b) of sub-section (2) of section 16 of CGST Act.

3.3 In the instant case, as per the terms of the EXW contract between the dealer and the OEM:

- a) the goods are being handed over by the OEM to the transporter at his factory gate for onward transmission to the dealer;
- b) transport is arranged by OEM on the behalf of dealer; and
- c) if insurance is arranged, it is done on the behalf of dealer and any claim in case of loss has to be lodged by the dealer.

3.3.1 In such a scenario, the property in the said goods can be considered to have been passed on to the dealer by the OEM upon handing over of the said goods to the transporter at his factory gate, meaning thereby that the goods can be considered to have been delivered to the registered person (the dealer), through the transporter, by the supplier (the OEM) at his factory gate and the supply of the said goods can be considered to have fructified at the factory gate of the OEM, even though the goods may be physically received by the registered person (the dealer) after the transit period. Accordingly, it is clarified that as per Explanation to clause (b) of sub-section (2) of section 16 of CGST Act, the registered person (the dealer) can be considered to have “received” the said goods at the time of such handing over of the goods by the supplier to the transporter, at his factory gate, for their onward transmission to the said registered person (the dealer).

3.4 The same principle is applicable in respect of supply of other goods also where the contract between the supplier and recipient is an EXW contract, and as per terms of the contract, the goods are to be delivered by the supplier to the recipient, or to any other person (including a transporter) on behalf of the recipient, at his (supplier’s) place of business and the property in the goods stands transferred to the recipient at the time of such handing over. In such cases, the said goods can be construed to have been “received” by the said recipient at the time of handing over the said goods to the recipient or to the transporter, as the case may be, as per provisions of clause (b) of sub-section (2) of section 16 of CGST Act.

3.5 It is also mentioned that as per provisions of sub-section (1) of section 16 of the CGST Act, a registered person is entitled to input tax credit only in respect of supply of goods or services or both, **which is used or intended to be used in the course or furtherance of business**. Therefore, the input tax credit may be available to the registered person on such receipt of goods by the said registered person from the supplier at his (supplier’s) factory gate or business premises, subject to fulfilment of other conditions of

section 16 and section 17 of CGST Act, including the condition that the said goods are used or intended to be used in the course or furtherance of business by the said registered person.

3.6 It is also to be noted that if the goods are found to have been diverted for non-business purposes at any stage, either before physically receiving the said goods at his business premises or subsequently, the registered person shall not be entitled to input tax credit on such goods in terms of sub-section (1) of section 16 of CGST Act. Further, if at any time after “receiving” the goods, such goods are lost, stolen, destroyed, written off or disposed of by way of gift or free samples, the registered person would not be entitled to the input tax credit in respect of such goods as per provisions of clause (h) of sub-section (5) of section 17 of CGST Act.

4. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

5. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)



Important Case Laws

1.0 Reversal of ITC at midnight during search and seizure operation can't be treated as voluntary payment

Case Title	: Shree Ganesh Molasses Trading Co. Vs Superintendent, Office Of The Commissioner
Court	: Gujarat High Court
Citation	: 2023 (01) ... 83 HC Gujarat, R/Special Civil Application No. 4026 of 2022
Judgement Date	: 18-January-2023
Matter	: In said case, department during search and seizer operations in mid night of 12.02.2022, at the premises of the Appellant (Shree Ganesh Molasses Trading Co) got reversed Rs 37,68,300/- through DRC-01 at 1.00 am.

Honorable Court held that reversal of ITC at midnight during search and seizure operation can't be treated as voluntary payment. Department had violated interim directions made in case of Bhumi Associate vs UOI which had not been challenged and instruction was issued by CBIC pursuant to Bhumi associate case which was binding in nature.

1.1 The recipient of goods and/or services or both if availing ITC, hence is liable to prove the genuineness of the transaction from all aspects. The Hon'ble Supreme Court has, in [State Of Karnataka v. Ecom Gill Coffee Trading \(P\) Ltd.](#) [2023] 148 352 (SC), examined a similar provision under the Karnataka VAT Act and held as follows:

"The dealer claiming ITC has to prove beyond doubt the actual transaction which can be proved by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoice and payment particular etc. The aforesaid information would be in addition to tax invoice, particular of payment etc. In fact, if a dealer claims Input Tax Credit on purchases, such dealer/purchaser shall have to prove and establish the actual physical movement of goods, genuineness of transaction by furnishing the details referred above and mere production of tax invoices would not be sufficient to claim ITC."

1.2 Buyer failed to prove actual physical movement of goods:

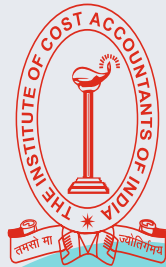
In the case of [Shiv Trading v. State of UP](#) [2023] 156 ..715 (All), the Hon'ble High Court of Allahabad, held as follows:

“the petitioner failed to discharge its onus to prove and establish beyond doubt the actual transaction, actual physical movement of goods as well as the genuineness of the transactions and as such, the proceedings have rightly been initiated against the petitioner under section 74 of the GST Act.”

[illegible]



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