

6 DAYS REFRESHER COURSE ON GST

Input Tax Credit & Related transition provisions

Presented By
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GST

Goods
and
Services
Tax



Flow of Presentation

3

- INPUT TAX CREDIT
 - Meaning & Basic understanding
 - Negative List
 - Conditions for availment
 - Apportionment
 - Input Service Distributor
 - Utilisation rules

- TRANSITIONAL PROVISIONS

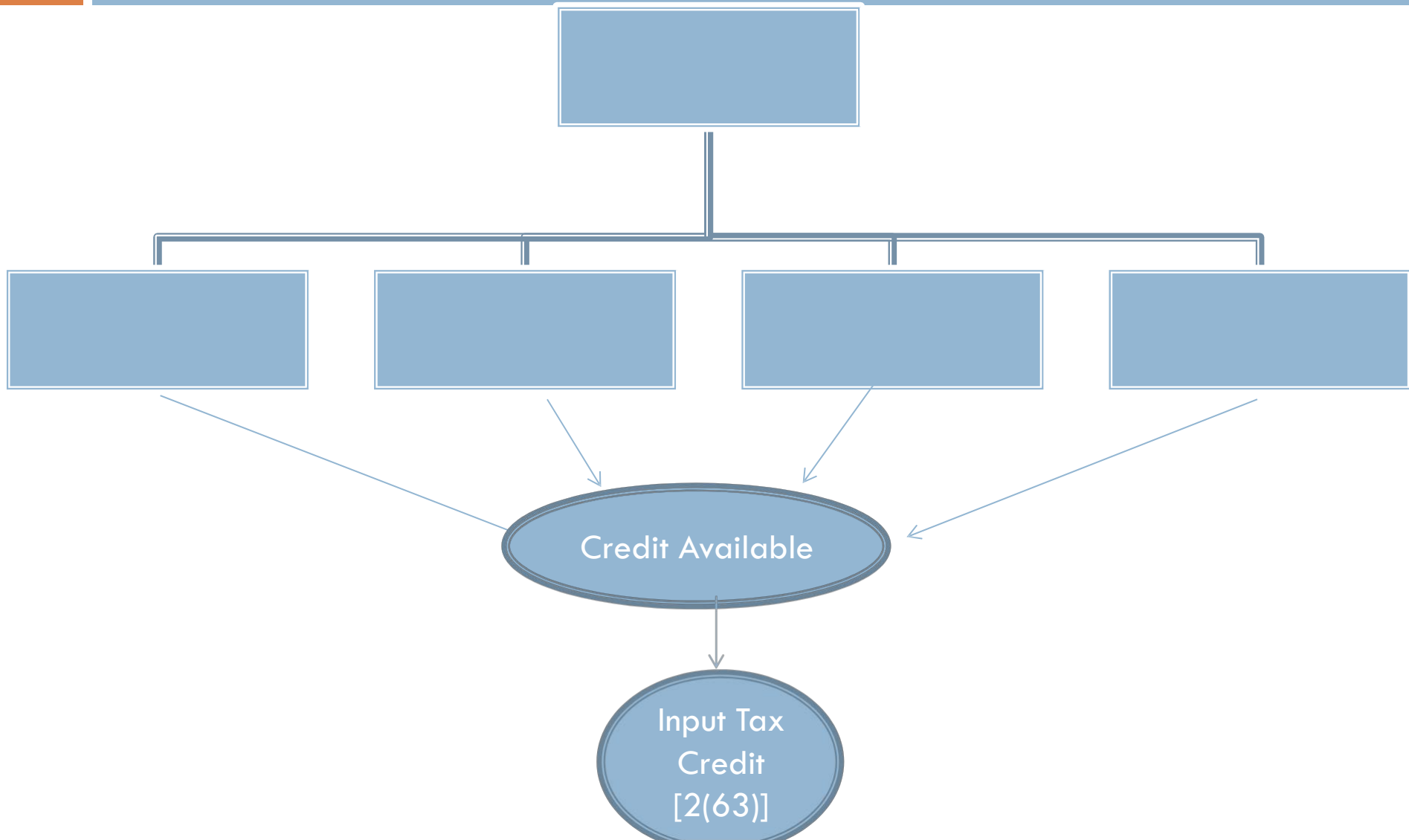
Input Tax Credit

TAXES

CGST - SGST - IGST

Basic Flow of Input Tax Credit [2(62) & (63) respectively]

5



Definitions/Meanings

6

- Inputs: [Sec 2(59)]
 - “input” means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business
- Input Service: [Sec 2(60)]
 - “input service” means any service used or intended to be used by a supplier in the course or furtherance of business;
- Capital goods: [Sec 2(19)]
 - “capital goods” means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business

The following factors will be guideline factor for interpreting in the course or furtherance of business:

- *The words ‘wholly and exclusively’ refers to motive, objective and purposes of the expenditure and gives jurisdiction to the taxing authorities to examine these matters. – B.K. Khanna & Co (P) Ltd v. CIT (2001) 247 ITR 705, 709 (Del)*
- *The expression ‘wholly and exclusive’ in section 37(1) does not mean ‘necessarily’. Ordinarily, it is for the assessee to decide whether any expenditure should be incurred in the course of its or his business. Such expenditure may be incurred voluntarily and without any necessity, and if it is incurred for promoting the business and to earn profits, the assessee can claim deduction therefor under section 37(1) even though there was no compelling necessity to incur such expenditure. – Bralco Metal Industries Pvt. Ltd. V. CIT, (1994) 206 ITR 477, 482 (Bom).*

The following factors will be guideline factor for interpreting in the course or furtherance of business:

- *The Hon. Supreme Court in the case of Eastern Investments Ltd v. CIT (1951) 20 ITR 1, 4 (SC) laid down following principles –*
 - *though the question must be decided on the facts of each case the final conclusion is one of law.*
 - *It is not necessary to show that the expenditure was a profitable one or that in fact any profit was earned*
 - *It is enough to show that the money was expended ‘not necessity and with a view to a direct and immediate benefit to the trade, but voluntarily and on the ground of commercial end in order indirectly to facilitate the carrying on of the business*
 - *Beyond that no hard and fast rule can be laid down to explain what is meant by the word ‘solely’ occurring in the pre-1939 law.*
- *That expenditure made under a transaction which is so closely related to the business that it could be viewed as an integral part of the conduct of the business, may be regarded as revenue expenditure laid out wholly and exclusively for the purpose of business. Bombay Steam Navigation Co. (1953) Pr. Ltd v. CIT (1965) 56 ITR 52, 61 (SC)*

The following factors will be guideline factor for interpreting in the course or furtherance of business:

- *The true test of an expenditure laid out wholly and exclusively for the purposes of trade or business is that it is incurred by the assessee as incidental to his trade for the purpose of keeping the trade going and of making it pay and not in any other capacity than that of a trade. CIT v. Delhi Safe Deposit Co Ltd (1982) 133 ITR.*
- *The manner to apply the test is to ask the question. Has the expense been incurred with the sole object of furthering the trade or business interest of the assessee unalloyed or unmixed with any other consideration? If the expense is found to bear an element other than the trade or business interest of the assessee the expenditure is not an allowable one. To arrive at the conclusion that the expenditure was dictated solely by business consideration one has to consider the nature of the business being adversely affected or its interest being promoted by the refusal or the incurring of the expenditure, as the case may be. When the assessee places all the facts and circumstances before the revenue authorities, the latter must examine the same and must make up their minds as to whether the expenditure was necessitated or justified by commercial expediency [Andrew Yule & Co Ltd v. CIT (1963) 49 ITR 57, 65 (Cal)]*

The following factors will be guideline factor for interpreting in the course or furtherance of business:

- *An expenditure to which one cannot apply an empirical or subjective standard is to be judged from the point of view of a businessman and it is relevant to consider how the businessman himself treats a particular item of expenditure, whether as revenue expenditure or as a capital expenditure [Ford & Macdonald Ltd v. CIT, (1964) 54 ITR 133, 143 (All.)]*
- *The test is not what a prudent man would do in similar circumstances. Though an assessee may be an imprudent businessman, yet if he incurs an expenditure voluntarily for the purposes of his own business, it would be allowable as a proper deduction. [J K Commercial Corporation Ltd v. CIT , (1969) 72 ITR 296 (All)]*

Negative List of Input Tax Credit

11

- Credit will not be available for –
 - ▣ Motor vehicles and other conveyances except when they are used making taxable supplies such as supply of such vehicles or conveyances, transportation of passengers, imparting training on driving, flying, navigating such vehicles or conveyances
 - ▣ For transportation of goods
 - ▣ Food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply
 - ▣ membership of a club, health and fitness centre

Negative List of Input Tax Credit

12

- Credit will not be available for –
 - ▣ rent-a-cab, life insurance and health insurance except where
 - The Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or
 - Such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply;
 - ▣ travel benefits extended to employees on vacation such as leave or home travel concession
 - ▣ 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

Negative List of Input Tax Credit

13

- Credit will not be available for –
 - ▣ goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.
Explanation.—For the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property
 - ▣ goods or services or both received by a non-resident taxable person except on goods imported by him
 - ▣ goods or services or both used for personal consumption
 - ▣ goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and
 - ▣ any tax paid under any investigations or such other proceedings

Conditions for claiming input tax credit

14

- Credit of any input tax is unavailable if –
 - ▣ Tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed are not available.
 - ▣ Goods/services or both are not received
[For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise]

Conditions for claiming input tax credit

15

- Credit of any input tax is unavailable if –
 - ▣ The tax charged in respect of such supply is unpaid.
 - ▣ Returns are not filed periodically.

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

- If the recipient fails to pay within 180 days to the supplier then an amount equal to the input tax credit availed by the recipient shall be added to his output liability alongwith interest.

Conditions for claiming input tax credit

16

- If depreciation is claimed on input tax credit portion of the capital goods/plant & machinery then, credit for the same is unavailable.

- A registered person shall not be entitled to take input tax credit in respect of any invoice or debit –
 - ▣ after the due date of furnishing of the return for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or
 - ▣ furnishing of the relevant annual return,
whichever is earlier

Meaning of the term “Plant & Machinery”

17

- The expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—
 - (i) land, building or any other civil structures;
 - (ii) telecommunication towers; and
 - (iii) pipelines laid outside the factory premises

Conditions for claiming input tax credit

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whichever is earlier

Illustration: Due date of taking credit for invoice dated 01.04.2017

a. 10th Oct 2019 or 31st December 2019 (whichever is earlier)

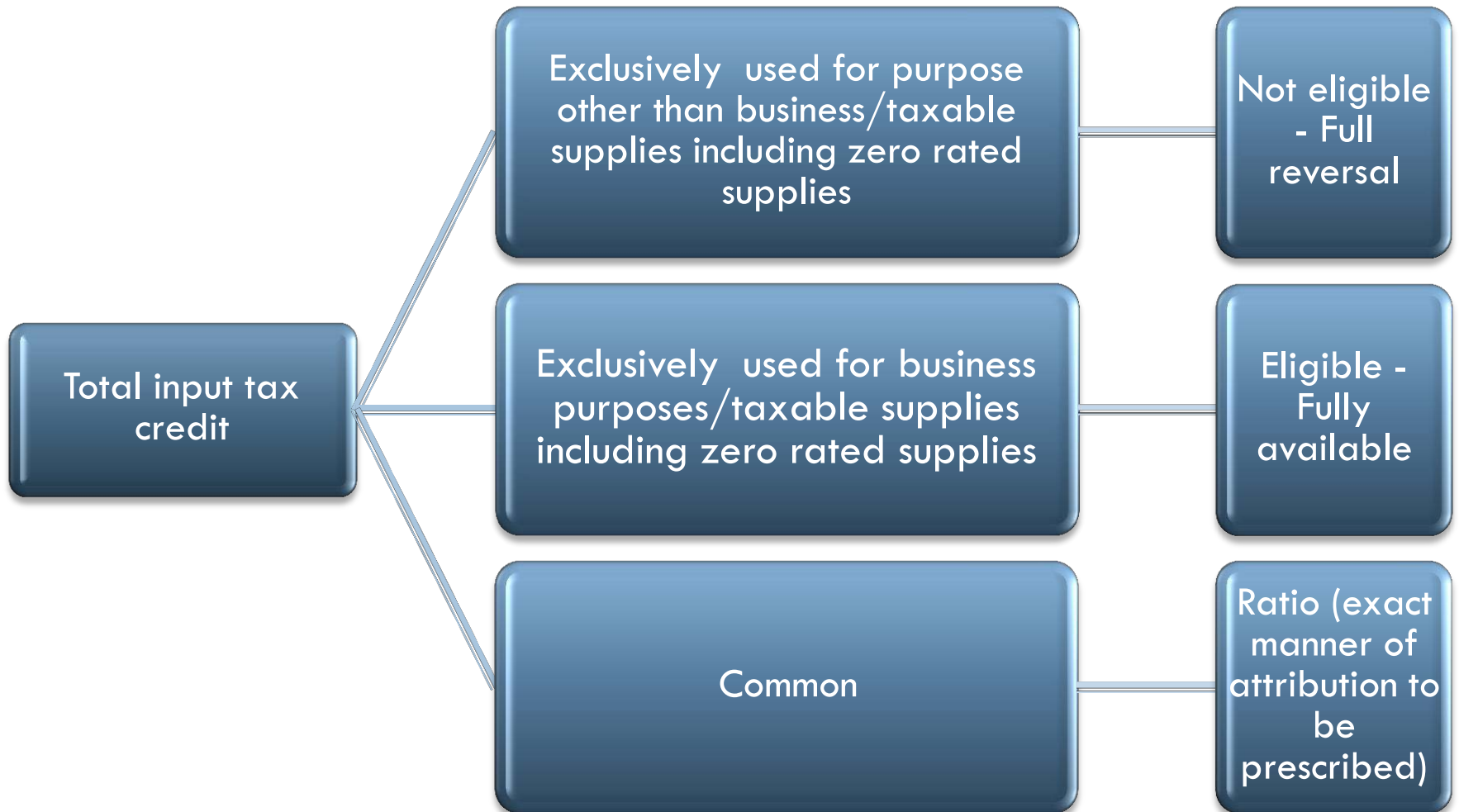
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Apportionment of input tax credit [Sec 17]

20



Apportionment of input tax credit

21

- The value of exempt supply shall be such as may be prescribed, and shall include supplies wherein -
 - ▣ The recipient is liable to pay tax on reverse charge basis
 - ▣ Transactions in securities
 - ▣ Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building
- For banking/financial institution including a non-banking financial company –
 - ▣ Follow the process explained above or,
 - ▣ Pay an amount equal to 50% of the eligible input tax credit on inputs, capital goods and input services in that month

Availability of credit under special Conditions [Sec 18]

S.N	Conditions
1	A person who has applied for registration under this Act within 30 days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act
2	A person who takes voluntary registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration
3	Any registered person ceases to pay tax under composition scheme, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax.
4	An exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable.

Availability of credit under special Conditions [Sec 18]

23

- The credit of capital goods shall be reduced by such percentage points as may be prescribed
- The time limit for availing input tax credit under the above mentioned conditions is 1 year from the date of issue of tax invoice.
- Registered person who has availed of input tax credit opts to pay tax
 - ▣ under composition scheme or,
 - ▣ where the goods or services or both supplied by him become wholly exempt,

he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of exercising of such option or, as the case may be, the date of such exemption

Input tax credit in respect of inputs and capital goods sent to jobworker [Sec 19]

24

- Principal can take input tax credit of inputs sent to job-worker even if goods are not bought to the place of business of principal.
- Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise or are not supplied from the place of business of the job worker within 1 year of being sent out then it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out
- For capital goods, the above mentioned goods should be bought back within 3 years.
- Further, time limit shall not be applicable to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work.

Input Service Distributor [Sec 20]

25

Total Cenvat Credit



Classification of Cenvat Credit



Implementation as specified



Utilisation Rules

26

- IGST can be utilised for IGST, CGST & SGST/UTGST
- CGST can be utilised for CGST & IGST
- SGST/UTGST can be utilised for SGST/UTGST & IGST



Major Areas of preparation.

1. Reconciliation of Credit in Books with Return.
2. Treatment of Goods / Services Received till 30-06-2017 but unaccounted.
3. Unpaid / Disputed invoices.
4. Reverse charge payments.
5. Credit disclosed in original return vis a vis credit disclosed in revised return.
6. Automatic or manual transfer.
7. Transfer of CESS – Education cess, KKC, etc.
8. Pending Litigations.

Migration to existing taxpayer [Sec 139]

29

- Provisional registration certificate would be issued to all existing taxpayers
- The same would be replaced by final certificate of registration.
- If the assessee does wish to register under GST regime then since migration would be automatic i.e. deemed, process for cancellation of registration has to be initiated by the instant assessee wishing to cancel.

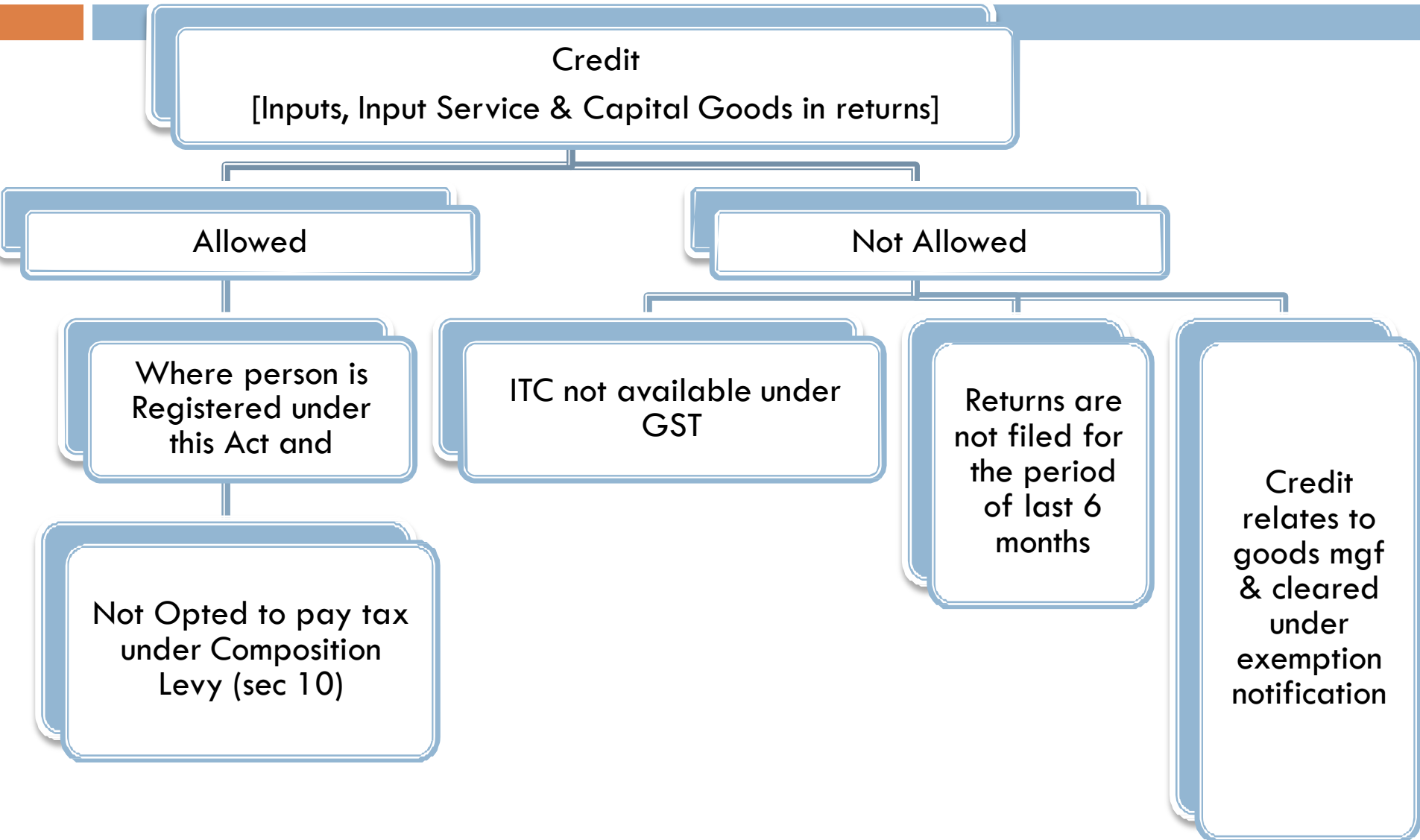
Transitional arrangements for input tax credit [Sec 140]

30

- A registered person, other than a person opting to pay tax under composition scheme, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed.

- The registered person shall not be allowed to take credit in the following circumstances –
 - where the said amount of credit is not admissible as input tax credit under this Act or,
 - where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or
 - where the said amount of credit relates to goods manufactured and cleared under such exemption notifications

Sec 140(1)–Amount of CENVAT credit carried forward in a return to be allowed as input tax credit

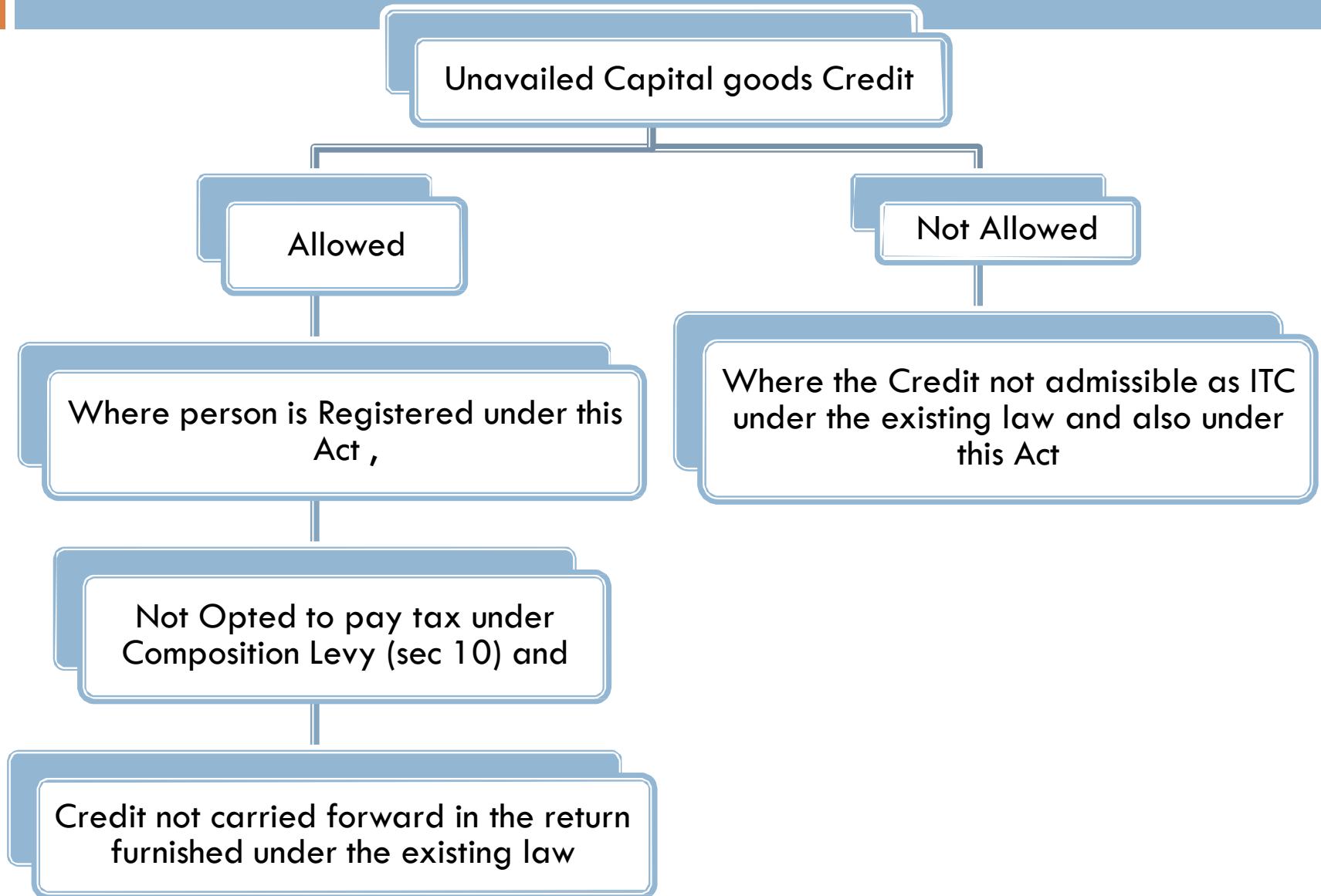


Transitional arrangements for input tax credit [Sec 140]

32

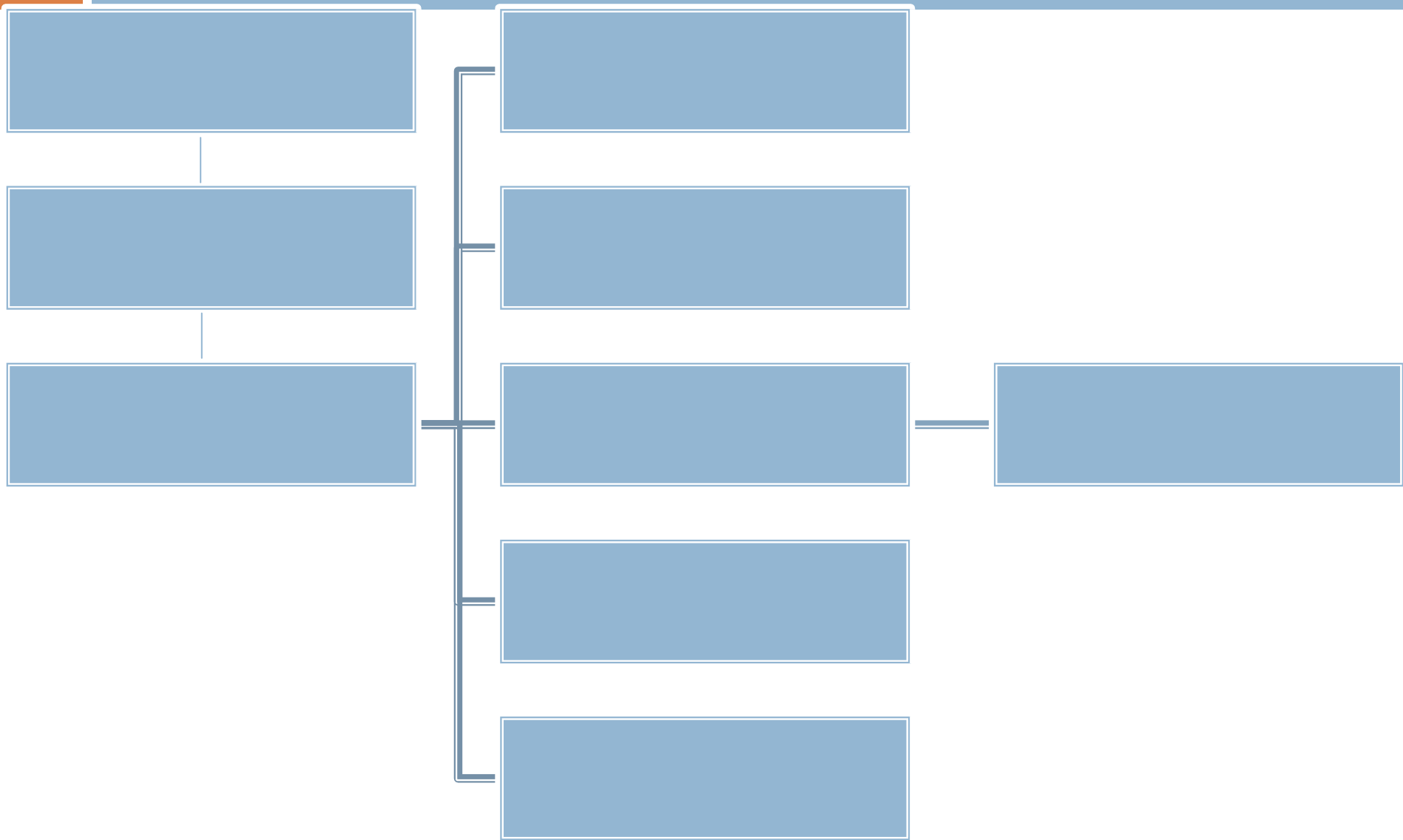
- Unavailed credit in respect of capital goods, not carried forward in a return, furnished under the existing law can be availed under the GST law. The said credit should be available under the existing law and under the GST law.
- The expression “unavailed CENVAT credit” = The aggregate amount of available CENVAT credit under the existing law - the amount of CENVAT credit already availed under the existing law

Sec 140(2)–Unavailed cenvat credit on capital goods, not carried forward in a return, to be allowed in certain situations



Transitional arrangements for input tax credit [Sec 140]

34

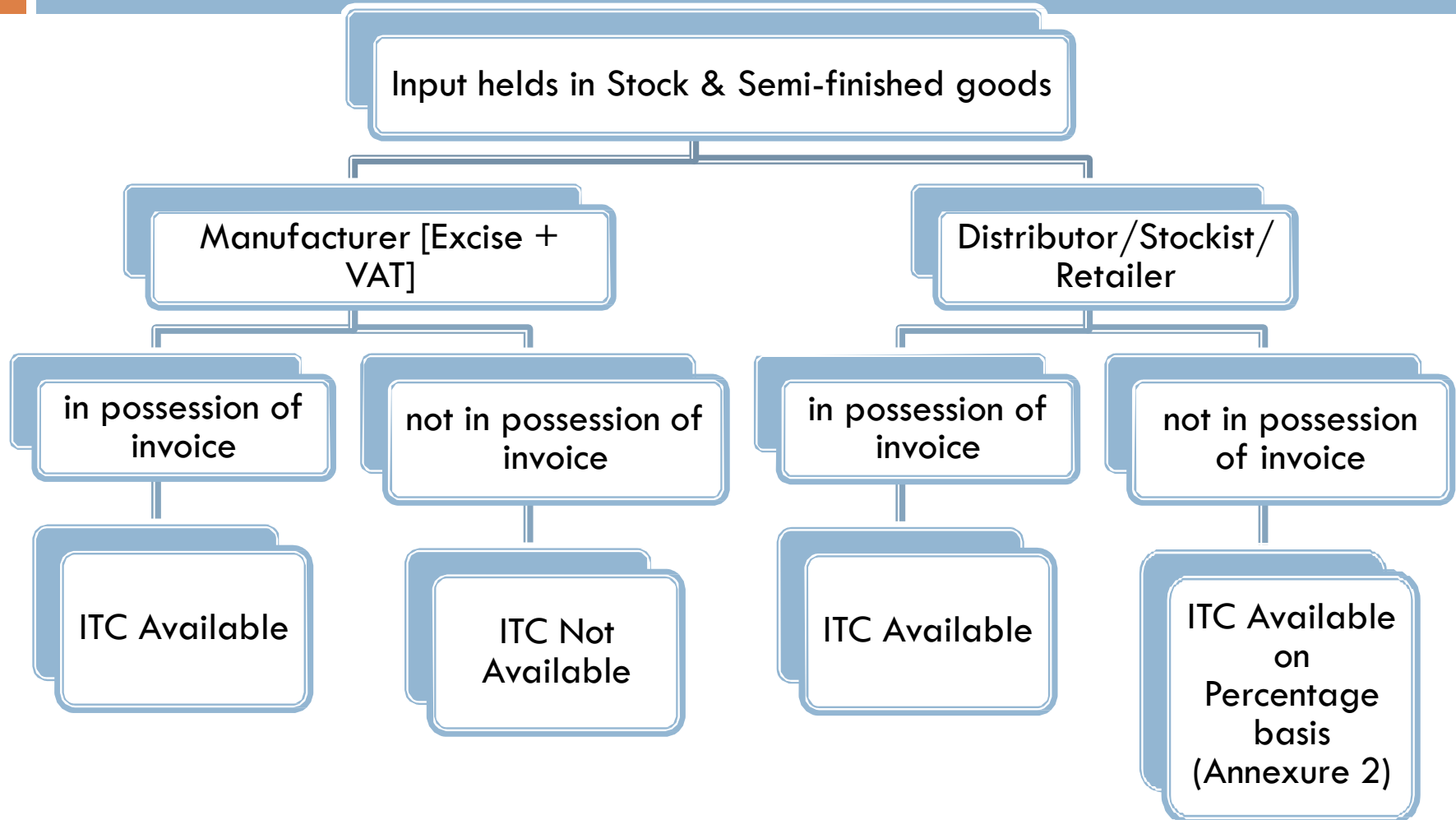


Transitional arrangements for input tax credit [Sec 140]

35

- A registered person, engaged in the manufacture/provision of service - taxable & exempted – taxable under GST - shall be entitled to take
 - ▣ The amount of CENVAT credit carried forward in return
 - ▣ The amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or services .
- The manner of such availment is in respect to the rules mentioned supra.

Sec 140(3) – Credit of eligible duties and taxes in respect of Inputs held in a stock to be allowed in certain situations.



Annexure 2 : -

Inter-state

Central Excise Duty
&
VAT

Tax rate \Rightarrow 9%

Credit allowed = 60%
CGST/SGST paid

Tax rate $<$ 9%

Credit allowed = 40%
CGST/SGST paid

No possession
of duty paying
document

Inter-state
transactions

Central Excise
Duty
&
VAT

Tax rate \Rightarrow 9%

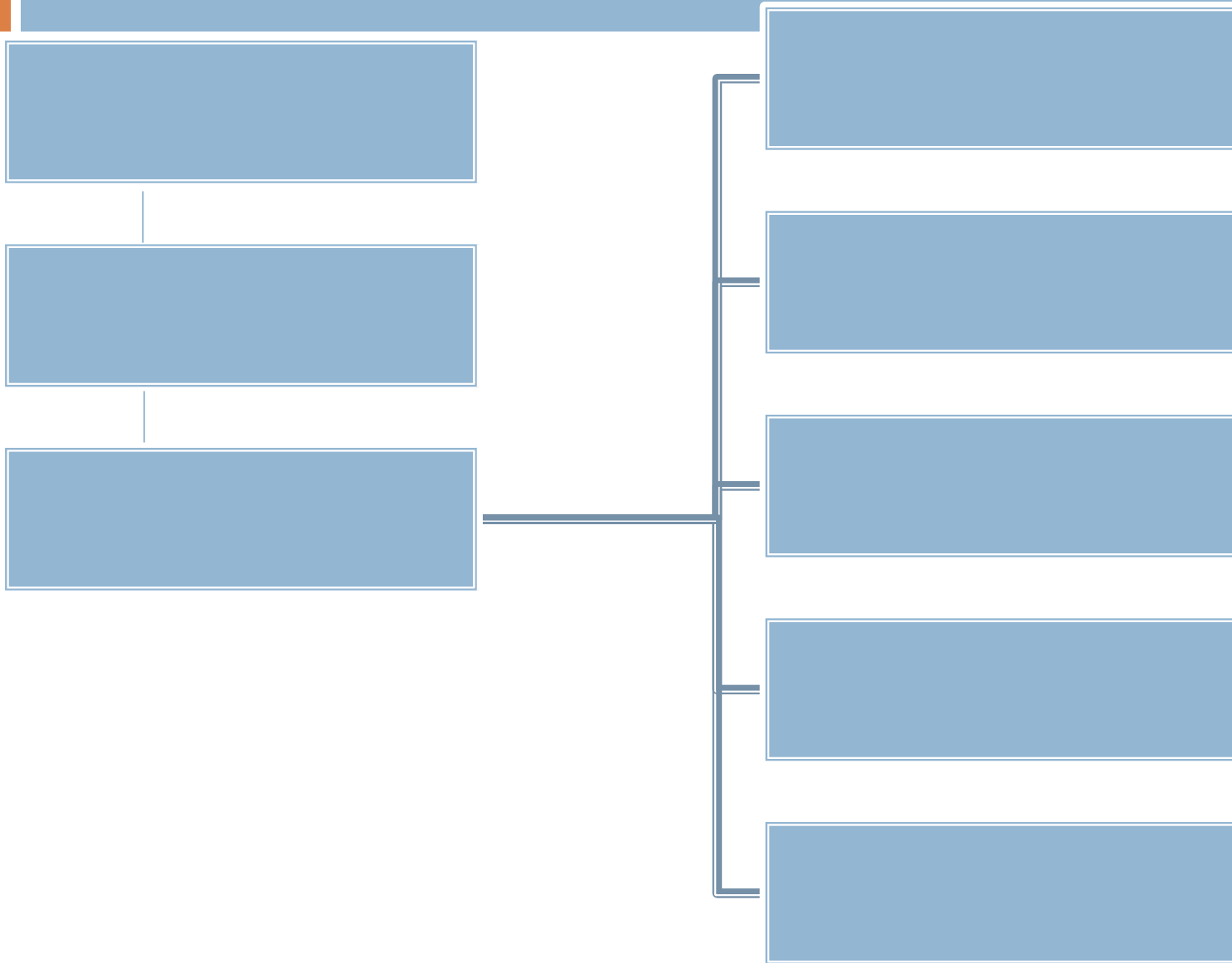
Credit allowed = 30% IGST
paid

Tax rate $<$ 9%

Credit allowed = 20% IGST
paid

Transitional arrangements for input tax credit [Sec 140]

38



Conditions for availment of Scheme

39

□ The scheme shall be available for six tax periods from the appointed date. Such credit of central tax shall be availed subject to satisfying the following conditions, namely,-

- (i) such goods were not unconditionally exempt from the whole of the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 or were not nil rated in the said Schedule.
- (ii) the document for procurement of such goods is available.
- (iii) the registered person availing of this scheme and having furnished the details of stock held by him in FORM GST TRAN 2 at the end of each of the six tax periods during which the scheme is in operation.
- (iv) the amount of credit allowed shall be credited to the electronic credit ledger of the applicant maintained in FORM GST PMT-2 on the Common Portal.
- (v) the stock of goods on which the credit is availed is so stored that it can be easily identified by the registered person.

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- (iv) the amount of credit allowed shall be credited to the electronic credit ledger of the applicant maintained in FORM GST PMT-2 on the Common Portal.
- (v) the stock of goods on which the credit is availed is so stored that it can be easily identified by the registered person.

Transitional arrangements for input tax credit [Sec 140]

41

- Registered person having centralised registration under the existing law such person shall be allowed to take, in his electronic credit ledger, credit of the amount of CENVAT credit carried forward in a return.
- Provided that if the registered person furnishes his return, within three months of the appointed day, such credit shall be allowed subject to the condition that the said return is either an original return or a revised return where the credit has been reduced from that claimed earlier
- Provided further that the registered person shall not be allowed to take credit unless the said amount is admissible as input tax credit under this Act
- Provided also that such credit may be transferred to any of the registered persons having the same Permanent Account Number for which the centralised registration was obtained under the existing law

Transitional arrangements for input tax credit [Sec 140]

42

- Where any CENVAT credit availed for the input services provided under the existing law has been reversed due to non-payment of the consideration within a period of three months, such credit can be reclaimed subject to the condition that the registered person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.

Anti-profiteering Measure

43

- (1) The Central Government may by law constitute an Authority, or entrust an existing Authority constituted under any law,
 - to examine whether
 - input tax credits availed by any registered taxable person or
 - the reduction in the price on account of any reduction in the tax rate
 - have actually resulted in a commensurate reduction in the price of the said goods and/or services supplied by him.

- (2) The Authority referred to in sub-section (1) shall exercise such functions and have such powers, including those for imposition of penalty, as may be prescribed in cases where it finds that the price being charged has not been reduced as aforesaid.

THANK YOU

Balanced view presented by

44

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