



Transitional Provisions under GST

Presentation by CA. Gaurav V Save

at GST Conclave

Organised by WIRC of ICAI

Mumbai, July 14, 2017

Agenda

Repeal/Amendment to
Earlier Laws

Migration of Existing Tax
Payers

ITC Transitional
Arrangements

Job Work Transitional
Provisions

Misc Transitional Provisions

IGST Transitional Provision



Repeal /
Amendments to
Existing Laws

Repeal / Amendment Provisions of Existing Law

- ✓ Sec 173. Save as otherwise provided in this Act, Chapter V of the Finance Act, 1994 shall be omitted
- ✓ Sec 174. (1) Save as otherwise provided in this Act, on and from the date of commencement of this Act are hereby repealed.,
 - ✓ the Central Excise Act, 1944 (except on Petroleum Products, etc),
 - ✓ the Medicinal and Toilet Preparations (Excise Duties) Act, 1955,
 - ✓ the Additional Duties of Excise (Goods of Special Importance) Act, 1957,
 - ✓ the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, and
 - ✓ the Central Excise Tariff Act, 1985 (hereafter referred to as the repealed Acts)

Repeal / Amendment Provisions of Existing Law

Sec 173. of Maha SGST Act Save as otherwise provided in this Act, on and from the date of commencement of this Act, the following laws are hereby repealed

- ✓ (a) The Maharashtra Betting Tax Act, 1925.
- ✓ (b) The Maharashtra Purchase Tax on Sugarcane Act, 1962.
- ✓ (c) The Maharashtra Advertisements Tax Act, 1967.
- ✓ (d) The Maharashtra Forest Development (Tax on sale of Forest Produce by Government or Forest Development Corporation) Act, 1983.
- ✓ (e) The Maharashtra Tax on Luxuries Act, 1987.
- ✓ (f) The Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987.
- ✓ (g) The Maharashtra Tax on the Entry of Goods into Local Areas Act, 2002.
- ✓ (h) The Maharashtra Tax on Lotteries Act, 2006.
- ✓ MVAT Act has not been repealed but Rate Schedules and Notifications have been amended / rescinded

Repeal / Amendment Provisions of Existing Law

- ✓ Sec 174. (2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as “such amendment” or “amended Act”, as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not—
 - ✓ (a) revive anything not in force or existing at the time of such amendment or repeal; or
 - ✓ (b) *affect the previous operation of the amended Act* or repealed Acts and orders or anything duly done or suffered thereunder; or
 - ✓ (c) *affect any right, privilege, obligation, or liability acquired, accrued* or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts

Repeal / Amendment Provisions of Existing Law

- ✓ **Sec 174. (2)** Additional clauses under Maha SGST 2017
- ✓ (d) affect any tax, surcharge, penalty, interest, fee or fine as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of repealed Acts ; or
- ✓ (e) affect any investigation, inquiry, audit, assessment, reassessment, refund, determination, advance ruling, rectification and any other legal proceedings or recovery of arrears or remedy in respect of any such tax, surcharge, penalty, interest, fee, fine, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, audit, assessment, reassessment, refund, determination, advance ruling, rectification and any other legal proceedings or recovery of arrears or remedy in respect of any such tax, surcharge, penalty, interest, fee, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, may be instituted, continued or enforced, and any such tax, surcharge, penalty, interest, fee, fine, forfeiture or punishment may be levied or imposed as if these Acts had not been so repealed
- ✓ (f) affect any proceedings including that relating to an appeal, revision, review or reference, instituted before, on or after the appointed day under the said repealed Acts or repealed provisions, and such proceedings shall be continued under the said repealed Acts or repealed provisions, as if this Act had not come into force



Migration of
Existing
Taxpayer

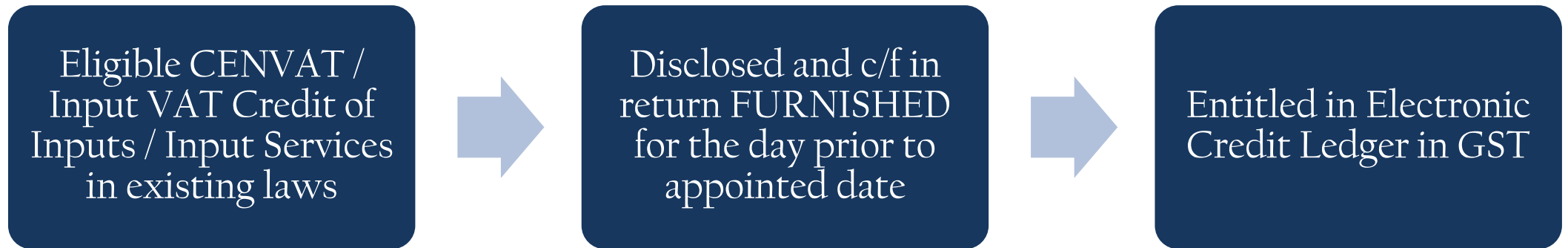
Sec 139 Migration of existing Taxpayers

- ✓ sec 22 (2) – Liable to be migrated if registered under the earlier law
- ✓ Sec 139 – Every assessee registered under earlier has to migrate through filling in the details on online portal through REG 26 and shall receive a provisional certificate in REG 25
- ✓ Sub (3) – If cancellation of GSTIN applied for in Form REG 29 u/s 29, then provisional certificate shall be deemed to be not issued.
(Reasons can be not crossing turnover of ₹ 20 lacs)
- ✓ Sec 122 – Penalty = HIGHER of ₹ 10,000/- or tax evaded



ITC
Transitional
Arrangements

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



Provided that the registered person **shall not be allowed** to take credit in the following circumstances, namely:—

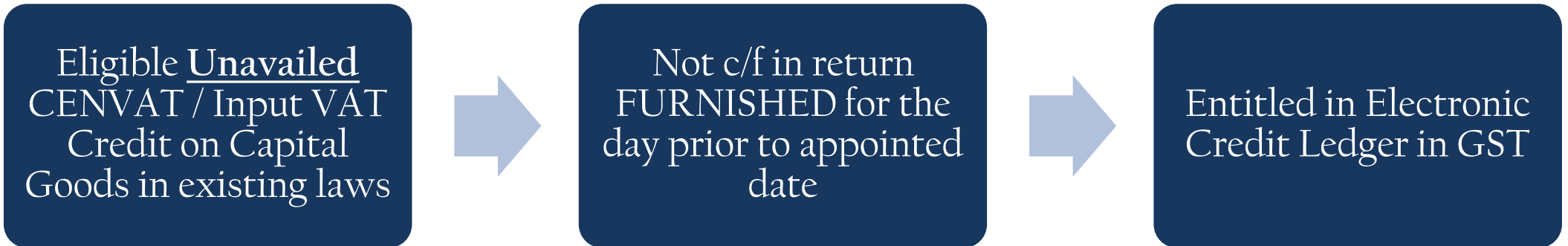
- (i) where the said amount of credit **is not admissible as input tax credit under this Act**; or
- (ii) where he has **not furnished** all the **returns** required **under the existing law for the period of six months immediately preceding the appointed date**; or
- (iii) where the said amount of **credit relates to goods manufactured and cleared under such exemption** notifications as are notified by the Government.

Note: Application for carry forward of credit shall be made in GST TRAN-01 within 90 days of appointed date electronically

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

- ✓ The balance of credit must be carried forward in the returns filed for earlier law, ER-1, ST3, MVAT
- ✓ Disputed Credits unavailed are to be considered in June 2017 Return
- ✓ All the bills must be on or prior to 30th June for availment of credit
- ✓ RCM if paid before 30th June 2017 shall be allowed to be carried forward
- ✓ Rule 12(7) of CST (Registration & Turnover) Rules mandates Forms C, F, E-I, E-II to be furnished within 3 months of the period for which it relates
- ✓ Rule 12(10) of CST (Registration & Turnover) Rules mandates Forms H to be furnished upto time of assessment by first assessment authority
- ✓ Can you claim credit after 01/07/2017 if Chapter V of Finance Act, 1994 & Central Excise Act, 1944 & other related acts have been repealed w.e.f commencement of the Act.

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



Provided that the registered person *shall not be allowed* to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act

Explanation.--For the purposes of this sub-section, the expression “unavailed CENVAT credit” means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law

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



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

shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions satisfied by said Taxable Person

| | | | | | |
|--|--|--|---|---|--|
| (i) such inputs /or goods are used or intended to be USED for making taxable supplies under this Act | (ii) Eligible for input tax credit on such inputs under this Act | (iii) Is in possession of invoice and/or other prescribed documents evidencing payment of duty under the earlier law in respect of such inputs, if not then subject to prescribed conditions | (iv) such invoices and /or other prescribed documents were issued not prior to 12 months of the appointed day | (v) the supplier of services is not eligible for any abatement under the Act: | Proviso to clause (iii) - Passes on the benefit of such credit by way of reduced prices to the recipient |
|--|--|--|---|---|--|

Rule 117(4) of GST Rules 10/2017 - Chapter XIV (Transitional Provisions) r.w. sec 140(3)

- The goods should not be exempted or NIL rated goods in Excise Laws
- Documents for procurement is available with the registered taxable person.

[Note: if Registered Taxable Person not in possession of duty paying documents

Credit allowed only @ 40% of CGST if CGST below 9%

Credit allowed only @ 60% of CGST if CGST 9% or above

Credit allowed only @ 20% of IGST if IGST below 18%

Credit allowed only @ 30% of IGST if IGST 18% or above]

- This transition scheme for Credit is available for 6 tax periods from appointed date
- Person availing the benefit must submit the stock statement indicating supplies of such goods effected in each of the 6 tax periods in Form GST TRAN 2
- Further Credit shall be available only after the relevant tax is paid and allowed in electronic credit ledger in GST PMT – 2 on common portal
- Such goods should be stored separately and easily identifiable

Revised MRP can be printed upto 30/9/17 for pre packaged commodity on unsold stock upto 1/7/17 (No¹⁶ notification but a Press Release by Ministry of Consumer Affairs, Food & Pub Dist)

Sec 140 (4) Credit of eligible duties and taxes in respect of inputs held in stock to be allowed in certain situations

A registered taxable person

Engaged in the manufacture of non-exempted as well as exempted goods under the Central Excise Act, 1944

Provider of non-exempted as well as exempted services under Service Tax Laws

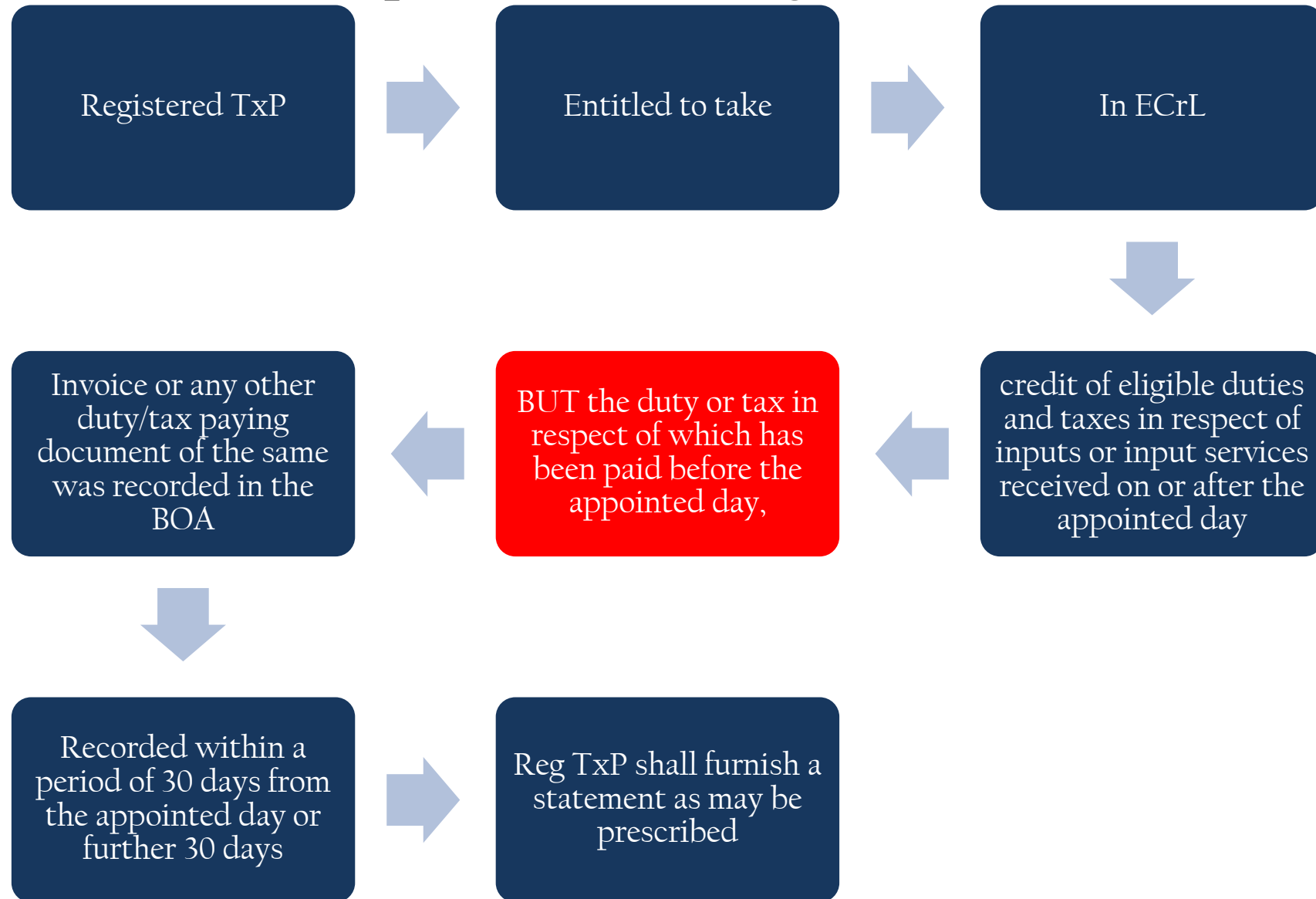


shall be entitled to take, in his electronic credit ledger

the amount of Cenvat credit carried forward in a return furnished under the earlier law by him in terms of section 167

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 exempted goods or services, in terms of section 169.

Sec 140(5) Credit of eligible duties and taxes in respect of inputs or input services during transit



Sec 140(6) Credit of eligible duties and taxes on inputs held in stock to be allowed to a taxable person switching over from composition scheme

A registered taxable person in GST

Paying tax at a fixed rate under the earlier law

Paying a fixed amount in lieu of the tax payable (Composition Scheme) under the earlier law

Sec 140(6) Credit of eligible duties and taxes on inputs held in stock to be allowed to a taxable person switching over from composition scheme

shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions satisfied by said TxP

| | | | | |
|--|---|--|--|--|
| such inputs /or goods are used or intended to be USED for making taxable supplies under this Act | Not registered as Composition Dealer in GST | Eligible for input tax credit, on such inputs under this Act | Is in possession of invoice and/or other prescribed documents evidencing payment of duty under the earlier law in respect of such inputs | such invoices and /or other prescribed documents were issued not prior to 12 months of the appointed day |
|--|---|--|--|--|

ITC Transitional Provisions

- (7) Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as credit under this Act even if the invoices relating to such services are received on or after the appointed day.
- (8) Where a registered person having centralised registration under the existing law has obtained a registration under this Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of CENVAT credit carried forward in a return, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:
 - *Provided that if the registered person furnishes his return for the period ending with the day immediately preceding the appointed day 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.

ITC Transitional Provisions

- (9) 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**.
- Issue – What if 90 days expiring after 1/7/17?

ITC Transitional Provisions

- (10) Eligible duties are listed in sub sec 10
 - (i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;
 - (ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975; [CVD]
 - (iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975; [SAD]
 - (iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978;
 - (v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;
 - (vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985; and
 - (vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001;



Job Work -
Transitional
Provisions

Sec 141(1) Inputs removed for job work and returned on or after the appointed day

- Where any inputs received in a factory / POB had been removed/despached as such or removed/despached after being partially processed to a job worker
- for further processing, testing, repair, reconditioning or any other purpose in accordance with the provisions of earlier law prior to the appointed day
- Such inputs, are returned to the said factory / POB on or after the appointed day
 - no tax shall be payable if such inputs, after completion of the job work or otherwise, are returned to the said factory / POB within 6 months from the appointed day:
 - On sufficient cause , period be extended by the competent authority for a further period not exceeding 2 months
 - If not received within above period from the appointed day the ITC shall be liable to be recovered in terms of section 142
- Tax not payable only if the manufacturer / dealer and the job worker declare the details of the inputs held in stock by the job worker on behalf of the manufacturer/dealer on the appointed day in FORM TRANS 01 and manner and within such time as may be prescribed

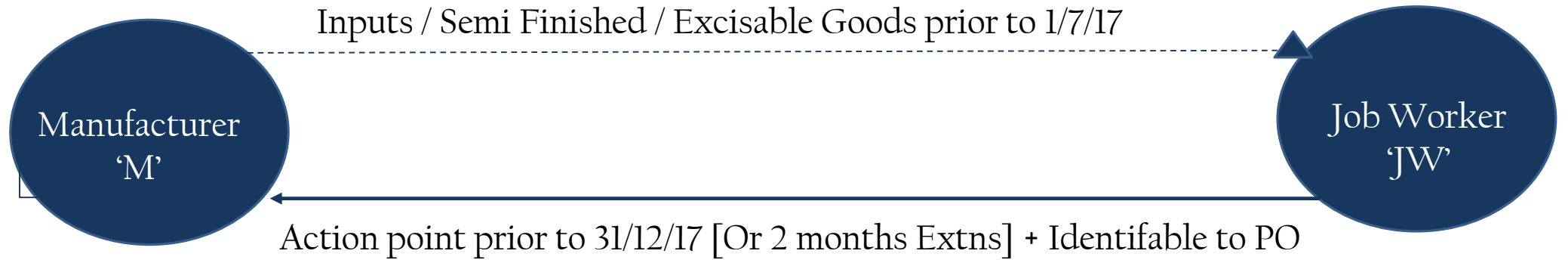
Sec 141(2) Semi finished goods removed for job work and returned on or after the appointed day

- Where any semi-finished goods had been removed/despached a factory / POB for carrying out manufacturing process in accordance with the provisions of earlier law prior to the appointed day
- such goods, are returned to the said factory / POB on or after the appointed day
- **no tax shall be payable** if such goods, after undergoing manufacture process, returned to the said factory / POB within 6 months from the appointed day or period be extended
- If not received within above period from the appointed day the **ITC shall be liable to be recovered** in terms of section 142
- Transfer the said goods to premises of any reg TxP for the purpose of supplying therefrom on payment of GST in India or without payment of tax for exports within 6 months or extended
- Tax not payable only if the manufacturer / dealer and the job worker declare the details of the goods held in stock by the job worker on behalf of the manufacturer/dealer on the appointed day in such form and manner and within such time as may be prescribed

Sec 141(3) Excisable goods removed for certain processes and returned on or after the appointed day

- Where any excisable goods had been removed/despached a factory / POB without payment of duty / tax
- For carrying out process other than manufacture in accordance with the provisions of earlier law prior to the appointed day
- Such goods, are returned to the said factory / POB on or after the appointed day
- no tax shall be payable if such goods returned to the said factory / POB within 6 months from the appointed day or period be extended
- If not received within above period from the appointed day the ITC **shall be liable to be recovered** in terms of section 142
- Transfer the said goods to other's premises, as per earlier law, on payment of GST in India or without payment of tax for exports within 6 months or extended
- Tax not payable only if the manufacturer / dealer and the job worker declare the details of the goods held in stock by the job worker on behalf of the manufacturer/dealer on the appointed day in such form and manner and within such time as may be prescribed

Sec 142(1) Return of Duty Paid Goods



| Sec | Place where brought back | Trf to POB of Other Reg TxP / Export |
|--------|--------------------------|--------------------------------------|
| 142(1) | Factory / POB | ✗ |
| 142(2) | Factory / POB | ✓ - Payment of GST |
| 142(3) | Factory / POB | ✓ - Payment of GST |

Issues in Job Work Transitional Provisions

- Whether Job Worker is liable for payment on processed goods if Returned after 6 months ?
- Provision if for Recovery of ITC if not returned within 6 month? So is it ITC under GST or CENVAT/ VAT ?
- No specific provision for treatment of Capital Goods Sent for Job Work?

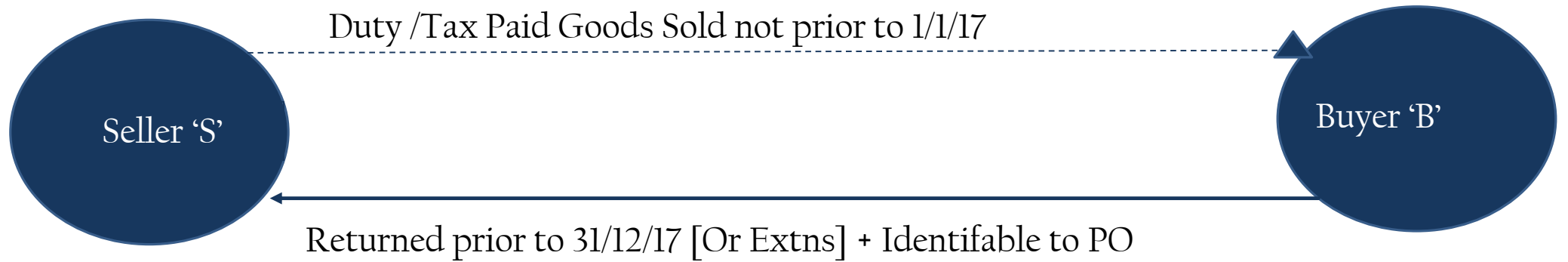


Miscellaneous
Transitional
Provisions

Sec 142(1) Duty / Tax Paid goods returned to the place of business on or after the appointed day

- Where any goods on which Duty / Tax had been paid under the earlier law
 - At the time of removal / Sale thereof
 - not being earlier than 6 months prior to the appointed day
 - are returned to any place of business on or after the appointed day
- the registered taxable person shall be eligible for refund of the duty paid under the earlier law where such goods are returned by a person, other than a Reg TxP
 - if such goods are returned to the said place of business within a period of 6 months from the appointed day and such goods are identifiable to the satisfaction of the PO
- PROVIDED that if the said goods are returned by a Reg TxP, the return of the goods shall be deemed to be a supply under GST

Sec 142(1) Return of Duty Paid Goods



| Situation | Tax Proposition |
|--------------------------------|---------------------------------|
| Returned by Reg TxP | Considered Supply under GST |
| Returned by other than Reg TxP | Seller Eligible to Claim Refund |

Transitional Provision – sec 142(2)

Issue of supplementary invoices, debit or credit notes where price is revised in pursuance of contract

Downward
Revision

- Issue Supplementary Invoice / Credit Note
- Within 30 days
- Deemed in respect of outward supply in GST Act
- TxP allowed to reduce tax liability provided recipient reduces his corresponding Input Tax Credit

- Issue Supplementary Invoice / Debit Note
- Within 30 days
- Deemed in respect of outward supply under GST Act

Upward
Revision

Provided that the registered person shall be allowed to reduce his tax liability on account of issue of the credit note only if the recipient of the credit note has reduced his input tax credit corresponding to such reduction of tax liability

Contract entered PRIOR TO APPOINTED date & change in effect of price after the appointed date IN PURSUANCE of such contract

Transitional Provisions Related to Refund / Assessments

| Sec No | Particulars | When | Disposal | How | Conditons | Other Conditions |
|---------------|--|---|-------------|---------------------------------------|-------------------------|--------------------------------------|
| 142(3) | Pending Refund Claim | Before / After Appointed Date | Earlier Law | In Cash | Partial Rejection Lapse | No Refund if c/f to GST |
| 142(4) | Duty Paid prior to 01/7/17 Goods / Services Exported Before / After | After Appointed Date | Earlier Law | In Cash | Partial Rejection Lapse | No Refund if c/f to GST |
| 142(5) | Service Tax paid on Advance before 1/7/17, but services not provided | After Appointed Date | Earlier Law | In Cash | -- | Subject to 11B of Central Excise Act |
| 142(6) (a) | Appeal, Revision, Review or Reference of CENVAT / ITC | Initiated Before, On or After the appointed day | Earlier Law | Refund In Cash/ Recovery as C/SGST | | No Refund if c/f to GST |

Transitional Provisions Related to Refund / Assessments

| Sec No | Particulars | When Filed | Disposal | How | Conditons | Other Conditions |
|----------------------------|---|---|-------------|--|---|---|
| 142(6) (a), (7), (8) | Finalisation of Appeal, Revision, Review or Reference of Ouput Duty / Liability | Initiated Before, On or After the appointed day | Earlier Law | Recovery as C/SGST; Due to assessee Refund In Cash | Refund Subject to IIB of Central Excise Act | Amount Recovered is not allowed as ITC in GST |
| 142(9) | Revised Return | After Appointed Date | Earlier Law | Recovery as C/SGST; Due to assessee Refund In Cash | Amount Recovered is not allowed as ITC in GST | |

Sec 142 – Time of Supply

- Sec 142(10) Treatment of Long Term Construction / Works Contract

IN Pursuance of Contract entered into prior to appointed date

Goods / Services Supplied ON or AFTER Appointed Date

Taxable in GST Acts

Sec 142 – Time of Supply

- Sec 142(11) (a) notwithstanding anything contained in section 12, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State;
- (b) notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994;
- (c) where tax was paid on any supply both under the Value Added Tax Act and under Chapter V of the Finance Act, 1994, tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed.

Sec 142(11) – Illustration

- Agreement Date = 01/02/2017
- Agreement Value = ₹ 1 crore
- Advance Received = ₹ 60 lakhs
- Works Completed upto 30/06/2017 = 40%
- MVAT Paid on Reg = 1% of ₹ 1 crore = ₹ 1 lakh

[Even if not registered as per MVAT 1517/C.R.57/Taxation. 1]

- Service Tax paid on Advance = 4.5% of ₹ 60 lakhs = ₹ 270000/-

Figures in ₹

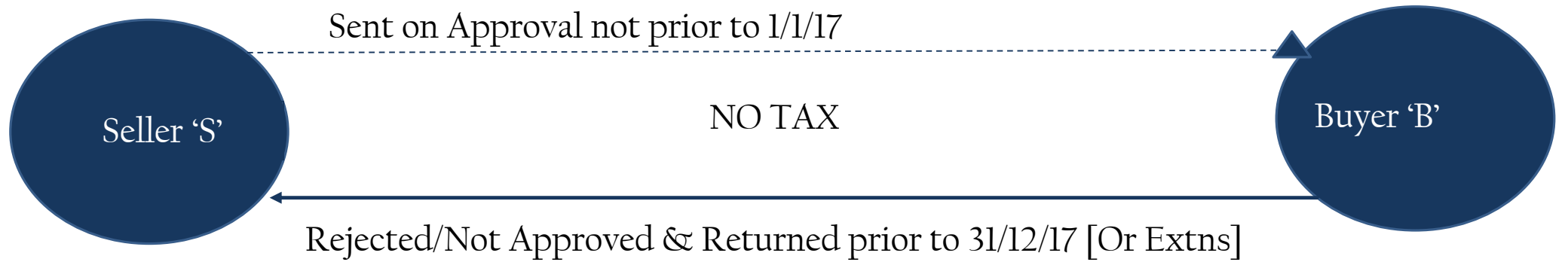
| Supply Made | Installment | Date of Receipt | GST @ 12% (Net of Abatement) | Credit of MVAT | Credit of Service Tax | Net GST Liability |
|-------------|-------------|-----------------|------------------------------|----------------|-----------------------|-------------------|
| 20% | 20,00,000 | 31/07 | 2,40,000 | 20,000 | 90,000 | 1,30,000 |
| 20% | 20,00,000 | 25/09 | 2,40,000 | 20,000 | NIL | 2,20,000 |
| 20% | 20,00,000 | 15/11 | 2,40,000 | 20,000 | NIL | 2,20,000 |

- Rule 118 Transitional Provs – 10/2017 – CT: Filing of Trans 01 is Mandatory

142(11) Sale on Approval

- **Sec 142(12)** Where any goods sent on approval basis, not earlier than six months before the appointed day, are rejected or not approved by the buyer and returned to the seller on or after the appointed day, no tax shall be payable thereon if such goods are returned within six months from the appointed day:
- Provided that the said period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:
- Provided further that the tax shall be payable by the person returning the goods if such goods are liable to tax under this Act, and are returned after a period specified in this subsection:
- Provided also that tax shall be payable by the person who has sent the goods on approval basis if such goods are liable to tax under this Act, and are not returned within a period specified in this sub-section.

Sec 142(12) Sale on Approval



| Situation | Tax Proposition |
|----------------------------------|------------------|
| Returned after 31/12/17 or Extns | Tax payable by B |
| Not Returned after 31/12/17 | Tax payable by S |

Sec 142(13) TDS

Sec 142(13)

Sale + Invoice under earlier VAT Law

no TDS under section 51 even if payment is made on or after the appointed day.

10/2017-CT, Chapter XIV Transitional Provisions

| Sec No | Corresponding Rule No | Form No | Due Date | Particulars |
|----------|-----------------------|---------|------------------------------|---|
| 140 | 117 | TRAN-1 | 28/09/2017 | Yes if any Credit is claimed, Furnish all particulars as per Rule |
| 140(3) | 117(4)(b) | TRAN-2 | End of each of 6 tax periods | Details of Stock if availing scheme under 117(4)(b) [No Duty Paying Doc] |
| 141 | 119 | TRAN-1 | 28/09/2017 | Details of Stock of Inputs, Semi Finished Goods, Finished Goods held by agent / jobworker |
| 142 (11) | 118 | TRAN-1 | 28/09/2017 | Furnish details of VAT & ST paid and Supply on or after 01/07/17 |
| 142(12) | 120 | TRAN-1 | 28/09/2017 | Details of Sale or Approval as on appointed date |

Credit wrongly availed through Transitional Statements Shall be recovered u/s 73 /74

[Transition Statement Formats](#)



IGST
Transitional
Provisions

Sec 21 -IGST – Import of services on or after the appointed day

Taxable under GST even if initiated prior to GST



If Tax is paid under the earlier law no Tax to be paid again



If part tax is paid, then balance tax needs to be paid



Intiation of Import - if either the invoice relating to such supply or payment, either in full or in part, has been received or made before the appointed day





संगच्छेद्वं !!...

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