


THE INSTITUTE OF CHARTERED
ACCOUNTANTS OF INDIA
GST & INDIRECT TAXES COMMITTEE

National Conference on Goods & Services Tax (GST)

Topic: Input Tax Credit
Date: 27.08.2022 By CA Gadia Manish R



GST & Indirect Taxes Committee, ICAI



Capital Goods Sec 2(19)


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


Services Capitalised Software?

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WHAT IS GST??

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· GOODS & SERVICES TAX ·

FAQ : It is a destination based tax on consumption of goods and services. It is proposed to be levied at all stages right from manufacture up to final consumption with credit of taxes paid at previous stages available as setoff. In a nutshell, only value addition will be taxed and burden of tax is to be borne by the final consumer.

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Input means Sec 2(59)

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- 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 Sec 2(60)

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

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Eligibility and Condition for ITC – 16(1) 10

- Every registered taxable person
- subject to such conditions and restrictions
- entitled to take credit of input tax charged on any supply of goods or services 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

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ITC wrongly availed 21

During the year 2021-22, -

Inter-state purchases: Rs. 1,00,000

ITC on above: Rs. 18,000 (IGST)

ITC **wrongly availed** as Rs. 9,000 (CGST) and Rs. 9,000 (SGST)

The above error was identified while filing GSTR 9. How can the same be rectified?

The ITC wrongly availed under the head CGST and SGST shall have to be reversed with interest.

The correct ITC of IGST can be claimed while filing GSTR 9, since the last date for availment of ITC for FY 2021-22 is 20th October 2022.

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Agarwal Coal Corporation Pvt. Ltd. – AAR MP 11

- The Applicant is into the business of sale of coal and supply of Service of Coal handling and distribution service.
- The applicant avail various services at port at the time of import of Coal.
- ITC on the above is available.

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When is ITC available 16(2) 22

Possession of a tax invoice, etc., issued by a **supplier registered** under GST

Received the goods and/or services

Bill to Shipped to Goods & Services

Advance paid
Air Ticket
Insurance
Policy

Details of invoice or debit note have been furnished by the supplier in his GSTR1 and such details have been communicated to the recipient (via GSTR 2B)

Inserted Via N. No. 39/2021-CT dated December 21, 2021 w.e. 1.1.2022


The tax charged in respect of such supply has been **actually paid** to the credit of the appropriate Government,

How to Know?

Furnished the return under section 39


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Documents Required for Claiming ITC – Rule 36

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- Invoice issued as per Section 31 
- In case of reverse charge only after the payment of Tax
- Debit Note
- Bill of Entry or any other document as specified under Customs Act, 1962
- ISD Invoice or ISD Credit Note or any other document by an ISD.
- ITC is availed only if all particulars is furnished in FORM GSTR-2 by such person

RCM of 20-21 paid now ITC available?



PAPERCLIP
REQUISITION
CENTER
TAKE ALL
PAPERCLIPS
SERIOUSLY

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Credit note as per BOA or GSTR 2A?

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Particulars	Value
Credit note appearing in BOA	Rs. 10 Lakhs
Credit note appearing in GSTR 2A	Rs. 5 Lakhs

ITC Reversal of Credit Note is to be done as per BOA or GSTR 2A?

Rule 36(4) restricts the availment of ITC of invoices or debit notes, the details of which have been not uploaded by the supplier. This sub rule shall not apply in case of reversal of ITC for invoices against which credit note has been issued by the supplier.

Therefore, the amount of ITC reversal w.r.t. Credit Notes shall be determined based on the amount of Credit Note as per Books of Accounts.

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ITC Shall not be available

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- Any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts. [Rule 36(3)]

N. No. 40/2021 CT 29th Dec, 2021, applicable from 01.01.2022

- No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are not to be furnished under subsection (1) of section 37 unless,-
 - (a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and
 - (b) the details of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60.[Rule 36(4)]

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Some Important Case Laws on Section 16(2) of CGST Act, 2017.

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LGW Industries Limited & Ors. Vs Union of India & Ors. (Calcutta High Court)

➤ **Facts:**

1. GST authorities on inquiry, came to know that the suppliers from whom the petitioners/buyers are claiming to have purchased the goods in question are all fake and non-existing and the bank accounts opened by those suppliers are on the basis of fake documents.
2. Petitioner's claim of benefit of input tax credit are not supported by the relevant documents.
3. The petitioners have not verified the genuineness and identity of the suppliers [who are registered taxable persons (RTP)] before entering into any transaction with those suppliers.
4. The registration of suppliers has already been cancelled with retrospective effect covering the transactions period in question.

➤ **Issue:** Petitioner not allowing the benefit of input tax credit and on purchase from the suppliers and also asking the petitioner to pay penalty and interest under the relevant provision of GST Act.

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➤ **Judgement:**

1. The Honorable High Court observed that when the names of the suppliers as a registered taxable person were already available with the Government record and in Government portal at the relevant period of transaction, then petitioner could not be faulted if they appeared to be fake later on.
2. Therefore, it cannot be said that there was any failure on the part of the petitioners in compliance of any obligation required under the statute before entering the transactions in question or for verification of the genuineness of the suppliers in question.
3. Thus, it was held that benefit of ITC to be granted if the purchases were genuine and supported by documents and it was directed to verify whether payment along with tax actually paid to suppliers and transactions were made before cancellation of registration of suppliers.

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➤ **Judgement:**

1. As per Section 16 of CGST Act, 2017, the assessee must have received the goods and the tax charged in respect of its supply, must have been actually paid to the Government either in cash or through utilization of ITC, admissible in respect of the said supply.
2. Therefore, if the tax had not reached the kitty of the Government, then the liability may have to be eventually borne by one party, either the seller or the buyer. It is also observed that, the Respondent has not taken any recovery action against the Seller. When it has come out that the Seller has collected tax from the Petitioner, the omission on the part of the Sellers to remit the tax must have been viewed very seriously and strict action ought to have been initiated against the Sellers.
3. Respondent took a stand that there was no movement of goods. **Held that, if there was no movement of the goods, the examination of Sellers became more necessary and imperative. However, the Respondent did not ensure the presence of Sellers in the enquiry even when the Petitioners insisted on the same. Hence, the Impugned order suffers from certain fundamental flaws. Quashed the Impugned order due to non-examination of Sellers in the enquiry and non-initiation of recovery action against Sellers in the first place and remitted back the matter to the Respondent. Directed Respondent to hold the enquiry afresh where Sellers will have to be examined as witnesses and to initiate recovery action against Sellers.**

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D.Y. Beathel Enterprises vs State Tax Officer (Data Cell) (Madras High Court)➤ **Facts:**

1. The Petitioner are dealers of Raw Rubber Sheets, they had purchased goods from Charles and his wife Shanthi ("Sellers").
2. The payments were made by the Petitioners to Sellers included the tax component. A substantial portion of the sale consideration was paid through banking channels. Based on the returns filed by the Sellers, the Petitioner availed Input Tax Credit ("ITC").
3. During inspection by the State Tax Officer ("the Respondent"), it came to light that Sellers did not pay any tax to the Government, which necessitated initiation of the proceedings and issuance of show cause notices to the Petitioner.
4. Subsequently, without involving the Sellers, the Respondent passed an order ("impugned order") levying the entire liability on the Petitioners.

➤ **Issue:** Whether the Respondent can levy the entire tax liability on the Petitioner, without involving the Sellers, where the tax has not been remitted to the Government by the Sellers?

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M/s Bright Star Plastic Industries vs Additional Commissioner of Sales Tax (Appeal) Ors. (Orissa High Court)➤ **Facts:**

1. The show cause notice was issued to the petitioner for cancellation of registration alleging the claim of input tax credit on fake invoices issued by non-existent supplier.
2. It filed clarification but registration was cancelled holding that clarification submitted was not satisfactory.
3. It filed for revocation of cancellation of registration but it was rejected.
4. Thereafter, appeal was filed before the Appellate Authority and the same was also rejected. It filed writ petition against the same.

➤ **Issue:** Cancellation of GST registration due to wrongful availment of input tax credit of fake invoices.

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➤ **Judgement:**

1. The Honorable High Court observed that the department would have to show that somehow the purchasing dealer and selling dealer acted in connivance to defraud the revenue.
2. However, the department failed to show that the petitioner as a purchasing dealer deliberately availed of the ITC in respect of the transactions with an entity knowing that such an entity was not in existence.
3. **Thus, the department was directed to restore the petitioner's registration by issuing appropriate orders/directions.**

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Reversal of ITC in case of non payment

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- Payment not made to supplier of goods/service/both within 180 days from the date of issue of invoice: Reverse the credit along with interest (Interest Shall be Applicable from the Date of availing Credit)
 - If Part payment is made and part not made beyond 180 days only the **proportionate** credit in respect of payment not made has to be reversed
 - In Case of Supplies without Consideration as specified in Schedule I - Payment to Supplier is deemed to be made
 - Value of supplies on account of any amount added in accordance with the provisions of **section 15(2)(b) shall be deemed to have been paid**
- No relaxation in the said provision for COVID-19**

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Provided that

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- Where the goods against **an** invoice are received in lots or instalments, the registered taxable person shall be entitled to the credit upon receipt of the last lot or instalment



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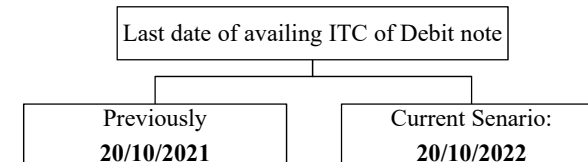
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Time limit for availing ITC -Section 16(4)
Circular No. 160/15/2021-GST

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Date of Debit Note: 04/03/2022 Date of invoice linked to debit note: 01/01/2021



W.e.f. 01.01.2021, in case of debit notes, the date of issuance of debit note (not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of the CGST Act. 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.

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Time Limit for claiming ITC

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No Time Limit for Re-Credit


ITC of any invoice pertaining to a F. Y. (2021-22) cannot be taken after

Due date of return for the month of September, 22

Cash basis – Purchase in March paid in December – ITC available?

Filing of the relevant annual return of FY 21-22

Earliest of



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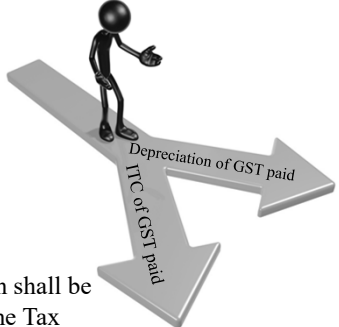
Eligibility and Condition for ITC Sec 16(3)

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- No ITC on tax component of capital goods for which depreciation claimed under the IT

Particulars	Amount
Cost of M/C	1,00,000/-
Tax @ 18%	18,000/-
Total	1,18,000/-

If ITC is taken of 18,000/-, Depreciation shall be allowed only on 1,00,000/- under Income Tax



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GSTR 3B of September 2022

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- Amendments/Addition of invoices pertaining to FY 2021-22
- Debit notes & Credit notes pertaining to FY 2021-22
- ITC availment for the period pertaining to FY 2021-22
- Reconciliation of GSTR-2A with GSTR-3B for the period from April 2021 to Dec 2021
- Reconciliation of GSTR-2B with GSTR-3B for the period from January 2022 to March 2022

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Capital Goods -18(6)

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In case of supply of capital goods on which input tax credit has been taken, payment is required to be made, higher of

- for an amount equal to ITC reduced by 5% per quarter or;
- tax on the transaction value of such capital goods
- Refractory, bricks, moulds and dies, jigs and fixtures supplied as scrap, tax on transaction value

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Reversal of ITC [17(1)(2)(3)&(4)] 46





ITC Partly used for Business	Partly used for other purpose	ITC used for Business shall only be eligible
ITC Partly used for Taxable Supply including Zero rated supply	Partly used for Non Taxable/ exempted Supply	ITC used for Taxable including zero rated Supply only be eligible
ITC in case of Bank, FI or NBFC	Either as per Sec 17(2)	Or avail 50% of eligible ITC

- Exempted supplies include recipient liable pay under RCM, transaction in securities, land, building

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Credit not allowed 17(5)(a)&(aa) 48

- ITC shall not be available in respect of
- motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons (including the driver), vessels and aircraft except when they are used for making the following taxable supplies, namely
 - further supply of such vehicles or conveyances
 - transportation of passengers
 - imparting training on driving such motor vehicles, navigating such vessels or flying such aircraft
 - Vessels and aircraft used for transportation of Goods

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17(4) Credit under Special circumstances Banks and NBFC 47

- 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 avail 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**.

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ITC on motor vehicles 49

Transportation of passengers

- Seating Capacity Not more than 13 person (incl. Driver)
- Eligible **only when used for:**
 1. (i) Further supply of such motor vehicles,
 - (ii) transportation of passengers,
 - (iii) imparting training on driving such motor vehicles

Transportation of Goods

- Own use: Eligible
- GTA: Ineligible for RCM @5%, Eligible for @12%

Others

Allowed if used in the course or furtherance of business


Manufacturer of hazardous goods purchased, Ambulance and kept at factory – ITC available?

With Fuel @12% ITC available
With Fuel @5% ITC not available

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Slide 47


NS4 What is tariff rate-conditions where credit is not admissible for lower rate of tax?
Nehal Shah, 26/07/2022




Further supply of Motor vehicle

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- **Madhya Pradesh AAR in the case of Narsingh Transport**
- Whether the Applicant can claim ITC of cars purchased to be provided on Lease to various other entities?
- In case of further supply of motor vehicle ITC is available. The term "Further Supply" is not defined in the act and thus one has to go with the definition of "Supply". The term 'Further' prefixed to 'supply' is merely in the form of adverb and does not differentiate it from 'Supply' by any stretch of definition. The term Supply as defined in the GST Act includes "All forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease, or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business."
- The outward leasing of motor vehicles by the applicant to other companies is further supply of motor vehicles. Section 17(5)(a)(A) clearly states further supply of motor vehicles as an exception to blocked credits and hence ITC of the cars purchased to be provided on lease is available.

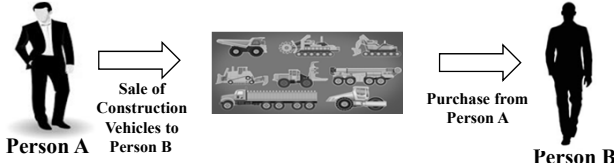


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17(5) – ITC of Dumper, Work Trucks, Other Special Purpose Motor Vehicles

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Person A → Sale of Construction Vehicles to Person B → [Vehicles] → Purchase from Person A → Person B

Up to 31st Jan, 19
 Input Tax Credit
 Ineligible as per Section 17(5)(a)

W.e.f 1st Feb, 19
 Input Tax Credit
 Eligible

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ITC of Motor Vehicles

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ITC of Motor Vehicle for Transportation of Money by Banking Co. or Financial Institution



Money = Neither Goods Nor Services

Up to 31.01.2019


W.e.f 01.02.2019

Ineligible as per sec 17(5)

Eligible as per sec 17(5)

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ITC of Motor Vehicles

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- Repair and maintenance, servicing, general insurance relating to motor vehicles, vessels or aircraft shall not be available except where
 - Motor vehicles, vessels or aircraft are used for the purpose specified
 - Above services are received by a taxable person engaged in the manufacture of such motor vehicles, vessels or aircraft; or in the supply of general insurance services in respect of such motor vehicles, vessel or aircraft insured by him

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Credit not allowed 17(5)(b)

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Allowed only for outward supply of same category or as element of composite/mixed supply If obligatory for employer to provide its employee under any law for the time being in force

food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, life insurance, health insurance, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or (aa) except when used for the purpose specified therein.

↓

Membership of
club, health and fitness centre

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Travel benefits
travel benefits extended to employees on vacation such as leave or home travel concession

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Held that:-

- 1.The Hon'ble Authority for Advance Ruling held that ITC on GST paid on canteen facility is blocked credit under Section 17(5)(b)(i) of the Act and inadmissible to applicant.**
- 2.GST, at the hands on the applicant, is not leviable on the amount representing the employees portion of canteen charges, which is collected by the applicant and paid to the Canteen service provider.**

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ITC on GST paid on Canteen Facility is blocked credit

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- **Tata Motors Ltd. – Gujarat AAR**

- 1.The applicant submits that as per the proviso to Section 17(5) (b) of Act, 2017, ITC of GST paid on 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. The Applicant is recovering nominal amount on monthly basis to ensure use of canteen facility only by authorized persons/employees and expenditure incurred towards canteen facility borne by Applicant is part and parcel of cost to company.
- 2.The applicant sought Ruling as to:
 - Whether ITC is available to Applicant on GST charged by service provider on canteen facility provided to employees working in factory;
 - Whether GST is applicable on nominal amount recovered by Applicants from employees for usage of canteen facility;
 - If ITC is available, whether it will be restricted to the extent of cost borne by the Applicant (employer).

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Credit not allowed 17(5)(c) & (d)

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- Works contract services when supplied for construction of immovable property,
 - other than plant and machinery,
 - 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 other than plant and machinery, on his own account incl. when used for furtherance of business
- **Construction** includes re-construction, renovation, addition, alteration, repair - to the extent of capitalization to said immovable property
- **'Plant and Machinery'** means apparatus, equipment, machinery fixed to earth by foundation or structural support that are used for making outward supply and includes such foundation and structural supports **but excludes** land, building or any other civil structures, telecommunication tower, pipeline laid outside factory premises

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ITC on Construction of Shopping mall for the purpose of letting out



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ITC on Construction of Shopping mall for the purpose of letting out

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- **Safari Retreats Private Limited Vs CC of CGST – Orrisa High Court W.P. (C) No. 20463 of 2018**
- Applicant is in the business of construction of shopping mall and later on give on Rent.
- Applicant purchase various material and availed various services for construction of Mall.
- Where inputs are consumed in the construction of an immovable property which is meant and intended to be for the provision of taxable output services, whether input tax credit was available to the assessee?



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Karnataka AAR in the case of M/s. Tarun Realtors Pvt. Ltd.

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- The Applicant is developing a shopping Mall. To undertake development of the said property, the Applicant was and is required to procure numerous goods and avail numerous services including works contract service.
- The mall will be given on rent.
- The relevant provisions of Section 17(5) relating to Blocked credit of the CGST Act, 2017 applicable to the applicant & question reads given above.
- As these goods or services when incorporated in the construction becomes part and parcel of the building and civil structure which is given on rent and no longer has separate existence.
- The provision of these are either statutory for a building or defines the nature of the building as a commercial mall.
- Hence the ITC on the inward supplies of goods or services involved in the construction of immovable property which is a civil structure or building is not available to the applicant and hence blocked.


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ITC on Construction of Shopping mall for the purpose of letting out

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- Rent income is arising out of the malls which are constructed after paying GST on different items.
- If ITC is denied on building meant and intended to be let out, it would amount to treating the transaction as identical to a building meant and intended to be sold.
- Further, treatment of these two different types of transactions as one for the purpose of GST, is contrary to the basic principles regarding classification of subject matter of tax levy and, therefore, violative of Article 14 of the Constitution.
- Hence, the interpretation adopted by the Revenue is frustrating
- the Petitioner in that case has to pay huge amount without any basis.
- The very purpose of the credit is to give benefit to the assessee.
- Therefore, if the Petitioner is required to pay GST on the rental income arising out of the investment on which he had paid GST, it is required to have the input tax credit on the **GST.**



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ITC of Lift

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- **Jabalpur Hotels Private Limited. vs MP AAR**
- plant and machinery many a times requires support structure and / or foundation for installation and cannot work otherwise.
- Thus, civil structures and foundation as supporting structure for fastening of plant and machinery to earth has been included as part of plant and machinery.
- The lift cannot be said to be separate from a Building.
- The lift has become part of the building
- The ITC paid on Lifts procured and installed in hotel building shall not be available to the applicant as the same is blocked in terms of Section 17(5)(d) of the GST Act 2017.



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- For construction of an immovable property (other than plant and machinery) on his own account including when such goods or services or both are used in the course or furtherance of business. For triggering the restriction, certain criteria have to be satisfied viz:
 1. The goods or services should be used for the **construction of immovable property**.
 2. The construction can be in the form of re-construction, renovation, additions, or alterations or repairs to the immovable property.
 3. The construction should be on his own account.
 4. The goods or services received are capitalized in the books of accounts.
- In the first case of “Detachable 14mm Engineered Wood with Oak top Wooden Flooring”, which is movable in nature, the condition 2, 3 and 4 can be satisfied as the construction of the same is considered as addition or alteration to the property, which is done on his own account, and is capitalized as “furniture and fixture” in the books of account.

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ITC detachable sliding or partition?

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- **Karnataka AAR in the case of We Work India Management Pvt. Ltd**
- Appellant is engaged in providing shared Workspace on rent to various businesses. The appellant procures goods and services from various contractors for fitting-out of the workspaces and provides the said workspace on rent, as sharing work spaces. The major components procured by the appellant that are used in the construction of furniture's and fixtures in its buildings are:
 1. Detachable 14mm Engineered wood with Oak top wooden flooring
 2. Detachable sliding and stacking glass partitions
- **Questions:**
 - Whether ITC can be availed on the detachable 14mm Engineered Wood with Oak top Wooden Flooring which is movable in nature and capitalized as “furniture and fixture”, and is not capitalized as “immovable property”?
 - Whether ITC can be availed by the applicant on the detachable sliding and stacking glass partition which is movable in nature and capitalized as “furniture and fixture” and is not capitalized as an “immovable property”?

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- The term **immovable property is not defined in the GST Law but rather it is defined in the Section 3(26) of the General Clauses Act, 1897** as “including land, benefits arising out of land, and things attached to the earth, or permanently fastened to anything attached to the earth”.
- As it is clearly stated, the 14mm Engineered Wood with Oak top Wooden Flooring is detachable and movable in nature, it cannot be considered as permanently fastened to anything attached to the earth and hence cannot be identified as an immovable property. Thus, the provisions of Section 17(5)(d) are clearly not applicable in this case and ITC of the same is not restricted.
- The second case is in relation to “Detachable sliding and stacking glass partitions”. The sliding and stacking glass partitions **are fixed to the earth with nuts and bolts and can be easily dismantled and moved without demolishing the civil structure according to the requirements of the clients of the Appellant**.
- There is no permanency as the same can be easily dismantled and re-fixed. Therefore, the “Detachable sliding and stacking glass partitions” cannot be considered as immovable property and **thus ITC of the same is eligible**.

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ITC on water park?

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- **MP AAR in the case of M/s. Atriwal Amusement Park**
- Applicant is engaged in construction of Water Park. For construction of the same various components & services will be used
- **Question:**
 - Whether ITC eligible on Purchase of Water Slides? Water Slides are made up of Strong PVC.
 - Water Slides are installed on Steel and Civil Structure. Credit of Tax paid on Input goods and services used in the construction of this support structure will be available or not?
 - Input Tax will be available or not on Goods and services used for area development and preparation of land on which water slides are erected.
 - Whether applicant will be eligible to take credit of Input Goods and Services used for construction of Swimming Pool/ Wave Pool as water slides directly run into pools?

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- Regarding the eligibility of ITC in case of Input Tax paid on Purchase of **Water Slides, we have to state that Water Slides shall fall within the meaning of the term apparatus, equipment and machinery and therefore, shall be eligible for claim of ITC.**
- Regarding the Steel and Civil Structure on which the Water Slides are installed, we have to state that **foundation and support structures which are used to fasten plant and/or machinery to the Earth is classifiable as Plant and or Machinery.** Therefore, the credit of Tax paid on Input goods and services used in construction of this support structure shall be available. However, the **Machine Room, which is a civil structure created for protecting machine is neither foundation nor civil structure for machine.** Therefore, It relatable to the construction of the room for hosing the machine shall not be eligible for ITC.

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- Section 17(5) of CGST Act, 2017 deals with the Blocked Credit.
- As per section 17(5)(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. 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 land, building or any other civil structures.
- In the explanation relating to Plant and Machinery, beneath sub section (6) of Section 17, while providing the meaning of the term plant and machinery it has been clearly stated that Buildings and Civil Structures shall not be covered under the term Plant.
- However, while so clarifying, it has been accepted and understood that plant and machinery many a times requires support structure and / or foundation for installation and cannot work otherwise. Thus, civil structures and foundation as supporting structure for fastening of plant and machinery to earth has been included as part of plant and machinery.

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- Regarding the Input Tax on Goods and services used for area development and preparation of land on which water slides are placed. We have to state that **are development and expenditure on preparation of land like site formation services are part of the cost of the land** and thus are interminably bound with land. These expenses are liable to be capitalized under the head land. Therefore, on account of the specific exclusion of Land from the meaning of plant and machinery ITC related to Land Development subject to is capitalization as per accounting principles shall not be available.
- Regarding eligibility of ITC on Goods and Services used for construction of swimming pools/Wave Pool in which the water slides directly run into, we have to state that such **Swimming Pools/Wave Pools are not support structure or foundation for a plan but are independent items per se.** Since they are not foundation or support structure on which are fastened for affixing them to earth and also on account they being Civil Structures. They are therefore excluded from the meaning of plant and machinery. Thus, The ITC related the construction of the Swimming Pools and Wave Pools, subject to its capitalization shall not be available.

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Karnataka AAR in the case of Shri Keshav Cement and Infta Ltd

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- The Applicant is in the business of manufacture and sale of cement.
- It has 2 manufacturing plants located at two different locations.
- The applicant has a **solar power plant situated at a 3rd location.**
- All the 3 places of business are registered under the same GST Registration and mentioned as additional places of business.
- The electricity generated at the solar power plant is for sole consumption of at the two manufacturing units of the applicant.
- **Electricity generated at the solar power plant is banked and then transmitted to the manufacturing units utilizing the grid facility of KPTCL, GESCOM & HESCOM** under an agreement. As per the requirement of the statute, the agreement clearly states that the electric energy generated by the solar power plant that is un-utilized at the end of 6 months from the date of banking, is deemed to be consumed by KPTCL, GESCOM & HESCOM. For such un-utilized energy, the electricity providers pay a certain sum to the applicant as compensation.

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13.08.2020



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- The general interpretation of the **Section 16(1)** implies that applicant is entitled to credit of ITC charged on any supply of goods and services or both made to the applicant and **used by the applicant in the course and furtherance of business.**
- Here the electricity produced by the solar power plant is used in the cement manufacturing business in the course and furtherance of business.
- Therefore, the supplies of goods and/or services that go into the setting up of the solar power plant can be rightly construed as supplies made and used in the furtherance of business.
- Section 2(59) of the CGST Act provides that “input” means any goods used or intended to be used by a supplier in the course or furtherance of business.
- Capital Goods are defines in Section 2(19) as goods, the value of which is capitalized in the books of accounts and which are used or intended to be used in the course or furtherance of business.

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Questions

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- Whether the company is eligible to take input tax credit as ‘inputs/capital goods’ or ‘input services’ of the equipment’s and machinery used at the solar power plant? Additionally, whether the capital goods and inputs constitute plant and machinery of the applicant for the business of Manufacturing Cement and hence not blocked Input Tax Credit under section 17(5) of the CGST Act?
- Whether the applicant company is permitted to avail the input tax credit of the items being used towards the electricity generation at the solar power plant for consumption at the cement manufacturing plants which are physically located at distinct locations?
- Whether the applicant company is required to reverse the ITC on the electricity generated by it at its plant and banked with KPTCL, GESCOM & HESCOM which is un-utilized at the end of 6 months from the date of banking and is deemed to be consumed by the electricity providers at the end of 6 months?

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- This implies that goods which have been capitalized in the books of accounts will not qualify to be considered as inputs. Therefore, goods the value of which has been capitalized in the books of accounts would not be considered as inputs and the applicant will not be entitled to credit of input tax in relation to such goods.
- The applicant is entitled to input tax credit in respect of goods other than capital goods. Section 17(5) of the CGST Act stipulates certain situations where the Input Tax Credits are blocked. Section 17(5)(c) reads as “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”. Plant and machinery has been described in the Explanation to Section 17(5) as follows: “For the purpose of this Chapter and Chapter IV, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to the 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”. Section 17(5)(c) clearly states that ITC shall be available in respect of works contract services related to construction of plant and machinery. Therefore, the credit of input tax shall only be qualified of the goods that answer to the definition stated above of ‘plant and machinery’. In respect of other goods, the provisions of 17(5)(c) shall apply and credit of input tax shall not be available.

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- **The activity of production of electric energy is a supply to self as the electricity produced is captively used.**
- **The fact that the electricity is produced at the solar power plant that is situated elsewhere is not a barrier** but is to be considered as in intermediate process in the manufacture of cement.
- The electricity energy produced at the power plant is solely used at the cement manufacturing units after transmission through the grid and drawl from the grid at the manufacturing point.
- Therefore, the operation of the solar power plant shall not constitute a separate supply warranting the application of Section 17(1) and/or Section 17(2).
- Although, it is implied that this shall apply only in the case where the entire electricity generated is consumed captively and no part of the energy produced is sold or discharged into the grid and not taken out at their manufacturing site.
- **Therefore, the applicant shall be entitled to the eligible input credits [eligible constitute the part decided in question (a)] in entirety provided the entire production is captively consumed.**

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Credit not allowed 17(5)(e)(f)(g) and (h)

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- Tax paid under Composition
- Received by Non-resident taxable person except on goods imported by him
- Used for personal consumption
- Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples
- ITC wrongly availed or utilised by reason of fraud etc.
- Detention, seizure and release of goods and conveyances in transit
- Confiscation of goods and/or conveyances



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- As it is clearly stated in the 'Wheeling and Banking agreement' between the applicant and KPTCL, GESCOM & HESCOM, the un-utilized energy banked with the energy providers at the end of 6 months shall be deemed to have been purchased by the Distribution Licensee of the area, and the applicant will be paid.
- This demonstrates the applicant makes a supply of electric energy (i.e. goods) in exchange for monetary consideration.
- Even though the applicant contends that he is required by the statute to forgo the surplus energy at the end of 6 months, the Appellate Authority points out it is a fact that the Distribution Licensee pays them a price.
- **Such a transaction would constitute as an exempt supply**
- **Therefore in respect of the supply of surplus electric energy it is evident that the applicant is engaged in supply of exempted goods and is required to reverse the input tax credit on the un-utilized energy banked with KPTCL, GESCOM & HESCOM, for which the applicant receives a consideration**

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Clarifications based on Circular No. 92/11/2019-GST dt. 7th March, 2019

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- ITC in relation to gifts or free samples distributed without consideration shall be available where such distribution is covered under Schedule I.
- ITC in relation to supply of goods or services as part of 'Buy One Get One Free' offers shall be eligible as it shall be treated as supplying 2 goods for the price of one.
- In case of "Buy more, Save more" scheme and **post supply/volume discounts** established **before or at the time of supply**, the supplier shall be entitled to avail the ITC in relation to supply of goods or services on such discounts.

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ITC of gold coin given as part of scheme

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- **Biostadt India Limited –Maharashtra AAR**
- Gold coin will be given on purchase of certain number of goods or making payment of time.
- Section 17(5) of CGST Act deals with blocked credit and begins with the non obstante clause, which means even if Section 16(1) allows ITC, shall block in respect of certain cases
- ITC on procurement of Gold coins which are to be distributed to the customers are not available.

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.....contd

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- **Judgement:**
 1. **The situations as set out above in clause (h) indicate loss of inputs that are quantifiable, and involve external factors or compulsions.** A loss that is occasioned by consumption in the process of manufacture is one which is inherent to the process of manufacture itself.
 2. The expression 'inputs of such finished product', 'contained in finished products' cannot be looked at theoretically with its semantics. It has to be understood in the context of what a manufacturing process is. If there is no dispute about the fact that every manufacturing process would automatically result in some kind of a loss such as evaporation, creation of by-products, etc., the total quantity of inputs that went into the making of the finished product represents the inputs of such products in entirety.'
 3. **The reversal of ITC involving Section 17(5)(h) by the revenue, in cases of loss by consumption of input which is inherent to manufacturing loss is misconceived, as such loss is not contemplated or covered by the situations adumbrated under Section 17(5)(h).**

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Case Law on Section 17(5)(h)

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M/s ARS Steels & Alloy International Pvt. Ltd. v. The State Tax Officer (Madras High Court)

➤ **Facts:**

1. The petitioners are engaged in the manufacture of MS Billets and Ingots. MS scrap is an input in the manufacture of MS Billets and the latter, in turn, constitutes an input for manufacture of TMT/CTD Bars.
2. There is a loss of a small portion of the inputs, inherent to the manufacturing process.
3. The impugned assessment orders reject a portion of ITC claimed, invoking the provisions of clause (h) which relates to goods lost, stolen, destroyed, written off or disposed by way of gift or free samples.
4. The impugned orders seek to reverse a portion of the ITC claimed by the petitioners, proportionate to the loss of the input, referring to the provisions of Section 17(5)(h) of the GST Act.

- **Issue:** Reversal of Input tax credit in case of loss of inputs during the manufacturing process.

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ITC on CSR Expenditure


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- Eligibility of ITC is dependant on two factors:
 1. Whether it fulfills condtions of Section 16(1)?
 2. Whether it is blocked credit u/s 17(5)?

Availment of Input Tax
Credit in relation to
CSR expenditure:
The dilemma persists

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 ITC on CSR Expenditure 83

Taxpayer is entitled to take credit of input tax charged on any supply of goods or services both to him which are used or intended to be used **in the course or furtherance of his business.** CSR expenses are mandated by **Section 135 of the Companies Act.** Failure to incur these expenses could result in **punitive actions and leads to disclosure** of non-compliance in board report.

While the term “business” is all inclusive as per GST law, the term “in course or furtherance of business” has not been defined. The “going concern” state of a company could be hampered. Hence, CSR expenses are needed to run business smoothly and in compliance with applicable law. Drawing nexus from the above it can be said **that CSR expenditure is a business expense and the ITC thereon is therefore available as per section 16.**

Let us assume that, any activity carried on with a purpose to **achieve business objectives, business continuity and stability** would amount to an activity in **course or furtherance of business.**


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 ITC on CSR Expenditure 85


Further, such expenditure is not allowed under Income Tax Act.

But that does not ipso facto mean that credit will not be available under GST. GST registration is isolated law and once cannot read GST as a subsidiary of other laws

Hence, its eligibility of ITC depends solely on the GST provisions and should be judged by them.



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 ITC on CSR Expenditure 84

Now, we have to check the eligibility as per section 17 (5). There can be various types of CSR expenditures. The eligibility depends on the type of the said CSR.


CSR Activity

Donation given to the specified activities as per Companies Act 2017. There is not question of ITC.


Materials distributed as free gifts to the needful as per specified activities. Eg: Books, Clothes, Blankets etc
Such ITC is blocked credit as per section 17(5) h

Activity other than above. Unless explicitly blocked under GST law, ITC on such ITC shall be available to the taxpayer.

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 Tariff rate-conditions where credit is not admissible for lower rate of tax 86

- Standalone restaurants , Standalone outdoor catering, Restaurants within hotels (where room tariff is less than Rs 7,500/-), outdoor catering within hotels (where room tariff is less than Rs 7,500/-)- 5% without ITC
- Construction of immoveable property: 1%/5% without ITC
- GTA under Forward charge: 5% without ITC



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ITC on Registration Sec 18(1) & (2)

ITC of Inputs held in Stock, semi-finished, finished goods

Applied for registration within 30 days of becoming liable, ITC of stock held immediately preceding the date from liable to pay tax	Applied for Voluntary Registration, ITC of stock held immediately preceding the date of registration	Switched from Composition to Normal Levy , ITC of stock held and Capital goods immediately preceding the date from liable to pay tax	Where exempt supply by RTP becomes taxable supply, ITC of stock held and Capital goods exclusively used for such exempted supply immediately preceding the date from which supply becomes taxable
--	--	---	--

No Credit after the expiry of 1 year from the date of issue of invoice for such supply

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Composition Levy → Normal Levy

ITC on CG reduced by 5% per quarter/part thereof

Exempt Supply → Taxable Supply

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Manner of Claiming Credit in special circumstances - Rule 40

- Within 30 days to becoming eligible for ITC, file Form GST ITC-01 specifying inputs in stock, semi/finishes goods, CG
 - Held on day preceding the date from which liable to pay GST
 - Held on day preceding the date of grant of registration (for voluntary registration)
 - Held on day preceding the date from which liable to pay under normal levy instead of composition
 - Held on day preceding the date from which exempt supplies become taxable
- **Form ITC-01 to be certified by practicing CA/Cost Accountant if claim of CGST, SGST, IGST exceeds 2 lakhs**
- ITC claimed shall be verified with GSTR-1 of supplier

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Change in the Constitution 18(3)

on account of

↓

sale, merger, demerger, amalgamation, lease or transfer of the business

↓

As per Circular No. 96/15/2019-GST dt. 28th March, 2019 transfer of business includes transfer by reason of death of proprietor

↓

provision for transfer of liabilities

↓

allowed to transfer the unutilised ITC in the manner prescribed

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Rule 41

91

- Registered Transferor shall file **Form GST ITC-02** with request to transfer unutilized ITC lying in electronic credit ledger to transferee
- In case of de-merger, ITC to be apportioned in ratio of value of assets of new units specified in demerger scheme
- Transferor to submit certificate from practicing CA/CS that sale/merger/de-merger, etc. done with specific provision for transfer of liabilities**
- Transferee shall accept ITC-02 on common portal
- Inputs and CG transferred to be accounted for by the transferee in his BOA

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Rule 44

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Inputs, semi finished goods and finished goods

Proportionately on the basis of corresponding invoices on which credit had been availed

Prevailing Market Price

Capital Goods

ITC on remaining useful life computed on pro rata basis taking useful life 5 years

⇒ Shall be determined separately for CT, ST, UT, IT,

⇒ File form GST ITC – 03 for Composition / Taxation & GSTR 10 for cancellation of Reg

⇒ **Details of prevailing Mkt Price shall be certified by a CA or Cost accountant**

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Switch to Composition / Exemption
Sec 18(4)

92

After payment of such amount if any balance in electronic credit register it will lapse

The amount of credit shall be computed as may be prescribed

Debit electronic cash / credit ledger amount equivalent to credit of input tax in respect of inputs held in

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Rule 41A N.N. 3/2019-CT Dt. 29.1.19

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- A registered person who has **obtained separate registration for multiple places of business** in accordance and who **intends to transfer**, either wholly or partly, the unutilized ITC to any or all of the **newly registered place of business**, shall furnish within a period of thirty days from obtaining such separate registrations, the details in FORM GST ITC-02A
- The ITC shall be transferred to the newly registered entities in the ratio of the value of assets held by them at the time of registration.
- The newly registered person (transferee) shall, on the common portal, **accept the details** so furnished by the registered person (transferor)

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Illustration for capital goods

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➤ 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

➤ Input tax credit taken on such capital goods= C

➤ Input tax credit attributable to remaining useful life= C multiplied by 5/60

▶

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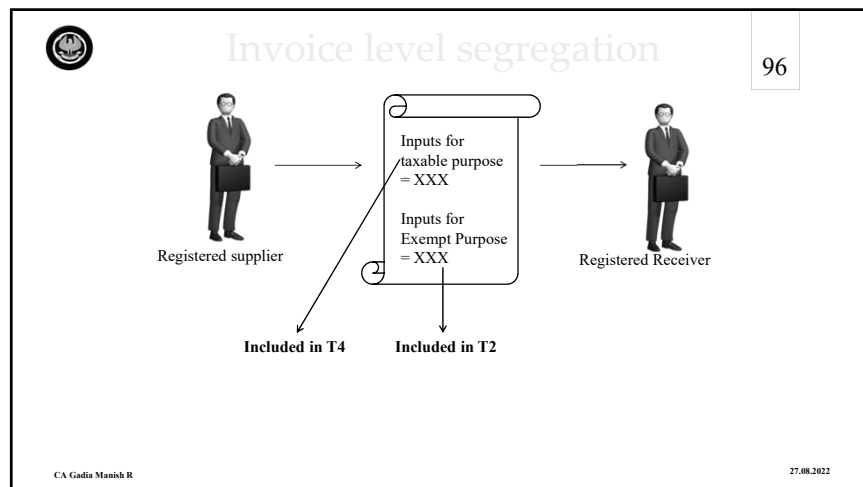



Reversal of Inputs and Input Services Rule 42

97

Particulars	Notation	Action	Amount
Total Credit	T		1,00,000
ITC for non business purpose	T1	Reversal	10,000
ITC for exempt supply	T2	Reversal	7,500
ITC ineligible [17(5)]	T3	Reversal	5,000
ITC for taxable supply used for business purpose	T4	Allowed	70,000
Balance ITC – Common Credit	C2		7,500
ITC partly used for non business out of common credit (5%of C2)	D2	Reversal	375
ITC partly used for exempt supply out of common credit (c2*ES/TT)	D1	Reversal	1,500
Common Credit available [C2 – (D1 + D2)]	C3	Allowed	5,625
Total available credit for Off Set liability (C2+C3)		Allowed	75,625
Total turnover in the state	TT		1,00,00,000
Exempt supply	ES		20,00,000

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Exempt Supply


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- “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 IGST Act, and includes non-taxable supply
- “non-taxable supply” means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act

Exempt Supplies:

- ATF, HSD, Petroleum Crude, Petrol, Natural Gas?
- Alcoholic liquor for human consumption?
- ENA?

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Exempt Supply shall exclude

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- ~~Supply of Service to Nepal or Bhutan against payment in INR.~~
(Omitted vide Notf No. 03/2019-CT dt. 29.01.2019 wef 1st Feb, 2019)
- Interest other than Interest earned by Bank, NBFC, FI.
- Transportation of Goods in vessel for export
- Aggregate value of Exempt supplies and total turnover shall exclude Excise, VAT etc. Alcohol, Petroleum products etc.
- Schedule III (except Sale of Land & Building) (Inserted by CGST Amendment Act, 2018, wef 1st Feb, 2019)

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Final settlement of ITC in September

101

C3 shall be again calculated for the entire year on or before 20th October of the succeeding year.

In case C3 calculated every month is greater than Final C3 for that year

↓

Reversed not later than 20th October of succeeding year along **with interest** from April of the succeeding year


In case C3 calculated every month is less than final C3 for that year

↓

Added to electronic credit ledger not later than 20th October of succeeding year

Interest shall be recovered for additional payment however no interest shall be receivable in case of refund

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100


Month	Taxable supplies	Exempt supplies
July	100,000	50,000
August	0	100,000
Purchases In August towards	75,000	25,000

↓

Here even if there are no taxable supplies in August, ITC of 75,000 can be taken

In case 75000 is common credit, the same can be availed by applying ratio of July

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Reversal under Rule 42 for construction business

102

Consideration for construction business received

On or before issuance of completion certificate
 ↓
 Supply of service as per Schedule II

After issuance of completion certificate
 ↓
 Neither supply of goods nor supply of services as per Schedule III

Sec 17(3)

Since there are above two probabilities in case of construction services, Rule 42 has been amended vide Notification No. 16/2019-CT dated 29/03/2019 wef 01/04/2019

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How ITC has to be Reversed?

103

YEAR	ITC AVAILED	FLATS SOLD	CONSIDERATION	GST	GST Paid
2018-19	1.3 Cr	10	85	10.5	1.3
2019-20	2.5 Cr	10	80	10.5	2.5
2021-22	3.8 Cr	10	85	10.5	3.8
2022-23	2.5 Cr	10	165	10.5	2.5
TOTAL	20 Cr	50	320	32.5	10.3

PROJECT START DATE

What about ITC?
Balance Of 1.3 Cr
Availed in C.Y. 2.5 Cr
Total 3.8 Cr.

Since Part of Consideration is received before OC hence entire will be Taxable

Since entire Consideration is received after OC hence entire will be Non-Taxable

85 Crs. Is Taxable

80 Crs. Is Not-Taxable

85+80=165 CR

OC Received 01.04.2022

TOTAL NUMBER OF FLATS- 50

Before OC Each flat is Sold at 6Crs. After OC Each Flat is sold for 8Crs

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Reversal of credit of Capital Goods Rule 43

105

Particulars	Treatment
Add: Total Input Tax Credit on CG	T
Less: Exclusive for other than business/exempt supplies	No credit in elec. credit ledger
Less: Exclusive for taxable supplies	Full credit in elec. credit ledger
Net Common Credit of CG	Tc Avail equally every month for 60 months
Less: Credit attributable to exempt supplies – reverse in t/o ratio	Te Reverse every month for 60 months

From the date of Invoice

- Change of use of CG from exempt/non-business/t supplies to common use or vice versa, reduce ITC of CG by 5% / quarter

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Which method to be followed?

104

If as per Turnover 22-23

Total Credit = 2.5 Cr.
Taxable T/o = 85 Cr.
Exempt T/o = 80 Cr.
Total T/o = 165 Cr.
Credit to be Reversed = $2.5 \times 80/165 = \text{Rs. } 1.21 \text{ cr}$

If as per Area

Total Credit = 20 Cr.
Sold Before OC = 40
Sold after OC = 10
Total Flat - 50
Credit to be Reversed = $20 \times 10/50 = \text{Rs. } 4 \text{ Cr.}$

The value to be calculated for each project separately w.e.f 1st April, 19

ITC to be

If as per Total Value

Total Credit = 20 Cr.
Total Sales Taxable=240 Cr.
Total Sales = 320 Cr.
Credit to be Reversed = $20 \times 80/320 = \text{Rs. } 5 \text{ Cr.}$

W.e.f 1st April, 2019 for other than residential project and for residential if continued in old scheme for ongoing project

Upto 31st Mar, 2019

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ITC relating to common use

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		month	July	August	Sept	Total
Computer	Pur	60	10,000			10,000
Furniture	Pur	60		20,000		20,000
Add : ITC on change of use	Added	30			2,500	2,500
Total of ITC of CG relating to common use			10,000	20,000	5,000	32,500
ITC for the Tax Period						
Computer	Tr		167	167	167	500
Furniture	Tr			333	333	667
Add : ITC on change of use	Tr				83	83
Total of ITC of CG relating to common use for a tax period	Tm		167	500	583	1,250
Total Turnover	F		10,00,000	11,00,000	12,10,000	
Exempt Supplies	E		1,00,000	95,000	90,250	
Total of ITC of CG relating to exempt supplies	Te		17	43	44	103
Interest on (Te)			-	3	10	13
Total Amount to be added to output liability			17	46	54	116

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Example


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Particulars	Amount
Cost of Machinery	1,00,000/-
Tax @ 18%	18,000/-
Total	1,18,000/-

However, if ITC is taken of 18,000/-, Depreciation shall be allowed only on 1,00,000/- under Income Tax

Suppose this machinery is used for providing taxable as well as exempt supply, proportion of credit shall be reversed as per rule 43.

Reversal ratio	10%
Reversal amount	1,800
Available credit	16,200



Hence in the above case, person has lost ITC of Rs 1,800/- and also depreciation on Rs 1,800/- since he claimed the entire credit.

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When the capital goods were used exclusively for effecting exempt or for non-business purpose, but subsequently used for effecting both taxable and exempt supplies.

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Particulars	Up to 31 st March 2020	From 1 st April 2020
Date of Purchase of CG	1 st April 2019	1 st April 2019
Change in Nature of Supply	1 st July 2020	1 st July 2020
ITC on said goods	Rs. 1,20,000/-	Rs. 1,20,000/-
The above ITC was not taken in the month of April 2019 as it was used for making Exempt supplies.		
ITC to be taken in July 2020	Rs. 90,000/- [Rs.1,20,000-(Rs.1,20,000*5%*5)]	Rs. 1,20,000/-
ITC to be considered in Outward Liability	-	Rs. 30,000/- (Rs. 1,20,000* 5%* 5)
Common Credit to be considered for reversal	Rs. 1,500/- (Rs. 90,000 / 60)	Rs. 2,000/- (Rs. 1,20,000 / 60)
Exempted to total turnover ratio for the month of July 2020	20%	20%
Amount to be reversed for the month of July 2020	Rs. 300/- (Rs. 1,500*20%)	Rs. 400/- (Rs. 2,000*20%)


*Interest will also be applicable on reversal of ITC (every month) @18% from the date of availment to the date of reversal of ITC.

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Final settlement of ITC

108

- The amount Te 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.



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When the capital goods were used exclusively for effecting taxable supplies, but subsequently used for effecting both taxable and exempt supplies.

110

Particulars	Up to 31 st March 2020	From 1 st April 2020
Date of Purchase of CG	1 st April 2019	1 st April 2019
Change in Nature of Supply	1 st July 2020	1 st July 2020
ITC on said goods	Rs. 1,20,000/-	Rs. 1,20,000/-
ITC to be taken in April 2019	Rs. 1,20,000/-	Rs. 1,20,000/-
ITC to be taken in July 2020	-	-
Common Credit to be considered for reversal	Rs. 1,500/- [Rs. 1,20,000 - (Rs. 1,20,000*5*5%)]/60	Rs. 2,000/- (Rs. 1,20,000 / 60)
Exempted to total turnover ratio for the month of July 2020	20%	20%
Amount to be reversed for the month of July 2020	Rs. 300/- (Rs. 1,500*20%)	Rs. 400/- (Rs. 2,000*20%)

*Interest will also be applicable on reversal of ITC (every month) @18% from the date of availment to the date of reversal of ITC.

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Slide 109

NS2 DOES THIS SLIDE NEED TO BE CHNAGED?
Nehal Shah, 26/07/2022



Restriction on use of amount in Electronic Credit Ledger - Rule 86A

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- The Commissioner or an officer not below the rank of an AC,
- Having reasons to believe that credit of ITC available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as:
 - the credit of input tax has been availed on the strength of tax invoices, etc. as prescribed under rule 36
 - ❖ issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or
 - ❖ without receipt of goods or services or both; or
 - Tax has been not paid by the supplier; or
 - The registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or
 - The registered person availing any credit of input tax is not in possession of a tax invoice, etc.

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ITC Utilization under Rule 86B

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As per GST Notification No. 94/2020 Dated 22 December, 2020,

- GST rule 86B has been introduced which has imposed 99% restricted on ITC available in electronic credit ledger of Registered Person.
- According to this Law 1% of Output liability to be paid in cash.
- This limitation is applicable where the value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds fifty lakh rupees.

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Restriction on use of amount in Electronic Credit Ledger - Rule 86A

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- May, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.
- The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.
- Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.

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ITC Utilization under Rule 86B

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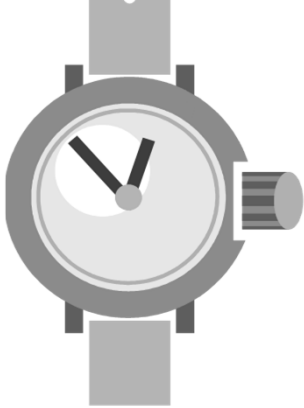
Provided that the said restriction shall not apply where

1. If the persons mentioned below **have paid more than Rs.1 lakh** as Income Tax under Income Tax Act, 1961 : The registered person ,Proprietor, Karta or Managing Director of the registered person , Any of the partners or whole time directors or any other person as the case may be.
2. If the registered person under concern has received a **refund of amount greater than Rs.1 lakh** in the preceding financial year on account of export under LUT or due to inverted tax structure.
3. If the registered person under concern has discharged his liability towards output tax by **electronic cash ledger for an amount in excess of 1%** cumulatively of the total output tax liability up to the said month in the current financial year.
4. If the registered person under concern is any of the following: Government department Public sector undertaking Local authority Statutory Authority.

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**Opinions or views
are like wrist
watches.
Every watch shows
different time from
others.
But every one
believes that their
time is right!**

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Thank You

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