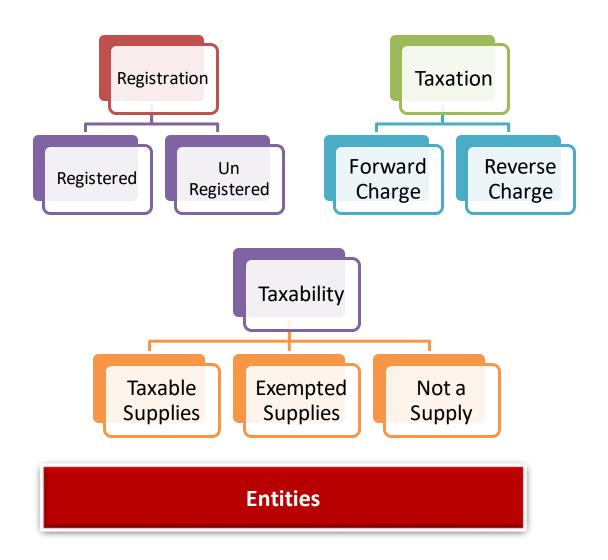
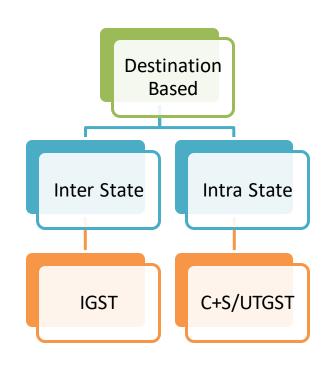
## **Input Tax Credit**

- Law, Procedures & Complexities

Rohit Kumar Singh ACA, ACMA, FCS, LLB, DISA (ICAI)

## **Taxation Fundamentals – GST Landscape**





Geography

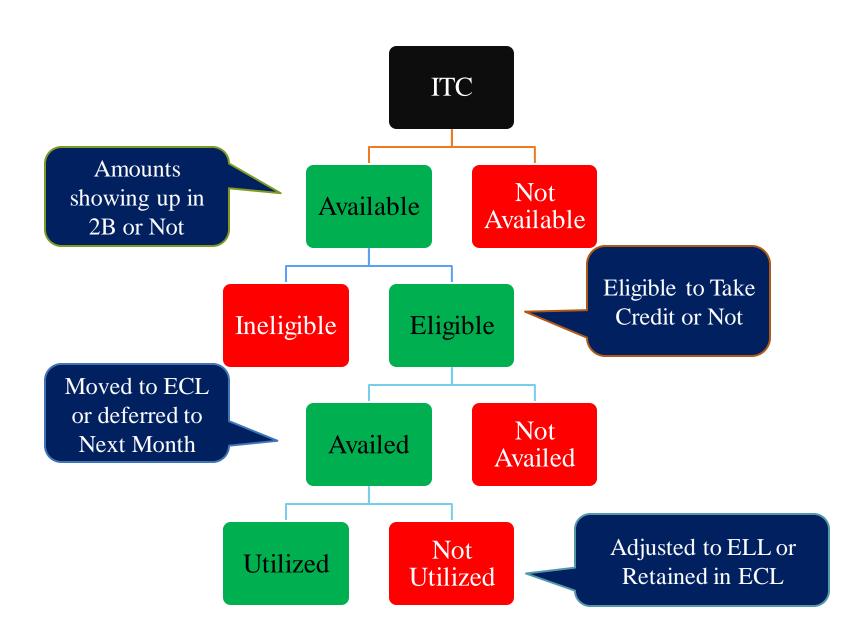
## Input Tax Credit - Introduction



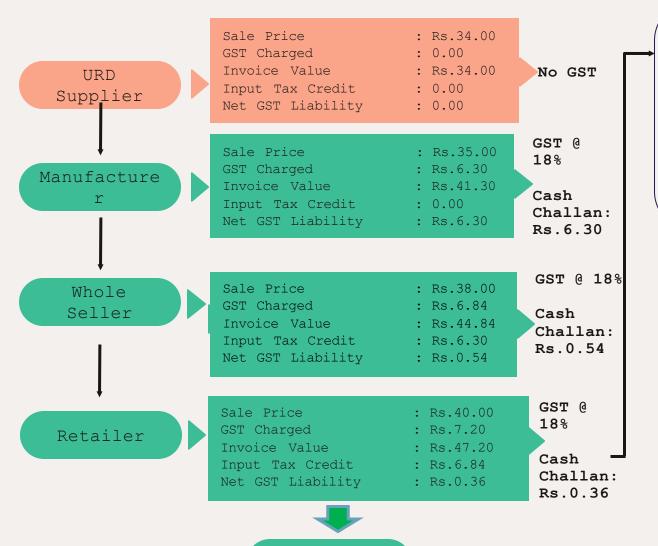
## **Concept of Input Tax**

- "Input tax" means IGST (including that on import of goods), CGST, SGST and UTGST;
- Charged on any supply of goods or services and;
- Includes the tax payable under sub-section (3) and (4) of section 9,
- Includes the tax payable under sub-section (3) and (4) of section 5 of IGST Act,
- Includes the tax payable under sub-section (3) and (4) of section 9 of SGST Act,
- Includes the tax payable under sub-section (3) and (4) of section 7 of UTGST Act, excludes the tax paid under section 10 (composition levy)

## Flow of Credit – System Track

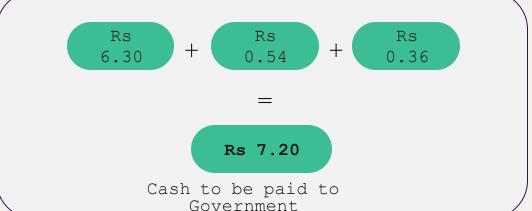


#### Ideal GST & Input Tax Chain



End user

GST Flow Cash paid to Govt



URD - Not in GST

Registered GST Business

## **Principles on Input Tax Credit**

- System for a seamless flow of credit
- Extends to inter-State supplies
- Credit utilization would be as follows [Sec 49(5)]:

Credit of:	Allowed for Payment of					
Credit of.	IGST CGST SGST					
IGST	Y	Y	Y			
CGST	Y	Y	N			
SGST	Y	N	Y			

$$Y - Yes$$
  $N - No$ 

### Manner of Utilisation of ITC

## Clarification in respect of utilization of ITC under GST - Circular No 98/17/2019 - GST dated 23rd April, 2019

- Section 49 was amended and Section 49A and Section 49B were inserted vide CGST Tax (Amendment) Act, 2018 with effect from 1st February 2019.
- Based on the representations received from the trade and industry regarding challenges being faced by taxpayers due to bringing into force of section 49A of the CGST Act, 2017, that this is resulting in accumulation of input tax

ITC Balance	Utilized for Set off against liability of		liability of	Remarks	
IGST	IGST	CGST	SGST	UTGST	After utilization towards payment of IGST only, balance can be used for set off of liability for CGST or SGST/UTGST (any manner)
CGST	IGST	CGST	NA	NA	Cannot be used against SGST/UTGST
SGST	IGST	NA	SGST	NA	Cannot be used against CGST/UTGST
UTGST	IGST	NA	NA	UTGST	Cannot be used against CGST/SGST

Note – Utilization of CGST/SGST/UTGST shall be allowed only when ITC for IGST has been first utilized in full.

### Manner of Utilisation of ITC

- Rule 88A was inserted in the CGST Rules, 2017 vide notification No. 16/2019- Central Tax, dated 29th March, 2019.
- Rule 88A in the CGST Rules allows utilization of input tax credit of Integrated tax towards the payment of Central tax and State tax, or as the case may be, Union territory tax, in *any order* subject to the condition that the entire input tax credit on account of *Integrated tax is completely exhausted first* before the input tax credit on account of Central tax or State / Union territory tax can be utilized credit for one kind of tax (say State tax) in electronic credit ledger and discharge of liability for the other kind of tax (say Central tax) through electronic cash ledger in certain scenarios

## Manner of Utilisation of ITC

utilization -

Query – **Amount of ITC available and Output Tax Liability under different tax heads. Find out the ITC** 

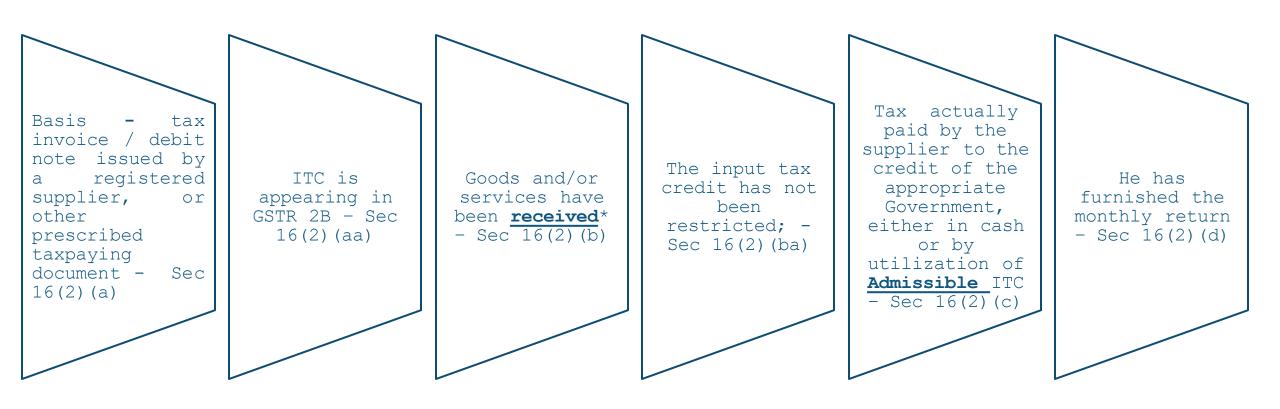
Head	Output Liability	Input Tax Credit
Integrated Tax	1000	1300
Central tax	300	200
State/ UT Tax	300	200
Total	1600	1700

Option 1 Solution -

	Discharge of Output liability on account of		Balance of					
ITC on account of	Integrated Tax	Central Tax	State/ UT Tax	ITC	Remarks			
Integrated Tax	1000	200	100	0				
	ITC on account of IGST has been exhausted completely							
Central Tax	0	100	-	100	Cannot be used against SGST/UTGST			
State/ UT Tax	0	-	200	0	Cannot be used against CGST			
Total	1000	300	300	100				

Option 2 **Discharge of Output liability on account of Balance of** ITC on account of **Remarks** State/ UT Tax **Integrated Tax Central Tax** ITC 1000 200 Integrated Tax 100 0 ITC on account of IGST has been exhausted completely Cannot be used against Central Tax 200 0 0 SGST/UTGST State/ UT Tax Cannot be used against CGST 100 0 100 **Total** 1000 300 300 100

## Conditions for Availment of ITC by a Registered Taxable Person – Sec 16



## Availment of ITC by a RTP – Sec 16

#### Note:

- Credit only upon receipt of the last lot/ instalment in case of goods received in lots / instalments.
- Goods deemed to be received by a taxable person when the supplier delivers the goods to the recipient/ any other person, on the direction provided by the taxable person to the supplier.
- Exception in case of goods being directly sent to job worker
- If the recipient of services fails to pay (value + tax) within 180 days from date of invoice, (ITC availed + interest @ 18%) shall be added to his output tax liability. ITC available when amount discharged later

#### Conditions for Availing ITC

01

Tax invoice / debit note
issued by a registered
supplier, or other
prescribed taxpaying
document
[Sec 16(2)(a)]

02

ITC is appearing
 in GSTR 2B
[Sec 16(2)(aa)]

03

Goods and/or services have been **received\***[Sec 16(2)(b)]

04

The input tax credit has not been restricted;

[Sec 16(2)(ba)]

05

Tax actually paid by the supplier to the credit of the appropriate

Government, either in cash or by utilization of

Admissible ITC

[Sec 16(2)(c)]

06

Has furnished the
 monthly return
 [Sec 16(2)(d)]

#### Validation of claim of ITC - Sec 16

Provision	Validation Check List
Possession of Tax Invoice	Supplier issues tax invoice along with E-Way Bill
Goods are received	Confirmation of receipt/payment by Buyer. Vehicle Tracking is enabled along with buyer acknowledgement
ITC appearing in GSTR 2B	ITC auto populated in GSTR 2B once supplier furnishes GSTR 1. Tax Team to validate details of invoice furnished by supplier and reaches out to supplier for any discrepancy
Tax actually paid by the supplier either in cash or by utilization of Admissible ITC	GSTR 3B is filed by the supplier
The input tax credit has not been restricted	Electronic Credit Ledger is not blocked

### Judicial Precedent In Favour

S.No	Party 1	Party 2	Forum	Citation	Date of Judgement
1.	OSL Securities Ltd	Union of India	Odisha High Court	2695 OF 2024	06-02-2024
1 7	LGW Industries Limited	Union of India	Calcutta High Court	W.P. No. 23512 (W) of 2019	08-01-2020
1 3.	Suncraft Energy Pvt. Ltd		Calcutta High Court	MAT 1218 of 2023	02-08-2023
1 4 -	D.Y. Beathel Enterprises	State Tax Officer	Bombay High Court	W.P.(MD) No.2127 of 2021	24-02-2024
5.	Balaji Exim	Commissioner, CGST	IDEINI HIAN COURT	W.P.(C) 10407/2022	10-03-2023
6.	Shiv Enterprises	_	Punjab and Haryana High Court	2022 (2) TMI 296	16-01-2023
1 '/	Shraddha Overseas Private Limited	The Assistant Commissioner of State Tax		M.A.T No.1860 of 2022	16-12-2022
1 8	TVL. Cleon Optobiz Pvt. Ltd	The Assistant Commissioner (ST)	Madras High ('Ourt	W.M.P.Nos.510 & 512 of 2024	19-01-2024
9.	Gargo Traders			WPA No. 1009 of 2022	12-06-2023

#### Judicial Precedent In Favour

transaction

	The Orissa High Court, granted interim relief in favor of the Petitioner. The court directed that no coercive action should be taken during the pendency of the writ petition, provided that the Petitioner deposits 20 percent of the tax payable amount.
<b></b>	If the transactions undertaken by the petitioner were genuine and supported by valid documents and such transactions were made before the cancellation of GST registration of suppliers, then the input tax credit shall be allowed. The appeal filed by department against said decision was dismissed by the Hon'ble High Court
_	The Court held that before directing the recipient to reverse the ITC, the department ought to have taken an action against the supplier. The reversal of ITC cannot be demanded unless it is an exceptional case where the department is able to prove collusion between the supplier and recipient or where the supplier is missing.
	That where the factum of payment of tax by the recipient to the supplier has been established, the omission on the part of the seller to remit the tax to the government must be viewed very seriously and strict action ought to be initiated against the seller.
	A taxpayer is not required to examine the affairs of its supplying dealers. The input tax credit cannot be questioned unless it is established that the taxpayer did not receive the goods or pay for them.
<b></b>	It is virtually impossible for a trader to ascertain as to whether input tax has been paid by his predecessors or not and it is for this reason also that the claim to input tax credit has been made subject to scrutiny and assessment. It is the fundamental legal principle embedded in legal maxim "LEX NON COGIT AD IMPOSSIBILIA"-That the law does not compel a man to do that which he cannot possibly perform". Once a person cannot be compelled to do something not possible, definitely he cannot be penalized for not doing so.
	The Court set aside the order passed by the Revenue Department cancelling GST Registrations of the assessee on the grounds of suspicion. Held that the transaction cannot be suspected merely on the grounds that the GST Registration of the other-end dealer was cancelled with retrospective effect.
3	that a recipient of goods/services cannot be denied input tax credit (ITC) if the supplier becomes non-existent or their registration is retrospectively cancelled. The court directed the Revenue Department to consider the documents provided by the assessee to substantiate the genuineness of the

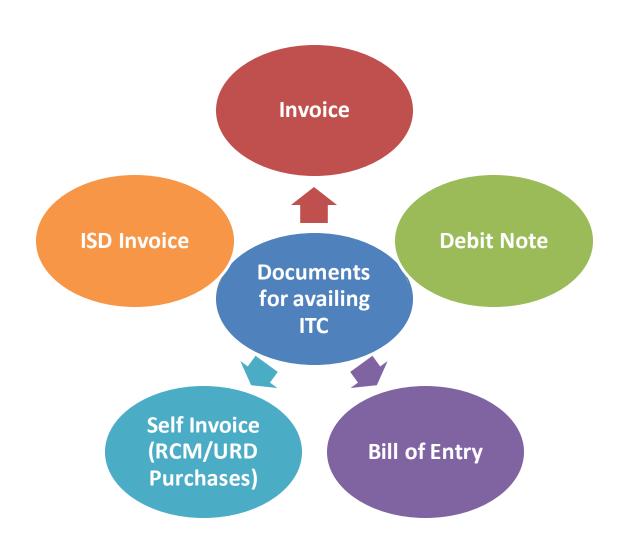
S.No					Date of
•	Party 1	Party 2	Forum	Citation	Judgement
1.	M Tradelinks	Union of India	Kerala High Court	WP No 31559 of 2019	04-06-2024
	Pinstar Automotive	Additional			
2.	India Pvt. Ltd	Commissioner	Madras High Court	W.P.No.8493 of 2023	20-03-2023
3.	Aastha Enterprises	State of Bihar	Patna High Court	10395 Of 2023	18-08-2023
				[2023] 155	
			Allahabad High	taxmann.com 517	
4.	Malik Traders	State of UP	Court	(All)	18-10-2023
				[2023] 156	
			Allahabad High	taxmann.com 715	
Risk	S18% (1/1769) Hg18% (Penalty	2tat <i>eterest</i> P	Court	(All)	28-11-2023

#### Judicial Precedent

Against

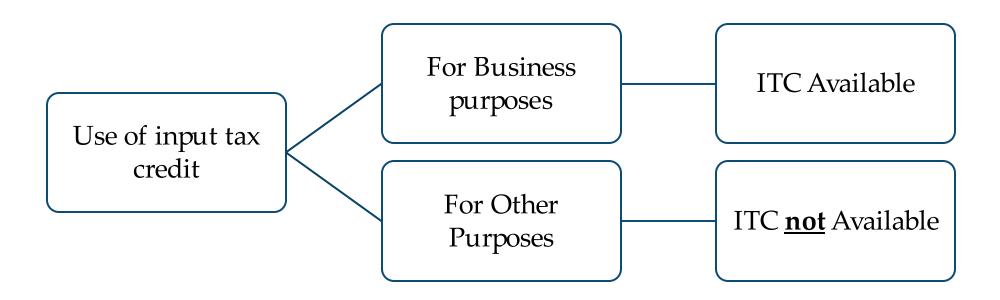
- □ Without Section 16(2)(c) of the CGST Act, where the inter-state supplier in the originating State defaults payment of tax (SGST+CGST collected) and the inter-state supplier is allowed to take credit based on their invoice, the originating State Government will have to transfer the amounts it never received in the tax period in a financial year to the destination States, causing loss to the tune of several crores in each tax period.
- ☐ The High Court ruled that the condition laid down in section 16(2)(c) of the CGST Act needs to be interpreted strictly and the mandate is upon the claimant to ensure compliance with the provision, failing which it would not be entitled to ITC.
- ☐ The purchasing dealer will not be eligible to avail the input tax credit (ITC) of tax paid to the supplier, if such supplier has not paid to the Government, the tax so collected from the purchasing dealer.
- Onus is to be discharged by the petitioner to prove and establish beyond doubt the actual transaction and physical movement of goods. But in the case in hand, the petitioner has failed to prove and establish actual physical movement of goods and genuineness of transaction as such the proceedings has rightly been initiated
- ☐ 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

## Input Tax Credit – Documents for availing credit



- ITC to be available only if all the particulars prescribed are contained in the invoice and the details are furnished in Form GSTR-1 by supplier
- No ITC if tax paid in pursuance of any order where demand has been raised on account of fraud, willful misstatement or suppression of facts

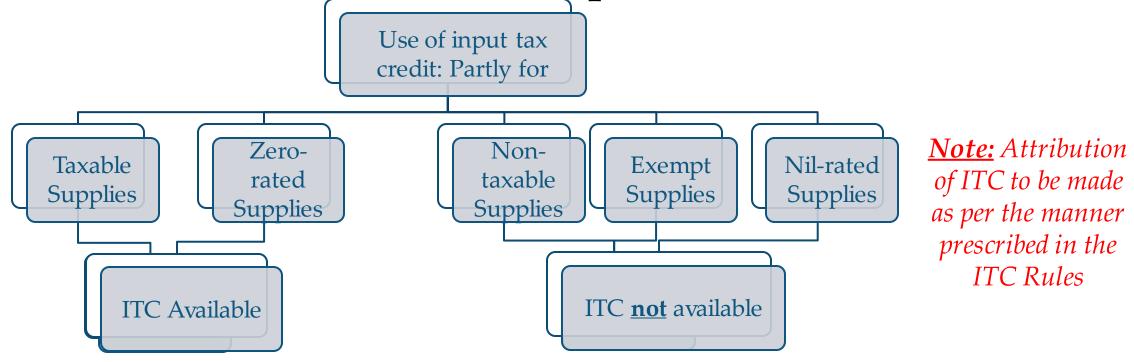
## ITC on the Basis of use of Inputs – Sec 17



"input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business

"input service" means any service used or intended to be used by a supplier in the course or furtherance of business

ITC on the Basis of use of Inputs – Sec 17



Alternative to apportionment between taxable and exempt supplies in case of <u>banking companies</u> and <u>financial institutions</u>:

- <u>Yearly option</u> to avail a standard rate of 50% of eligible ITC on inputs, capital goods and input services on a monthly basis
- 50% shall not be applied on tax paid on supplies made by one registered person to another registered person having same PAN

### **Blocked Credit – ITC Restriction – Sec 17(5)**

Goods or Services
partly used for
business purpose
(Restriction of ITC on
non business use)

Motor Vehicles and other conveyance

Zero Rated and Exempt Supplies

Food & Beverages,
Outdoor catering,
beauty treatment,
health services,
cosmetic and plastic
surgery

Zero Rated and Exempt Supplies (ITC on Taxable and Zero rated allowed as credit)

Membership of club, health and fitness centre Rent a cab, life and health insurance

Travel benefits to employees on vacation such as LTA

Works Contract
Services (Except P&M)

Goods, Services or both used for personal purpose

Construction on Own
Account

Tax Paid under Composition Scheme

Goods, Services or both received from non-resident taxable person

Goods lost, stolen, damaged, written off

Goods disposed off by way of gifts or free samples

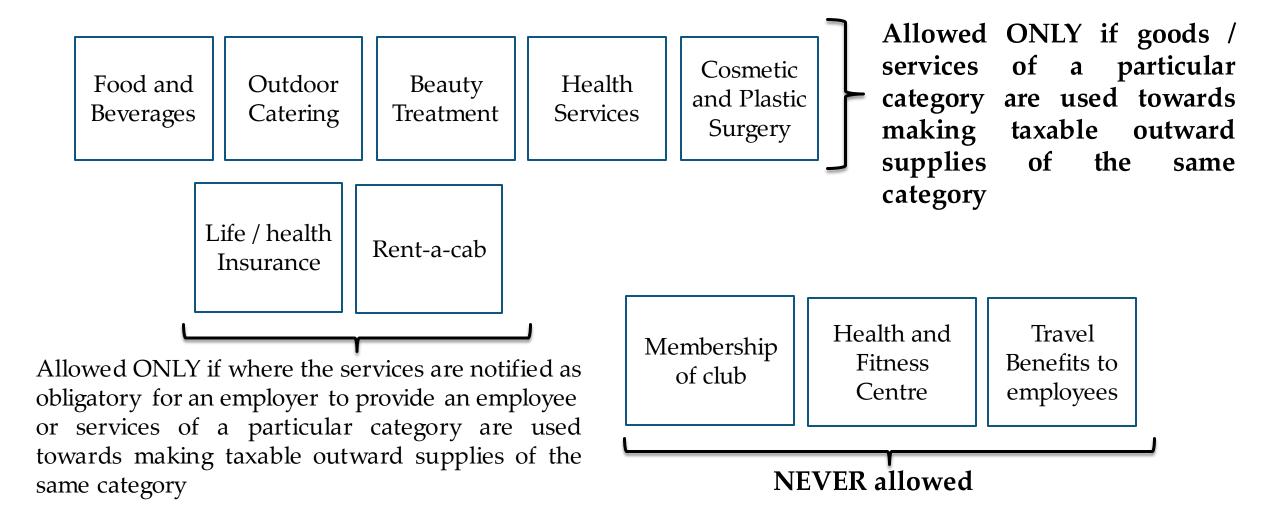
a) Motor Vehicles

ITC for Motor Vehicles will **NOT** be available Except
when
they are
used for

- Transport of Persons having seating capacity more than 13 persons (incld. Driver)
- Transportation of goods, or
- Making foll. **Outward taxable services**:
  - i. Further supply of such vehicles / conveyances, or
  - ii. Transportation of passengers, or
  - iii. Training for driving / flying / navigating such vehicles / conveyances

**Note:** ITC for general insurance, servicing, repairs and maintenance is available in respect *Motor* vehicles on which ITC is allowed

b) Supply of goods and services being:



c) Construction of Immovable Property (other than plant and machinery)

Works contract services, except where it is an input service for further supply of works contract service Goods or services received by a taxable person for construction of an immovable property on his own account *even when used in course or furtherance of business*;

#### ITC not Available

Construction includes reconstruction, renovation, additions or alterations or repairs to the extent of capitalisation

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.

### & Goods Lost, Stolen, Destroyed, written off or given off as gift or free samples:

#### • Not Allowed:

- 1. Goods lost/stolen Impact of Insurance claims received
- 2. Year end write offs for shortages of stock/inventories Post Board Approval
- 3. Goods distributed as Diwali/ year end gifts ITC Eligible?
- 4. Treatment of free samples Pharma Industry/FMCG or other practice of sending samples for approval by clients

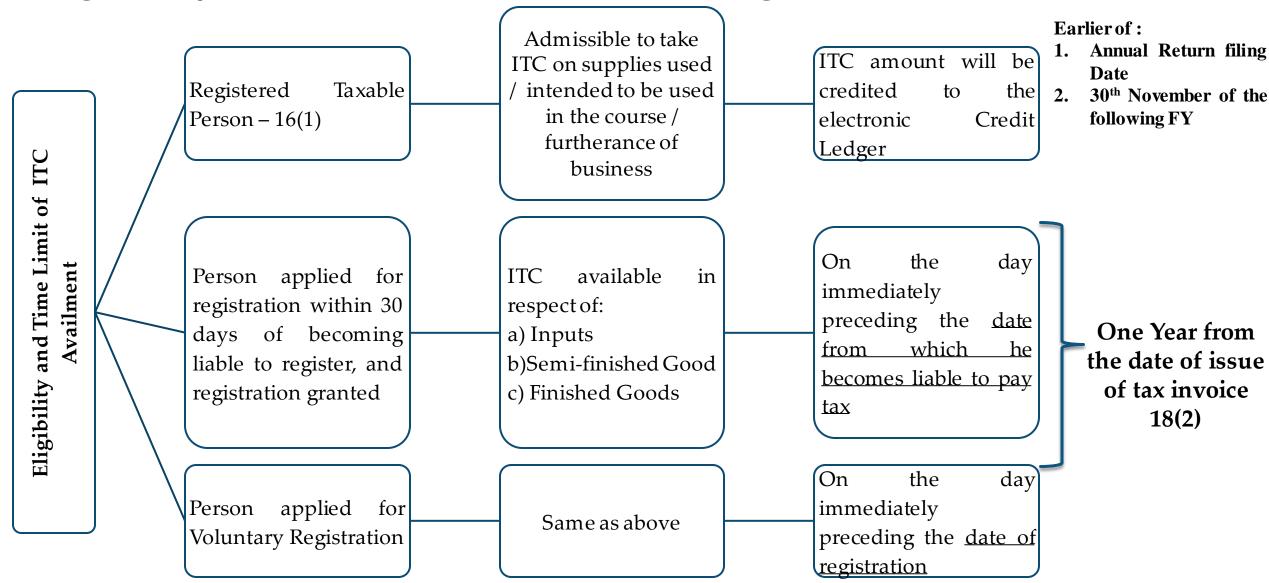
Clarification issued by CBIC vide *Circular No 92/11/ 2019-GST dated 7<sup>th</sup> March 2019 for treatment of sales promotion schemes* –

**Free samples or gifts -** Where the activity of distribution of gifts or free samples falls within the scope of "supply" as per **Schedule I** of the Act, the supplier would be eligible to avail of the ITC.

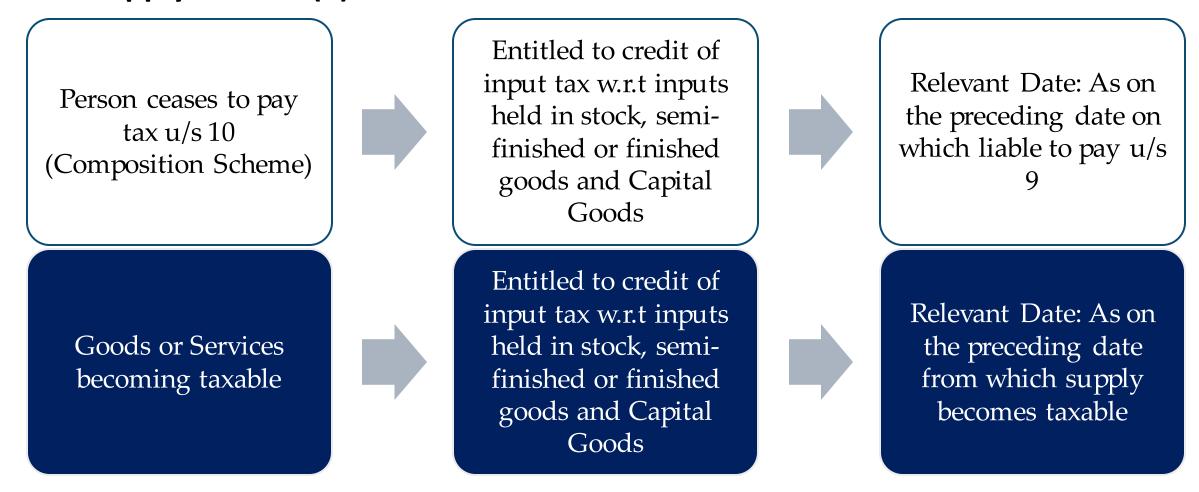
**BOGO Schemes** for FMCG or Pharma Industry - Such supplies may not be treated as an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply.

- Taxes on supply of goods or services paid u/s 10
- Goods or services or both received *by a non-resident taxable person* except on goods imported by him, shall not be allowed
- Goods or services or both used for personal consumption; and
- Any tax paid in accordance with the provisions of sections 74, 129 and 130.

## **Eligibility and Time Limit for Availing ITC**



## Switching from Composition / Exempt Supply to Normal Tax / Taxable Supply – Sec 18(1)

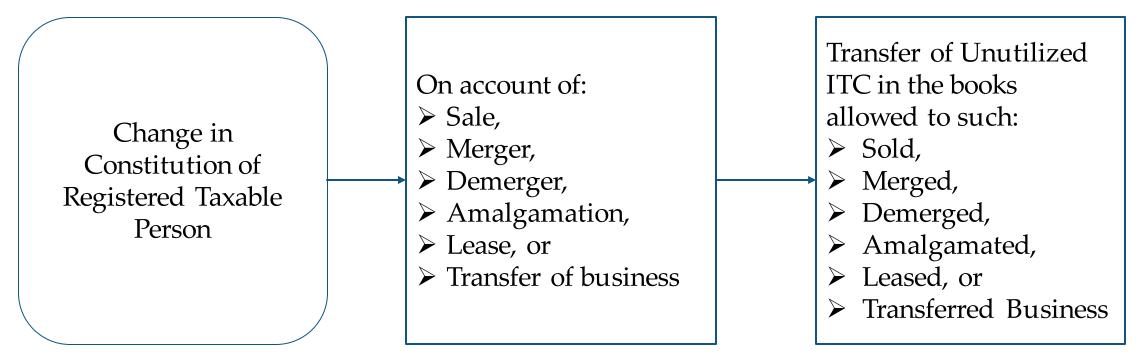


Credit on Capital Goods to be available after reducing 5% per quarter of a year or part from the date of invoice or such other document on which capital goods were received by taxable person

## Conditions for claiming credit under – Sec 18(1)

- Purchase invoice should not be earlier than 1 year from the relevant date
- Declaration in Form GST ITC-01 to be filed within 30 days from the date of him becoming eligible
- Details of Inputs held in stock / semi finished or finished goods and capital goods to be furnished in Form GST ITC-01 within 30 days from the relevant date
- Declaration in Form GST ITC-01 to be certified by a practicing Chartered Accountant or Cost Accountant if the value of credit claimed exceeds Rs. 2,00,000

### ITC - Change in Constitution of Taxable Person Sec 18(3)



- ITC shall be apportioned in the ratio of value of assets of the new units in case of demerger scheme
- Transferor to submit certificate from a practicing Chartered Accountant certifying whether the sale / merger / de-merger / amalgamation / lease / transfer has been done with specific provision for transfer of liabilities
- Transferee to furnish details of credit available in Form GST ITC-02

# Switching from regular to over composition- Pay and Exit – Sec 18(4)

Eligible credit under earlier law carried forward in the return Amount equivalent to the credit of input tax in respect of input held in stock or input contained in semi-finished goods or finished goods held in stock and capital goods as on appointed day Such amount shall be payable by debiting the electronic credit ledger or cash ledger Balance in electronic credit ledger shall lapse

Declaration for input tax reversed to be submitted in Form GST ITC-03

## ITC in case of Capital Goods

Depreciation claimed on Tax component of the cost of capital goods under IT Act

ITC not Available

Example:

Cost of asset = Rs. 100

Tax-10%(say) = Rs. 10

Total Cost Rs. 110

If Depreciation charged on Rs.100
ITC Available

If Depreciation charged on Rs.110

**ITC** not Available

"capital goods" means the goods, the value of which is capitalized in the books of accounts of the person claiming the credit and which are used of intended to be used in the course or furtherance of the business

## Supply of Capital goods on which ITC already taken – Sec 18(6)

Supply of Capital goods on which ITC had been taken earlier



Pay Tax on higher of:



ITC availed earlier **LESS**5% for every quarter
OR

Tax on Transaction Value

#### Note: Any credit wrongly taken shall be subjected to the recovery provisions

Purchase Date of Laptop	Jan 01, 2018
Purchase Price	50,000
Taxes Paid	9,000
Sale Date	July 05, 2020
Sale Value of Laptop	10,000

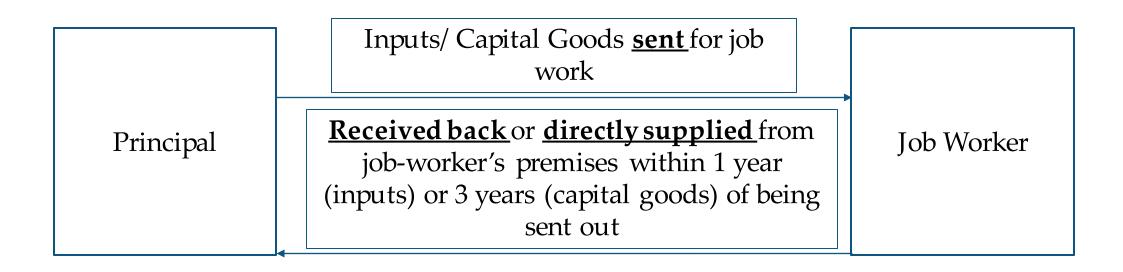
Particulars	Amount
Sale Value of Laptop	10,000
IGST @ 18%	1,800

Particulars	Amount
Input Tax Credit Availed	9,000
Less: 5% per quarter (For 11 quarters)	4950
Higher of Tax – Rs 1800 or ITC availed less 5% per Quarter i.e. Rs 4,950	4050

## ITC Rules – Credit in Special Circumstances

- Credit of Capital Goods as provided to a person switching from composition to regular scheme and a person whose exempt supply becomes taxable supply (Section 18 (1)(c) and (d), shall be claimed after reducing such tax by 5% per quarter from the date of issue of invoice;
- A declaration within 30 days shall be furnished in all the scenarios as specified in Section 18 (1) for details relating to inputs, semi-finished, finished and capital goods as the case may be;
- CA/CMA certificate is necessary in case claim for input tax exceeds 2 lakhs;
- Matching of claims shall be done with GSTR-1 or GSTR-4 of the corresponding supplier.

# ITC in respect of goods sent for job work – Sec 19



ITC available if the conditions and restrictions under job work are satisfied

If not received / directly supplied in time: Principal to pay ITC availed + <u>Interest.</u> He can reclaim this ITC on receiving back such inputs/ capital goods.









**Suppliers of** Service

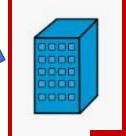


**Receipt of Tax Invoice** for Input Services by **ISD** 



**Input Service Distributor** 



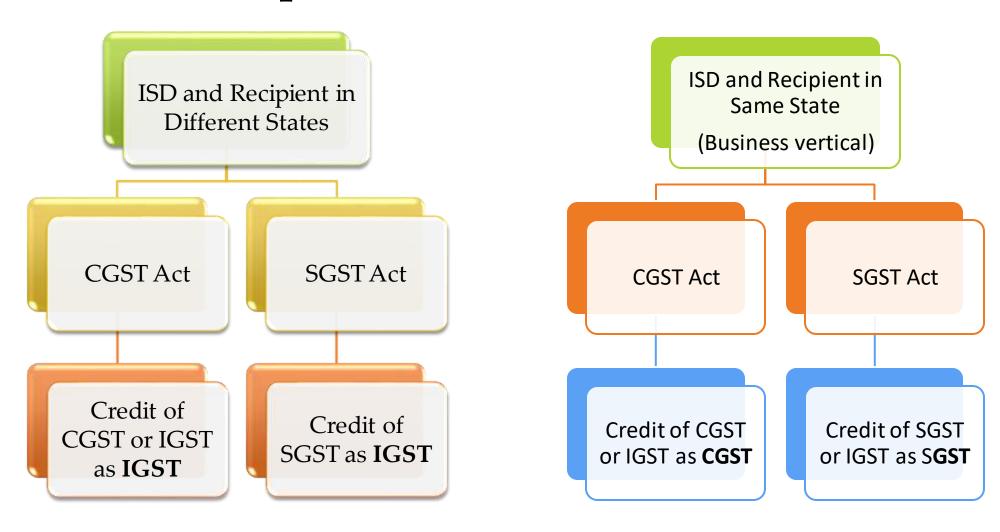


Offices/

Locations

**Under Same PAN Number (both Head Office and Branches)** 

# **Input Service Distributor**



# **Blocking of ITC by Department**

# I have received an email message as well as a SMS stating - "Please visit your Credit Ledger to see the amount of credit blocked for utilization by the jurisdictional tax officer." What does this message indicate?

Your Jurisdictional Tax Officer has blocked some ITC amount available in your Electronic Credit Ledger.

Navigate to Services > Ledgers > Electronic Credit Ledger.

You will notice the amount that has been blocked in your Electronic Credit Ledger by your Jurisdictional tax officer

#### I am unable to utilize the available balance in my Electronic Credit Ledger? Why?

The amount blocked by Jurisdictional tax officer would be reduced in your Electronic Credit Ledger, hence would not be available for utilization. Balance amount of ITC, if any, after deducting the amount blocked by the officer, can be utilized as per credit utilization rules.

#### I can see some amount/ entire amount available in my Electronic Credit Ledger as blocked. Who has blocked it and Why?

To avoid misuse of the ITC credit availed, your Jurisdictional Tax Officer has blocked the ITC available in your Electronic Credit Ledger.

Your Jurisdictional Officer at his discretion may block only CGST, SGST, IGST & Cess balance partly or fully.

After scrutiny of the GST TRAN-1 and GST TRAN-2 or any other return or statement through which credit has been claimed, the Jurisdictional Officer may unblock the ITC.

#### What should I do in case my ITC has been blocked?

Your Jurisdictional Officer may ask for certain clarifications based on the returns/statements you have filed and have claimed ITC.

Please provide necessary information as may be asked by the Jurisdictional Officer.

After scrutiny of the GST TRAN-1 and GST TRAN-2 or any other return/statement, the Jurisdictional Officer may unblock the ITC.

#### How will I know if my ITC has been unblocked?

You will receive an email message as well as an SMS - "Please visit your Credit ledger to see the amount of credit unblocked by the jurisdictional officer.".

Navigate to Services > Ledgers > Electronic Credit Ledger. You will notice the ITC has been unblocked.

English

# **Blocking of ITC by Department**



Electronic Credit Ledger

Financial Year Month ITC Balance As On Date: 03-10-2020

2020-2021 October 0.00

1. Electronic Credit Ledger

2. Provisional Credit Balance: 0.00

3. Blocked Credit Balance: 0.00

#### **Blocked Credit Balance**

Date	Amount of blocked credit balance (₹)						
	Integrated Tax	Central Tax	State Tax	CESS	Total		
	0.00	0.00	0.00	0.00	0.00		

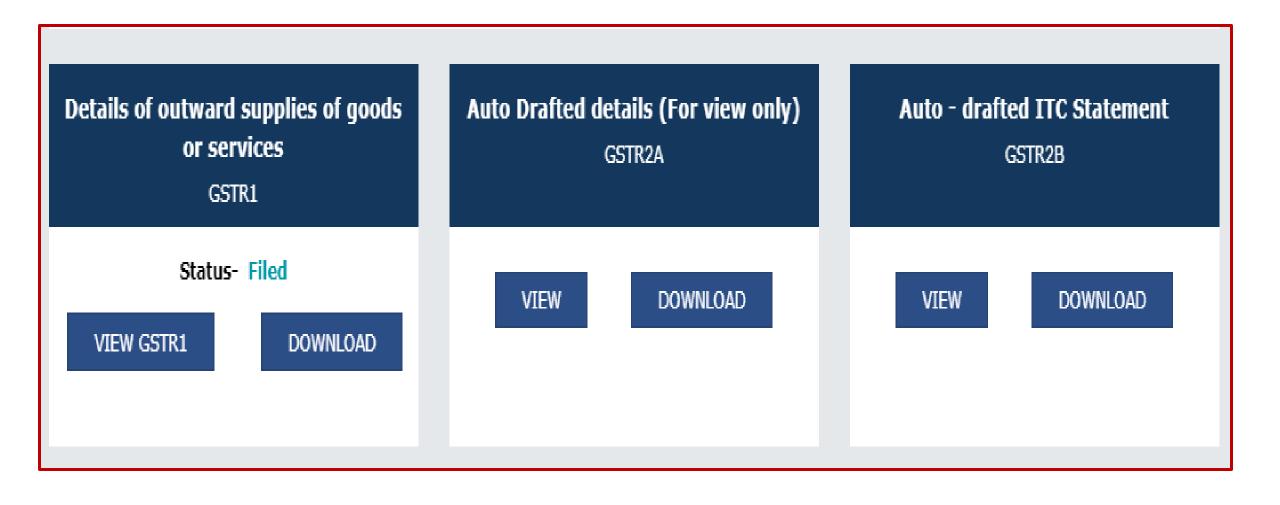
BACK

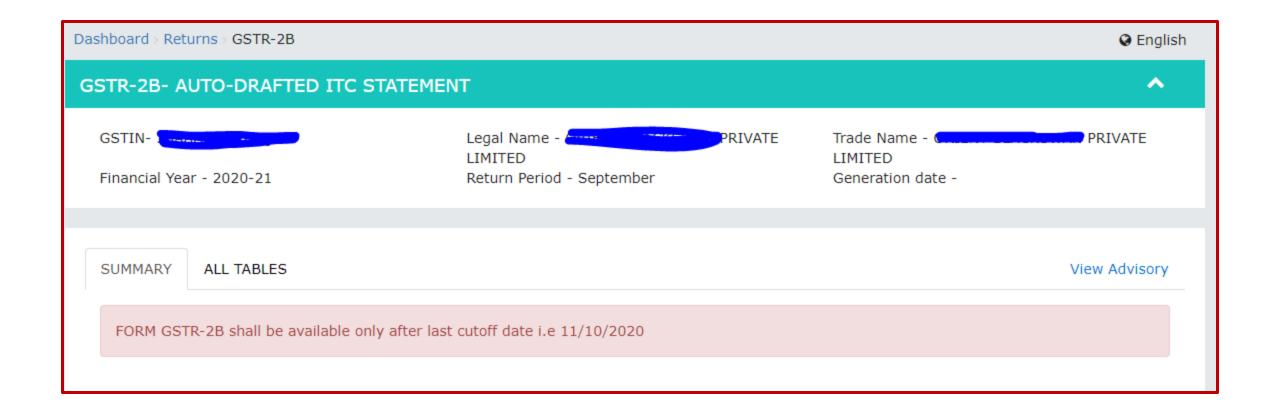
SAVE AS PDF

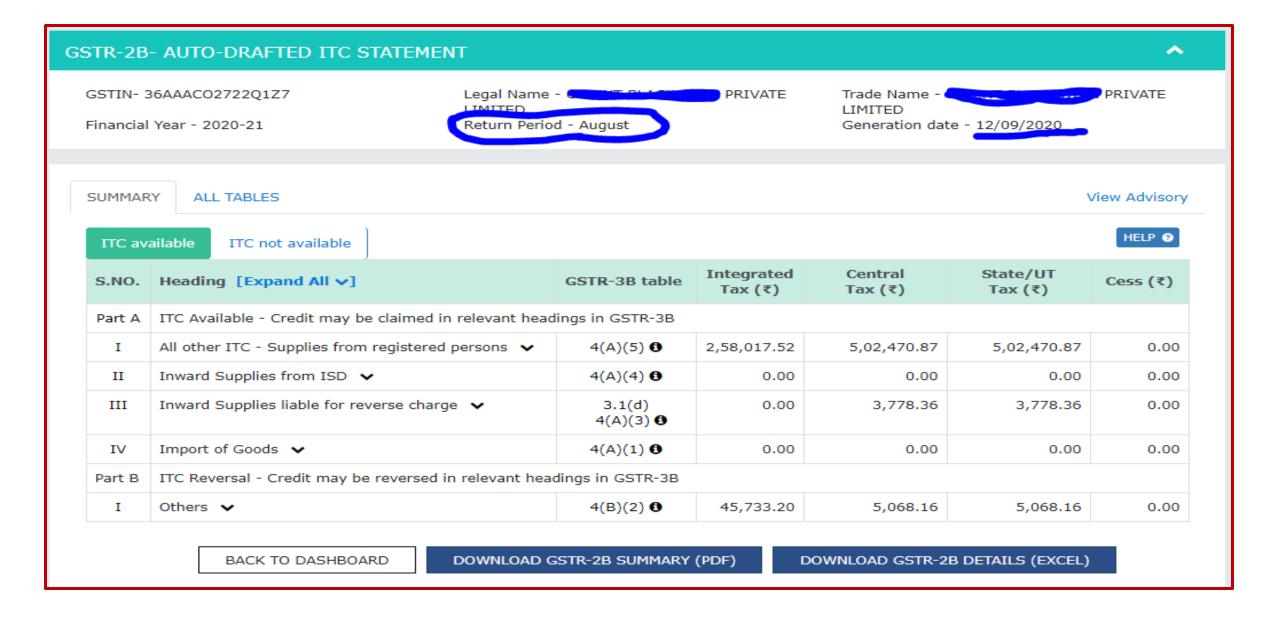
SAVE AS EXCEL

# GSTR 2A & 2B Auto Drafted Details (For View only)









Period \*

Feb'20

0.00

Date \*

12/08/2020

Tax (₹) **^** 

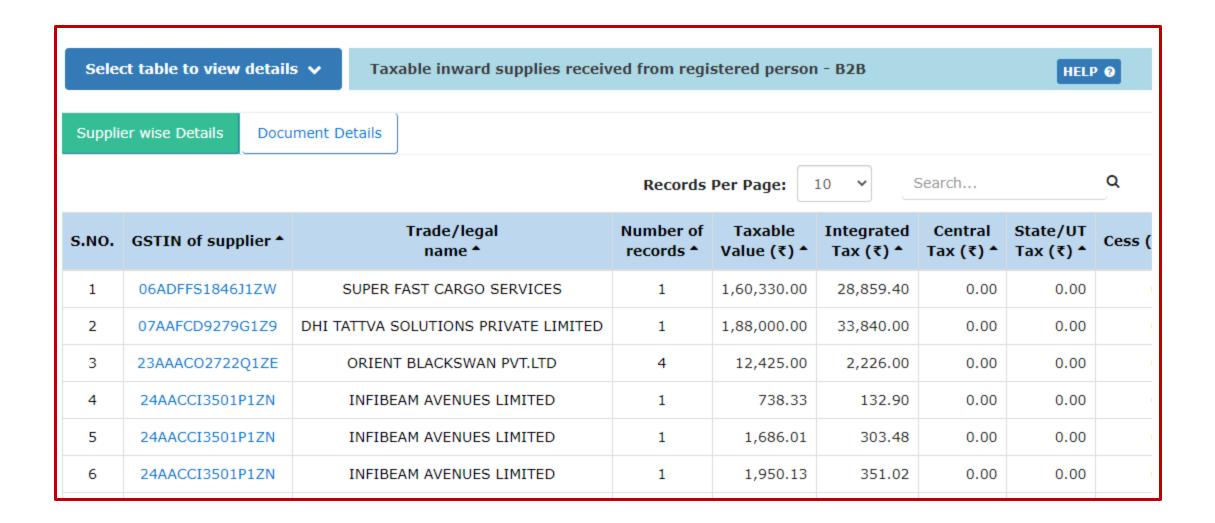
1,275.00



s.no.	GSTIN of supplier *	Trade/legal name ◆	Invoice number *	Invoice type *	Invoice Date ▲	Invoice Value (₹) ^	Place of supply •		
1	37AAJCS6803R1ZK	SHELTON HOSPITALITY PRIVATE LTD	108401 🗸	Regular	04/02/2020	23,799.97	Andhra Prad		
State/UT Cess (₹) ▲ GSTR-1/5 GSTR-1/5 Filing ITC Availability ▲ Reason ▲									

No

POS and supplier state are same but recipient state is different



# Queries Please



# Thank you

