

# **Intricacies and Legal Issues in 'Input Tax Credit' Under Goods and Services Tax Laws 29.12.2022**

**WIRC of ICAI**

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# Entitlement and Eligibility of Input tax credit

## Section 16

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

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

***“Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services— (i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise; (ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.***

## PRACTICAL



## CHALLENGES

### QUESTION 1

WHICH ARE OTHER DOCUMENTS ON WHICH INPUT TAX CREDIT CAN BE CLAIMED OTHER THAN ON INVOICE AND DEBIT NOTE?

### QUESTION 2

PHYSICAL RECEIPT OF GOODS IS AT 'SITE A', WHICH IS A REGISTERED PLACE OF BUSINESS, WHEREAS THE CONSUMPTION TAKES PLACE AT 'SITE B' (WHICH IS NOT REGISTERED PLACE WITH GST), SHALL ITC BE DENIED SINCE CONSUMPTION IS AT UNREGISTERED PLACE IN SAME STATE AND DOCUMENTS ARE ADDRESSED TO 'SITE A'

### QUESTION 3

A REGISTERED PERSON IS NOT IN POSSESSION OF PHYSICALLY SIGNED DOCUMENT BUT HAS A DIGITALLY SIGNED INVOICE ISSUED BY VENDOR IN SOFT COPY? ANY ISSUES IN CLAIMING ITC?

### QUESTION 4

CAN BANK STATEMENT BE CONSIDERED AS VALID DOCUMENT FOR CLAIMING GST CREDIT?

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply;

**M/s DY BEATHEL ENTERPRISES Vs STATE TAX OFFICER (DATA CELL)**

(d) he has furnished the return under section 39 Provided that where the goods against an invoice are received in lots or Instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment.

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed.

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

**INTEREST APPLICABILITY U/S 50(1)/50(3).. RULE 37(3). FROM WHICH PERIOD ?**



QUESTION 1

WHETHER BY BEATHEL JUDGEMENT WILL BE SUFFICIENT TO STOP ALL POSSIBLE RECOVERY OF TAXES FROM THE RECIPIENT ? OR CHANGE THE COURSE OF ACTION WHICH WILL BE ADOPTED BY THE DEPARTMENT FOR TAX RECOVERY FROM THE DEFAULTERS?

QUESTION 2

IF ITC IS MISSED OUT TO BE CLAIMED IN RETURNS, CAN IT BE CALLED AS VALID CREDIT ONLY SINCE THE SAME IS IN BOOKS?

QUESTION 3

IF THE RETURNS ARE NOT FILED WITHIN THE TIME LINES UNDER SECTION 39 OR IF THE RETURNS ARE FILED BELATED BASIS, CAN ITC BE CLAIMED AS VALID?

QUESTION 4

IF THE PAYMENT IS NOT MADE TO THE VENDOR WITHIN THE TIME OF 180 DAYS, AND IF THE SAME HAS BEEN POINTED OUT DURING THE AUDIT. ALSO IF THE PAYMENT HAS BEEN MADE SUBSEQUENTLY. WAS REVERSAL AND RE-AVAILMENT MANDATORY? ALSO IN CASE INTEREST IS DEMANDED, FOR WHICH PERIOD SHALL THE INTEREST BE RECOVERED?

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after ~~the due date of furnishing of the return under section 39 for the month of September~~ **30<sup>th</sup> day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.**

PRACTICAL



CHALLENGES

## **RULE 36(4) AND INSERTION OF SECTION 16(2)(aa)**

IS RULE 36(4) APPLICABILITY CONSIDERED CONCLUSIVE AND ULTIMATE? SINCE IT'S A RULE AND NOT PROVISION OF LAW till 31/12/2021 before GSTR-2B

WITH INSERTION OF CLAUSE (aa) to Section 16(2) IS IT ACTUALLY MAKING RULE 36(4) NOT APPLICABLE ?



## CREDIT NOTES UNDER GST

Section 34. (1) Where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient a credit note containing such particulars as may be prescribed.

(2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not ~~later than September following the end of the financial year in which such supply was made~~ later than **30<sup>th</sup> Day of November, or the date of furnishing of the relevant annual return, whichever is earlier**, and the tax liability shall be adjusted in such manner as may be prescribed

Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

## DEBIT NOTES UNDER GST

(3) Where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient a debit note containing such particulars as may be prescribed.

(4) Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.

PRACTICAL



CHALLENGES

QUESTION 1

REVERSAL OF OUTWARD TAX LIABILITY BY ISSUING CREDIT NOTES?

QUESTION 2

IS IT A MECHANISM TO ADJUST ANY POSSIBLE CHANGES IN CUSTOMER NEGOTIATIONS ?

QUESTION 3

CAN CREDIT NOTE ISSUANCE RELIEVE THE SUPPLIER FROM RESPONSIBILITY? OR HE SHOULD ENSURE THE REVERSAL OF INPUT TAX CREDIT BY RECIPIENT, ONLY THEN REDUCE OUTWARD TAX LIABILITY ?

QUESTION 4

ANY DEBIT NOTE RECEIVED AT ANY POINT IN TIME SHALL BE VALID TO AVAIL ITC IN ANY YEAR WITHOUT ANY LINKAGE TO TRANSACTION?

# Blocked Credits

17. (1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business. (2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

(4) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse. Provided 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.

PRACTICAL



CHALLENGES

QUESTION 1

IS EVERY BUSINESS LIABLE FOR REVERSAL OF ITC UNDER SECTION 17(2)

QUESTION 2

IS EVERY CATEGORY OF INPUT TAX CREDIT LIABLE FOR REVERSAL AS ENVISAGED UNDER SECTION 17(2)

QUESTION 3

CAN ITC BE AVAILED BY BANKS/NBFC AVAILED UNDER NORMAL MECHANISM IE OTHER THAN 17(4).?

QUESTION 4

WHAT DO WE MEAN BY REASONS UNDER OHER THAN BUSINESS, U/S 17(1)?

(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:

(a) motor vehicles and other conveyances except when they are used— (i) for making the following taxable supplies, namely:— (A) further supply of such vehicles or conveyances ; or (B) transportation of passengers; or (C) imparting training on driving, flying, navigating such vehicles or conveyances; (ii) for transportation of goods

(b) the following supply of goods or services or both— (i) 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;

(ii) membership of a club, health and fitness centre; (iii) rent-a-cab, life insurance and health insurance except where— (A) 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 (B) 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; and (iv) travel benefits extended to employees on vacation such as leave or home travel concession

c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

(e) goods or services or both on which tax has been paid under section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

(g) goods or services or both used for personal consumption;

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and (i) any tax paid in accordance with the provisions of sections 74, 129 and 130. (6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.



In section 17 of the principal Act,— (a) in sub-section (3), the following explanation shall be inserted, namely ‘Explanation.—For the purposes of this sub-section, the expression “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.’;

(b) in sub-section (5), for clauses (a) and (b), the following clauses shall be substituted, namely:—  
“(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:—

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or (C) imparting training on driving such motor vehicles; (aa) vessels and aircraft except when they are used. (i) for making the following taxable supplies, namely

(A) further supply of such vessels or aircraft; or (B) transportation of passengers; or

(C) imparting training on navigating such vessels; or (D) imparting training on flying such aircraft;

(ii) for transportation of goods; (ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa)

Provided that the input tax credit in respect of such services shall be available— (i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein; (ii) where received by a taxable person engaged— (I) in the manufacture of such motor vehicles, vessels or aircraft; or (II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

*(b) the following supply of goods or services or both— (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance: Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply; (ii) membership of a club, health and fitness centre; and (iii) travel benefits extended to employees on vacation such as leave or home travel concession: Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.”*

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

PRACTICAL



CHALLENGES

QUESTION 1

ITC ON REPAIRS AND INSURANCE OF MOTOR VEHICLES ? IS IT ELIGIBLE ?

QUESTION 2

CAN ITC BE CLAIMED ON INSURANCE POLICY TAKEN FOR EMPLOYEES UNDER CITING DISASTER MANAGEMENT ACT FOR COVID RELATED INSURANCE?

QUESTION 3

CAN SERVICES RELATING TO HOTEL BASED QURANTINE BE CONSIDERED AS HEALTH CARE SERVICE? IF NOT CAN THE ITC BE CLAIMED IN CASE IF IT IS TREATED AS A ACCOMODATION SERVICES?

QUESTION 4

CAN (CGST+SGST) CHARGED IN STATE GOA, BE CLAIMED AS ITC, IN MAHARASHTRA WHERE THE PERSON WHO IS REGISTERED UNDER GST IN MAHARASHTRA BUT NOT IN GOA ?

# **Availability of Input tax credit under special circumstances**

18. (1) Subject to such conditions and restrictions as may be prescribed— (a) a person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax 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; (b) a person who takes registration under sub-section (3) of section 25 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;

(c) where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9: Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed;

(d) where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable: Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed.

(2) A registered person shall not be entitled to take input tax credit under sub-section (1) in respect of any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply.

(3) Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.

(4) Where any registered person who has availed of input tax credit opts to pay tax under section 10 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: Provided that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse. (5) The amount of credit under sub-section (1) and the amount payable under sub-section (4) shall be calculated in such manner as may be prescribed.

(6) In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher: Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15

Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.

### **Input tax credit-Job workers**

19. (1) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on inputs sent to a job worker for job work.

(2) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job work without being first brought to his place of business.



(3) 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 in accordance with clause (a) or clause (b) of sub-section (1) of section 143 within one year of being sent out, 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: Provided that where the inputs are sent directly to a job worker, the period of one year shall be counted from the date of receipt of inputs by the job worker.

(4) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on capital goods sent to a job worker for job work.

(5) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on capital goods even if the capital goods are directly sent to a job worker for job work without being first brought to his place of business.

(6) Where the capital goods sent for job work are not received back by the principal within a period of three years of being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out

Provided that where the capital goods are sent directly to a job worker, the period of three years shall be counted from the date of receipt of capital goods by the job worker.

(7) Nothing contained in sub-section (3) or sub-section (6) shall apply to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work. Explanation.—For the purpose of this section, “principal” means the person referred to in section 143.

20. (1) The Input Service Distributor shall distribute the credit of central tax as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed. (2) The Input Service Distributor may distribute the credit subject to the following conditions, namely:— (a) the credit can be distributed to the recipients of credit against a document containing such details as may be prescribed; (b) the amount of the credit distributed shall not exceed the amount of credit available for distribution; (c) the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;

Provided that where the capital goods are sent directly to a job worker, the period of three years shall be counted from the date of receipt of capital goods by the job worker.

(7) Nothing contained in sub-section (3) or sub-section (6) shall apply to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work. Explanation.—For the purpose of this section, “principal” means the person referred to in section 143.

### **Input Service Distributor-ITC**

20. (1) The Input Service Distributor shall distribute the credit of central tax as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed. (2) The Input Service Distributor may distribute the credit subject to the following conditions, namely:— (a) the credit can be distributed to the recipients of credit against a document containing such details as may be prescribed; (b) the amount of the credit distributed shall not exceed the amount of credit available for distribution; (c) the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient; j

PRACTICAL



CHALLENGES

QUESTION 1

CAN INPUT TAX CREDIT BE TRANSFERRED IN CASE OF AMALGAMATION/MERGER? IS THERE ANY SPECIFIC REQUIREMENT TO BE COMPLIED WITH IN SUCH CASE ?

QUESTION 2

REVERSAL OF INPUT TAX CREDIT IN CASE OF SALE OF ASSET ON WHICH ITC WAS AVAILED. WHETHER PROFIT/LOSS OF SALE OF ASSET WILL MAKE ANY DIFFERENCE IN APPLICABILITY OF TAX?

QUESTION 3

IF THE GOODS SENT TO JOB WORKER (REGISTERED OR NOT ) WHAT WILL BE THE IMPLICATIONS IF THE GOODS ARE LYING WITH JOB WORKER EVEN AFTER 1 YEAR AND 3 YEARS IN CASE OF CAPITAL GOODS?

(d) the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period

e) the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.

## LEGAL ISSUES

### . Tax, Interest [50(3)] and Penalty

#### Section 122

**122. (1)** Where a taxable person when.....

*(ii)* issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder.....

*(vii)* takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;.....

**THANK YOU FOR THE PATIENT LISTENING**

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