

Chapter-V

Input Tax Credit

16. Eligibility and conditions for taking input tax credit
17. Apportionment of credit and blocked credits
18. Availability of credit in special circumstances
19. Taking input tax credit in respect of inputs and capital goods sent for job-work
20. Manner of distribution of credit by Input Service Distributor
21. Manner of recovery of credit distributed in excess

Statutory Provision

16. Eligibility and conditions for taking input tax credit

- (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*

Explanation- 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;
 - (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; and*
 - (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.

- (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 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.*

Rule -36 Documentary requirements and conditions for claiming input tax credit.

- (1) *The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely, -*
 - (a) *An invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;*
 - (b) *An invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;*
 - (c) *A debit note issued by the supplier in accordance with the provisions of section 34;*
 - (d) *A bill of entry or any similar document as prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;*
 - (e) *An Input Service Distributor invoice and Input Service Distributor credit note or any documents issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.*
- (2) *Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document, and the relevant information, as contained in the said document, is furnished in FORM GSTR-2* by such person.*
- (3) *No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on accounts of any fraud, willful misstatement or suppression of facts.*

Rule -37 Reversal of input tax credit in case of non-payment of consideration.

- (1) *A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to subsection(2) of section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in **FORM GSTR-2*** for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice.*

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

- (2) *The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.*
- (3) *The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid.*
- (4) *The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.*

16.1 Introduction

Chapter V of CGST Act deals with input tax credit. Input Tax Credit is the backbone of the GST regime. GST is nothing but a value-added tax on goods and services combined. It is these provisions of Input Tax Credit that make GST a value-added tax i.e., collection of tax at all points in the supply chain after allowing credit of taxes paid on inputs/input services and capital goods. The invoice method of value added taxation will be followed in the GST too, viz., the tax paid at the time of receipt of goods or services or both will be eligible for set-off against the tax payable on supply of goods or services or both, based on the invoices with a special emphasis on actual payment of tax by the supplier. The procedures and restrictions laid down in these provisions are important to make sure that there is seamless flow of credit in the whole scheme of taxation without any misuse.

16.2 Analysis**(i) Relevant definitions:**

- (a) **Taxable person:** Means a person who is registered or liable to be registered under section 22 or section 24. As such, the liability to pay tax devolves on every 'taxable person' whether or not registration has been sought. But consider that input tax credit will be available only to a 'registered' taxable person and to a limited extent pre-registration credits are available under section 18(1).

- (b) **Input tax credit:** means the credit of “input tax” in terms of section 2(63).
- (c) **Input tax:** “Input tax” in terms of section 2(62) in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes
- integrated goods and service tax charged on import of goods
 - tax payable on reverse charge basis under IGST Act/SGST Act/CGST Act/UTGST Act.
 - but excludes tax paid under composition levy.
- Section 9(3) and 9(4) of CGST Act levies tax on goods or services or both on reverse charge. Therefore, ‘input tax credit’ is the tax paid by a registered person under the Act whether on forward charge or reverse charge for the use of such goods or services or both in the course or furtherance of his business.
- (d) **Electronic credit ledger:** The input tax credit as self-assessed in return of registered person shall be credited to electronic credit ledger in accordance with section 41, to be maintained in the manner as may be prescribed. [Section 2(46) read with Section 49(2)].
- (e) **“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 [Section 2(19)].
- (f) **Input:** “Input” in terms of section 2(59) means
- any goods,
 - other than capital goods,
 - used or intended to be used by a supplier
 - in the course or furtherance of business
- (g) **Input service:** “Input service” in terms of section 2(60) means
- any service
 - used or intended to be used by a supplier
 - in the course or furtherance of business.
- (h) **“Works Contract”** in terms of Section 2(119) means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

(ii) Section 16

(a) Registered person to take credit: Every registered person subject to Section 49 (payment of tax), shall 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. The input tax credit is credited to the electronic credit ledger. Rule 36 of the Central Goods and Service Tax Rules, 2017 provides that input tax credit can be taken on the basis of any of the following documents:

- (i) Invoice issued under section 31 by supplier of goods or services.
- (ii) Debit note issued under section 34 by supplier of goods or services.
- (iii) Bill of entry or any similar documents under Custom Act, 1962.
- (iv) Invoice prepared in respect of supplies made under reverse charge basis issued u/s 31(3)(f).
- (v) Invoice/ Credit Note issued by ISD for distribution of credit in accordance with Rule 54(1) of CGST Rules, 2017.

It is important to observe the words 'used by him' and 'in his business' are appearing in section 16(1). These words refer to the registered taxable person in question and not the legal entity. So, input tax paid in a State must not be in relation to the business of a taxable person in another State albeit belonging to the same person. For example, A Company has Branch-A which is a registered taxable person in Andhra Pradesh conducts conference in a hotel in Lonavla (Maharashtra) where CGST-SGST is charged by the hotel. This Company also has Branch-M which is a registered taxable person in Mumbai, Now the provisions of section 16(1) operate as follows:

- CGST-SGST charged by the hotel in Lonavla (Maharashtra) is 'used in the business of Branch-A' in Andhra Pradesh and not in the business of Branch-M in Mumbai.
- Hotel would not be aware about the above fact and would not resist to issue the bill in the name of Branch-M because both are branches of the same Company
- Since, CGST-SGST has been charged by the hotel, input tax credit would not be available to Branch-A as tax paid in Maharashtra is not a creditable tax in Andhra Pradesh
- Branch-M may be compelled to forego the tax paid to the hotel. However, there may be an urge to save this loss by informing the hotel the GSTIN of Branch-M. In fact, the Company is rightly required to obtain ISD registration in Maharashtra and distribute this credit entirely to Andhra Pradesh.
- But, Branch-M in Mumbai cannot justify this input tax credit as it is not '**used by him**' in '**his business**' but it is 'used by another' in 'that others business'
- Care should to taken to verify 'whose' business each input tax credit relates to;

- If nexus is established between the services of the hotel and the 'business' of Branch-M, input tax credit may be availed by Branch-M. Nexus emerges if inter-branch supply of services occurs between Branch-M and Branch-A
- (b) **Wastage of inputs in the course of production:** Credit in respect of inputs that may have been wasted during the course of production of finished products does not cease to be *'used or intended to be used' in the course or furtherance of business*. As such, there is no restriction to be read into the language of section 16 (1). In fact, the full extent of credit will be available whether the extent of wastage of inputs in the course of production of finished goods is within normal wastage norms or even exceeds that to be called abnormal wastage of inputs. Unless there is a diversion of inputs (in respect of which credit has been availed), there is no embargo on availment and retention of input tax credit.
- (c) **Input-Output nexus:** The degree of nexus expected for allowable deal of credit is a tightly knit inextricable nexus, that is, everything that is 'used' in effecting the outward supply will qualify (subject to blocked credits) without going an explanation as to the rationale for using one or other material or services that may be argued to be unnecessary excessive or even imprudent in making the outward supply. In other words, by working backwards from what the outward supply is, every one of those material or services that have aided in the cause of successfully concluding the outward supply will qualify for credit. There is no room for raising questions as to the necessity but sufficient only to examine the fact of its usage in the outward supply. Accordingly, eligibility of credit will be in respect of capital goods, raw materials, consumables, packing materials, accessories, spares, taxable marketing and publicity material and taxable material distributed in the form of incentives and non-returnable trial units.
- (d) **Costing:pricing inter-relationship:** Credit may be availed in respect of inputs will cost may not be included in the pricing of the product and hence in its transaction value – this may create a concern as to whether this credit is admissible or not. As explained by the Hon'ble Supreme Court in CCE, Pune v. Dai Ichi Karkaria 1999 (112) ELT 353, the nature of Modvat scheme is such that to cost of purchase of inputs will be lowered due to an availment of credit, this does not immediately, directly and proportionately impact the assessable value of the finished product manufactured using the inputs. This ratio continues to be applicable in the context of GST law. As such, neither availment of credit nor its discontinuation can be alleged to have an immediate, direct and proportionate effect on the transaction value under section 15.
- (e) **Conditions for availment of credit by registered person:** Input tax credit is available only if –
- (i) The said goods or services or both are used or intended to be used in the course or in the furtherance of his business;
 - (ii) He is in possession of tax invoice/ debit note / tax-paying document issued by a supplier registered under this Act (listed above);

- (iii) He has received the said goods or services or both subject to job-work facilities and restrictions relating to input tax credit in Section 19;
 - (iv) The supplier has uploaded the relevant invoice on the GSTN;
 - (v) Subject to section 41 (claim of ITC and provisional acceptance thereof), the supplier has paid the said amount of tax (as charged in the invoice) to appropriate Government in cash or by way of utilization of input tax credit, as admissible;
 - (vi) "He" – claimant of input tax credit – has furnished return under section 39 in FORM-GSTR 2;
- (a) **Goods received in instalments:** If goods are received in instalments against a single invoice, credit can be taken upon receipt of last instalment of goods.
- (b) **Failure to pay to supplier of goods or service or both, the value of supply and tax thereon:** If recipient of goods or service or both has not paid the supplier within 180 days from date of invoice, the amount of input tax credit availed of proportionate to such amount not paid to supplier along with the interest will be added to output liability of the recipient. Such non-payment of the value of invoice must be admitted in the return filed in FORM-GSTR 2 (Rule 37 of CGST Rules, 2017) for the month immediately following the period of 180 days from the date of issue of invoice. The said input tax credit can be re-availed on payment of value of supply and tax payable thereon.
- (c) Please note that this condition does not apply for supplies which are payable under reverse charge basis. This exception has been expressly created in second proviso to section 16(2) of the Act. However, it is important to note that the second proviso to rule 37 that creates this *carve out*, excludes supplies between distinct persons under schedule I. Conspicuous by its absence is the inclusion of import of goods and services within this *carve out* provision. While reverse charge is excluded from the condition of having to make payment within 180 days (or lose credit), GST paid on import of goods and services does not come within reverse charge under section 9(3) or 9(4) even though the nature of GST paid is by the recipient of the import. The question that now arises is – whether there can be reverse charge liability other than under section 9(3) and 9(4). The definition in section 2(98) does not permit such extended application. The privilege to prescribe pre-conditions for vesting of right to input tax credit belongs to section 16, there is other provision from where any overriding right to claim credit on imports appears to flow. As such, the condition the non-payment will result in denial of credit already claimed and the only exceptions are reverse charge and supplies under schedule I and no others.
- (d) **Capital goods on which depreciation is claimed:** 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 shall not be allowed on the said tax component.

There may however be some cases where assessee has not been able to take Input Tax Credit on capital goods for the reason that Department has objective to the same. In such cases assessee may decide to capitalize the tax component and may avail depreciation on tax component also. Whenever, the dispute relating to eligibility of Input Tax Credit on capital goods is resolved, assessee may avail Input Tax Credit and correspondingly reverse the depreciation claimed under Income Tax Act, 1961 on tax component. Similar provisions were there under Cenvat Credit Rules and the Hon'ble Gujrat High Court in the case Genus Electrotech Limited reported in 2013 (296) ELT 175 (Guj.) held that after reversal of entry for deprecation, assessee could have taken credit. This decision under the Cenvat Credit Rules, 2004 shall equally apply under Goods and Services Tax Act also.

- (e) **Time limit to avail the input tax credit:** A registered person is not entitled to take input tax credit on invoice/ debit notes after due date of furnishing of the return under section 39 for the month of September of the subsequent financial year or furnishing of the relevant annual return, whichever is earlier. This is a very important provision where, unlike claims under earlier laws that – registration is not a vesting condition – has been altered in GST. In fact, not only is registration a pre-requisite (see, 'registered taxable person' shall be entitled to claim credit) but filing of return under section 39 is also a requirement. Input tax credit is a right that does not 'vest' until the last of conditions in section 16(2) are completed and until that this right – input tax credit – is *inchoate* (or incomplete or in-formation) but not a vested-right. Rights that are not yet vested can lapse by limitation unless effective steps to actualize those rights are taken by the person. And once the right is vested, it becomes indefeasible except by operation of inherent conditions-subsequent. In other words, input tax credit which is a right in law of the taxable person is not fully mature and available to the taxable person until all pre-conditions (steps to actualize available rights) have been taken. Section 16(2) lays down these steps that can be taken immediately or in course of time. And once all these steps are taken then the right 'available' becomes 'availed'. After credit availed, it is available without any time limit. Section 18(4) provides a condition (known at the time of availing credit) that this credit will reverse if the outward supplies become exempted. Other than this situation, the credit availed is permanently available to the taxable person. Now, credit that is 'available' is somehow delayed and 'not availed', even then it is still available but not beyond the limitation prescribed of October 20, 20X1 – due date for filing return for September of subsequent year. Since the credit is 'not availed' the limitation prescribed is proper in view of the principle of reaching finality in respect of all 'available' credits that may 'not' be intended to be availed.

Therefore, input tax credit shall be available to a registered person only if invoice/challan is in his possession for the goods or services or both are received and the payment of such tax has been made by the supplier and a return u/s 39 has been filed. Receipt of goods shall include delivery to any other person as directed by the registered person.

Note: Goods are deemed to be received by a registered person when the supplier delivers the goods to the recipient/ any other person, on the direction provided by the registered person to the supplier. Credit would be available in case goods are directly sent to the job worker subject to provisions under section 19

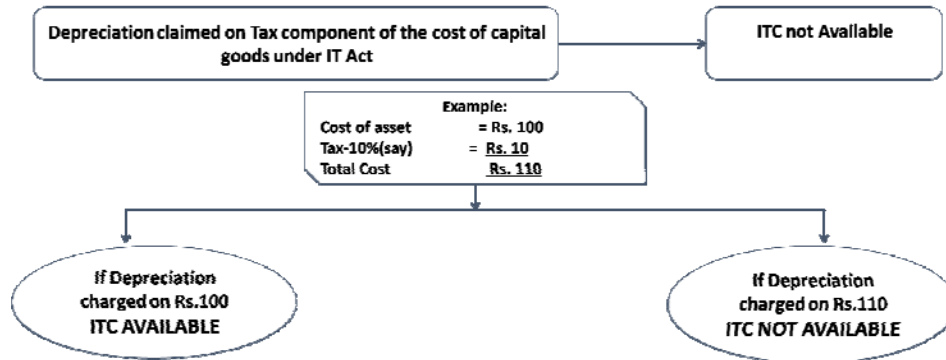
In summary, among others the following facts are crucial for availment of Input tax credit:

- (a) The goods and/ or services must be used “by him” in the course or furtherance “of his” business.
- (b) Possession of Output Invoice/Supplementary Invoice/ Debit note/ ISD invoice/ Bill of Entry and other related documents is a must.
- (c) The said document must contain all the prescribed specified in Rule 46 of Central Goods and Service Tax Rules, 2017 relating to Invoice. It may be noted that Invoice or such other document can contain additional details other than those prescribed but NO LESS. For details of invoice, see Chapter VI of the CGST Rules.
- (d) Supplier of goods and/ or services must upload the details of such documents in the common portal i.e. GSTN.
- (e) Vesting condition for claiming input tax credit is the return u/s 39 and not the supply *per se*.
- (f) Input tax credit in case of supplies in installment, would be receipt of last installment of goods.
- (g) The law casts an obligation on the recipient of goods and/or services who avails the credit to effect payment to the supplier within a period of 180 days from the date of invoice. If such payment is not effected by the recipient to the supplier, Rule 37 obligates reversal of input tax credit so availed leading to consequential levy of tax, interest. In case recipient of goods has made part payment, he would be liable for reversal on proportionate basis.

Proviso to section 16(2) provides that the taxable person shall be entitled to avail Input Tax Credit after making payment of the amount towards value of supply of goods or services or both along with tax payable thereon. Further, Rule 37(4) provides that the time limit specified under section 16(4) shall not be applicable for such recredit.

- (h) Claim of depreciation on tax component disqualifies a recipient of Capital goods from availment of input tax credit.
- (i) ITC cannot be availed after the due date of filing the return for September month of the next Financial year or on furnishing the Annual Return whichever is earlier.
- (j) No registered person is permitted to avail any input tax credit pursuant to an order of demand on account of fraud, willful misstatement, or suppression of fact.

ITC in case of Capital Goods



16.3 Comparative review:

Aspect	Credit under erstwhile system	Input tax credit under GST
Definition of "capital goods"	Defined in Cenvat Credit Rules	Comparatively wider definition.
Definition of "input"	Defined in Cenvat credit Rules which has inclusion and exclusion limb.	Exhaustive definition and does not contain inclusion or exclusion limb.
Definition of "input services"	Defined in Cenvat credit Rules which has inclusion and exclusion limb.	Exhaustive definition and does not contain inclusion or exclusion limb.
Electronic credit ledger	No such concept	Electronic credit ledger required to be maintained for crediting and utilising input tax credit

Statutory Provision

Section 17: Apportionment of credit and blocked credit

- (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 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

- (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 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, 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 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 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 and 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 purpose of clause (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

(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.

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

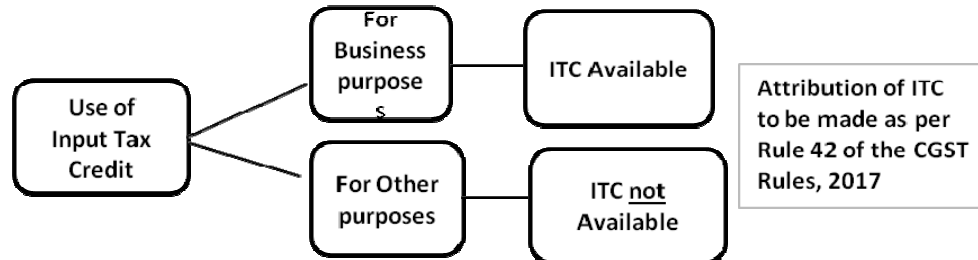
17.1 Introduction

The input tax credit eligibility is based on whether the same is used for taxable supplies or exempt supplies. Where the goods or service is used for both taxable and exempted supplies, only proportionate credit is allowed to a registered person, Further, a list of supplies ineligible for input tax credit is also provided.

17.2 Analysis

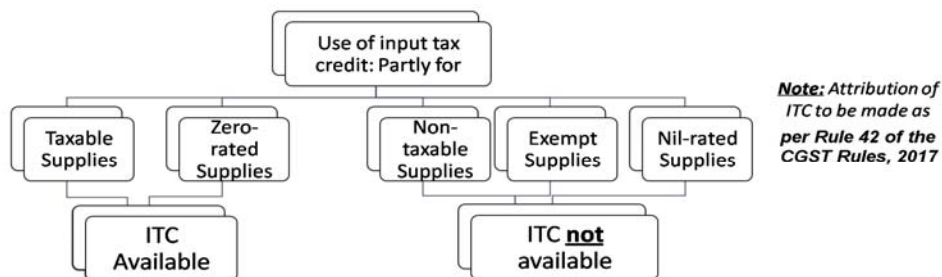
(a) **Proportionate credit:**

ITC based ON usage in business



ITC based ON use of Inputs

ITC on the Basis of use of Inputs



Alternative to apportionment between taxable & exempt supplies in case of **banking companies & financial institutions**:

- **Yearly option** to avail a standard rate of 50% of eligible ITC on inputs, capital goods and input services on a **monthly basis**

- (b) **Special definition of 'exempt supply'**: Although exempt supply is defined in section 2(47). for purposes of credit reversal, there is a special definition provided in section 17(3) read with explanation (2) in rule 45. The value of exempt supplies shall include supply on which tax is paid under Reverse Charge, transaction in securities, sale of land and sale of building subject to clause (b) of Paragraph 5 of Schedule II. Please note that supplies in respect of which the outward supplier is not liable to pay tax but the recipient is made liable to pay the tax, then due to section 17(3), for the limited purpose of restricting input tax credit to the supplier (who is not responsible to pay tax due to RCM provisions) the value of these supplies will be regarded as 'exempt supplies' while arriving at the net available input tax credit. Doubts have been raised whether such supplies should be included as exempt supplies by the recipient who pays the tax (on RCM basis). This is not the case, as the recipient has not made such supply and the recipient is merely discharging tax 'as if' he is the person liable to pay the tax.. The explanation (2) in rule 45 provides a notional value of 'securities' and applies 'stamp duty' valuation in respect of immovable property.

In case, goods or services or both are partly used in taxable supplies and partly in non-taxable supplies, then amount of credit shall be restricted to the taxable supplies. Taxable supplies include zero rated supplies and exempt supplies shall include non-taxable supplies.

Provisions in respect of SEZ developers/units in GST contrasts with the erstwhile laws where either ab initio exemption was allowed or refund of taxes paid but in respect of qualifying procurements were allowed. While the requirement of examining 'entry for authorized operations' continues, ab initio exemption has been restored and the domestic supplier (to SEZ) is allowed to follow either of the two methods of neutralizing the impact of taxes paid upto the point of making supplies to SEZ. The domestic suppliers can enjoy the benefit only if the SEZs are able to support with confirmation (from the concerned zone authorities) of 'entry for authorized operations'. And where such confirmation is not available, the domestic suppliers are obliged to charges GST and all supplies 'to' SEZ are required to be treated as inter-State supplies.

(c) Banking Company or financial institution including NBFC engaged in accepting deposits, extending loans or advances: There is an option allowed as detailed in Rule 38 of Central Goods and Service Tax Rules, 2017 as follows:

- (i) Refrain from availing input tax credit relatable to 'non-business purposes' and not avail any credit restricted u/s 17(5) (discussed in detail below) and make this election known in FORM-GSTR 2 or
- (ii) Avail full extent of credit on inter-branch supply of services of the banking or NBFC company having same PAN and also avail 50% of 'all other' input tax credits. 'All other' credits refer to input tax credit that would have been available u/s 16 before administering the restriction in this section.

Ineligible input tax credit: input tax credit shall not be available in respect of the following:

- (i) Motor vehicle and other conveyance except when they are used for making the following taxable supplies, namely-
 - (a) Further supply of such vehicles or conveyances or
 - (b) Transportation of passenger or
 - (c) Imparting training on driving, flying, navigating such vehicles or conveyances;
- (ii) Motor vehicle and other conveyance except used for transportation of goods
- (ii) Supply of goods and/or services such as –
 - (a) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where such supply of goods or services of each category is used for making an outward taxable supply of the particular category of goods or services or both or as an element of a taxable composite or mixed supply

- (b) membership of a club, health and fitness centre
 - (c) rent-a-cab, life insurance, health insurance except where it is notified by the Government as 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; and
 - (d) travel benefits to employees on vacation i.e. leave or home travel concession.
- (iii) Works contract services when supplied for construction of immovable property, other than plant and machinery, except where it is for further supply of works contract service;

It is important to note that credit of GST paid on works contract services will be allowed only if the output is also works contract services.

- (iv) Goods or services received by a taxable person for construction of an immovable property on his own account, other than plant and machinery, even though it is used in course or furtherance of business;

“Construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property. Please note that ‘alterations’ and ‘repairs’ are also included in this definition.

- (v) Goods or services or both on which the tax paid under composition scheme
- (vi) goods or services or both received by a non-resident taxable person except on goods imported by him
- (vii) Goods or services or both used for personal consumption
- (viii) Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples
- (ix) Tax paid in terms of sections 74, 129 and 130

The words ‘in respect of’ appearing at the start of section 17(5) needs to be given its full and due meaning. Consider an illustration where input ‘A’ is converted into output ‘B’ (both being goods) and a certain quantity of output ‘B’ that are produced but not yet supplied are destroyed by fire, Now, is GST payable on output ‘B’ or is it sufficient if input tax credit taken on input ‘A’ were reversed,?. Destruction of output ‘B’ does not satisfy the requirements of ‘supply’ and therefore there is no question of payment of tax on the output that are destroyed before they are supplied. This would have been the case under Central Excise law (as Central Excise Duty was payable on manufacture) but those principles do not find place in GST law. Therefore, on destruction of output ‘B’, the only tax that remains to be paid is the credit availed on input ‘A’. Recovery of input credit that was properly availed on ‘A’ which was properly used in the course or furtherance of business in the production of ‘B’ which was destroyed before being supplied renders the credit availed to fail the requirements of section 16(1). Credit is not an entitlement at the time of receipt of inputs but an entitlement on the condition of its participation in a taxable outward supply. It must be added here that, there is no question of reversal of input tax credit under clause (h) in respect of inputs forming part of

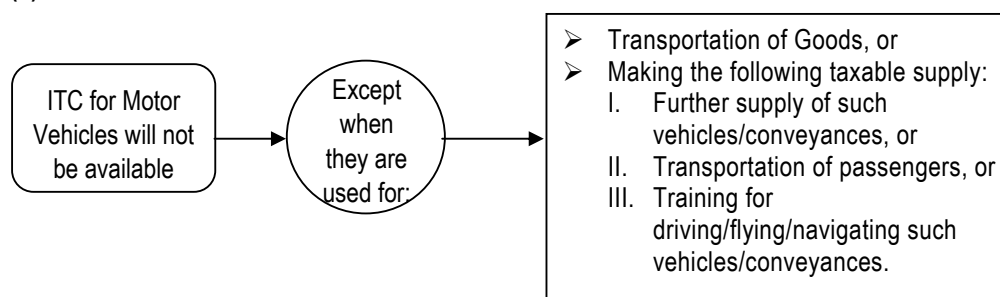
normal (or even abnormal) wastage in the course of production of the output. Credit 'in respect of' inputs that fail to participate in a taxable outward supply are identified and recovered by this clause. Therefore, by this illustration, it becomes clear that the words 'in respect of' are not limited to the very articles that are disqualified from claim of input tax credit under this subsection but also credits 'in respect of' goods or services linked to the 'disqualified articles are also liable to be disqualified.

6. Plant and machinery: means apparatus, equipment, 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, telecommunication towers; and pipelines laid outside the factory premises.

The analysis of above provision in a pictorial form is summarised as follows:

Restrictions on ITC: Blocked credits under Sec 17(5)

(a) Motor Vehicles



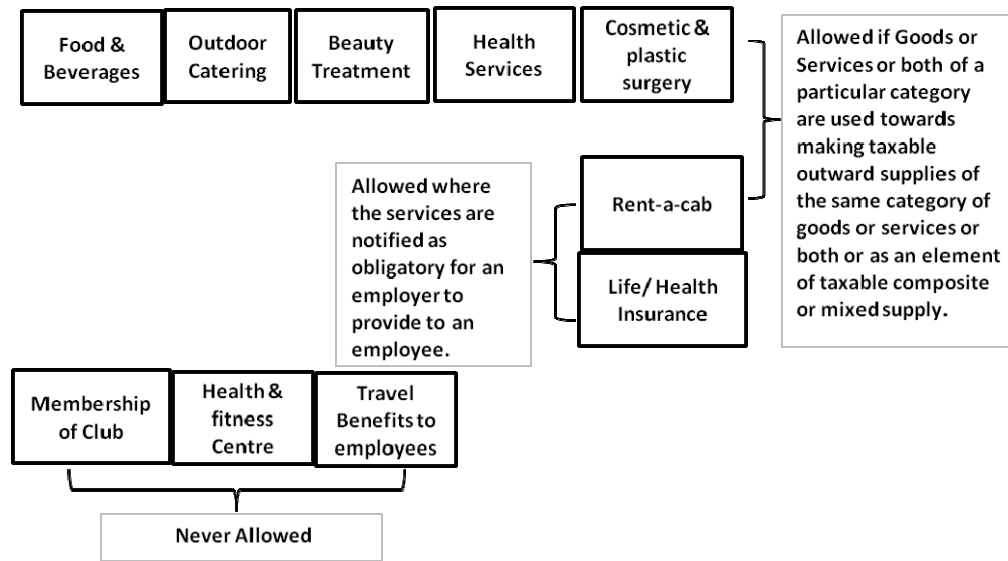
Note: Further, to come out of the restriction applicable to motor vehicles 'claiming' them to be for transportation of goods or transportation of passengers, registrations necessary under the motor vehicles' registration laws must also be in alignment with such a 'claim'. It would not suffice to merely claim motor vehicles which are duly registered for 'private use' to be used for transportation of goods or transportation of passengers. It may be a fact that a motor vehicle registered for private use in fact used often although occasionally for transportation of goods or transportation of passengers, it would still not escape the restriction because of the primary purpose of such a motor vehicle reported at the time of its registration.

Any recovery towards cost of such supplies from employees or other persons by a registered taxable person, input tax credit would be available to the extent these inward supplies are involved in an taxable outward supply.

Also note that rent-a-cab is a term that has been defined in Motor Vehicles Rules, 1989 and motorcab is defined in section 2(25) of the Motor Vehicles Act, 1988 to be limited to vehicles designed to transport 'less than 6' persons. Service tax law, however, expanded the meaning of 'cab' while imposing tax under the category of Rent-a-Cab Operator Services to include vehicles designed to seat more than 12 persons. In this section, rent-a-cab is not defined and it must be admitted to be an expression not of common usage. Now, whether the expansive meaning from the (now repealed) Finance Act, 1994 is to be borrowed or the meaning (now

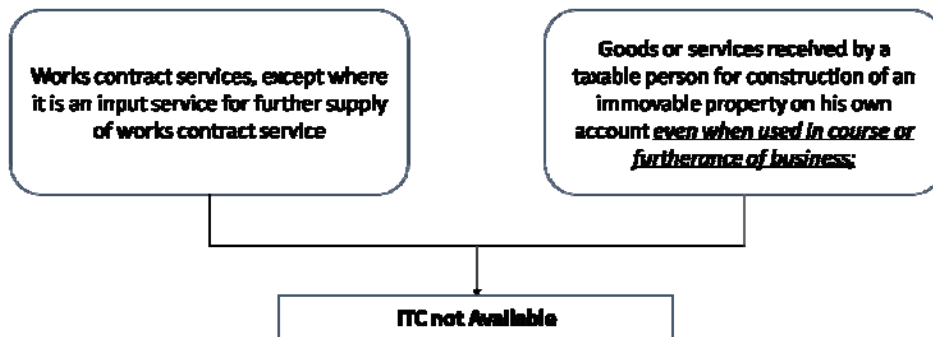
valid) Motor Vehicles Act/Rules is to be borrowed. One thing is clear that this is not a well understood or commonly used expression and there is definitely a need to go somewhere to borrow its meaning. Current law would prevail over repealed law. As such, it would be limited to motorcabs designed to carry 'less than 6 persons'. And credit in respect of transport of persons in a bus or minivan (for more than 6 persons) would not be blocked but only in respect of cars used as cabs.

(b) Supply of goods and services being:



Note: Though credit is restricted in respect of the above supplies, credit would still be allowed when they are used for further taxable supply, composite or mixed supply. It would not suffice to merely claim these restricted supplies are used for further taxable supply in the absence of a clear contractual requirement in an outward supply to include these restricted supplies. Utilization of these restricted supplies for the benefit of the supplier in the course of an outward supply does not deviate the restriction successfully.

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



Note: Considering that 'works contract services' is not itself a classification of a taxable outward supply, the restriction would apply only in those cases where the inward supply is not used directly in a further taxable outward supply. Goods or services or Works Contract services availed by buuiders/ developers for providing outward supply of services, would be eligible for ITC. The definition of plant and machinery is also unique in including foundation and support which may be a works contract service and credit being allowed in such cases.

(d) Self-construction

Inward supply of goods or services for construction of immovable property for 'own use' would also not be eligible for input tax credit. This restriction applies even when such immovable property is used in furtherance of business. Understanding the scope of 'immovable property' is very important. Immovable property is well understood to be land and building but it also includes everything that is attached to or forming part of the land and rights-in-land. Credit is blocked on all inward supplies leading to the establishment of such immovable property. Inward supply of services from real estate agent, architect, interior decorator and contractor are all banned as these are involved in the establishment of the immovable property. But, inward supplies such as security, house-keeping and property maintenance are not excluded as these are received after establishment of the immovable property. Please note the line that the law draws to prevent indiscriminate extension of this credit ban beyond the purpose for which it is specified.

(e) Non-use in business

Since credit reversal is required whenever inputs are lost stolen or destroyed, distinction is to be made between inputs 'lost' and 'loss' of inputs. As stated earlier, credit is not liable to be reversed in case of 'loss' of inputs that does not amount to inputs being 'lost' even if such 'loss' were normal or abnormal (in comparison to two firms in the industry). Reversal of credit is occasioned when there is any event that results in inputs being 'lost'.

Stocks given away as gifts or free sample appear to be covered by this clause (h), but it is important to note that the manner of giving away gifts or free samples is qualified with the word 'disposal'. Disposal has already been used once before in section 7(1)(a) which is not the same as 'sale' or 'transfer'. Therefore, it appears that gift or free samples given must be such that they are not by way of 'sale' or 'transfer' (or any other form of supply). From our earlier discussion undervaluation of stocks given of away for nonmonetary consideration which were concluded to be a taxable supply, it can be recognized here that 'disposal' by way of gift or free samples must necessarily be stocks that are 'unfit' for supply and not 'saleable' that are supplied for non-monetary consideration. A supply that is rightly taxable cannot be substituted based on its being given away as gift or free samples by mere reversal of relatable input tax credit. When stocks that are 'unfit' for supply are 'disposed off', the words 'in respect of' manages to recover input tax credit relatable to the inputs used in the production of such stocks that no longer make a taxable supply.

17.3 Comparative review:

Aspect	Credit under old regime	Input tax credit under GST regime
Proportionate credit	No explicit distinction made between goods or services used for business and non-business	Specific distinction made between goods or services used for business and non-business
Works contract credit	Restriction to inputs only	Credit Allowed when used for further supply of works contract
Credit on inputs used for construction of immovable property	Input or Input Service used for civil construction not eligible.	Restriction to both inputs and input services.
Credit related to works contract and construction w.r.t plant and machinery	Plant and machinery not excluded from restriction of credit	Plant and machinery is excluded from restriction of credit

17.4 FAQ

Q1. Where goods or services or both received, is used for both taxable and non-taxable supplies, what would be the input tax credit entitlement for the registered person?

Ans. The input tax credit of goods or service or both used in taxable supplies can only be taken by registered person & not non-taxable supplier.

Q2. Whether the taxable supply would include supplies on which tax is payable by recipient on reverse charge basis?

Ans. No.

Q3. Whether tax paid on repair and maintenance of Motor Vehicles used for the purpose of business is eligible for ITC.

Ans. Yes. Restriction placed under Section 17(5) of the CGST Act, 2017 is for Motor Vehicles and conveyance per se. There is no restriction for its repair and maintenance.

17.5 MCQ

Q1. Which of the following is included for computation of taxable supplies for the purpose of availing credit?

- (a) Zero-rated supplies
- (b) Exempt supplies

- (c) Both
- (d) None of the above

Ans. (a) Zero Rated supplies

Statutory Provision

Section 18: Availability of credit in special circumstances

- (1) *Subject to such conditions and restrictions as may be prescribed-*
- (a) *A person who has applied for registration under the 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 provision for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilized 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 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.

Rule 40. Manner of claiming credit in special circumstances. -

(1) The input tax credit claimed in accordance with the provisions of sub-section (1) of section 18 on the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or the credit claimed on capital goods in accordance with the provisions of clauses (c) and (d) of the said sub-section, shall be subject to the following conditions, namely, -

(a) the input tax credit on capital goods, in terms of clauses (c) and (d) of sub-section (1) of section 18, shall be claimed after reducing the tax paid on such capital goods by five percentage points per quarter of a year or part thereof from the date of the invoice or such other documents on which the capital goods were received by the taxable person.

(b) the registered person shall within a period of thirty days from the date of becoming eligible to avail the input tax credit under sub-section (1) of section 18, or within such further period as may be extended by the Commissioner by a notification in this behalf, shall make a declaration, electronically, on the common portal in FORM **GST ITC-01** to the effect that he is eligible to avail the input tax credit as aforesaid:

Provided that any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.]

(c) the declaration under clause (b) shall clearly specify the details relating to the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or as the case may be, capital goods—

(i) on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of the Act, in the case of a claim under clause (a) of sub-section (1)

of section 18;

- (ii) on the day immediately preceding the date of the grant of registration, in the case of a claim under clause (b) of sub-section (1) of section 18;
- (iii) on the day immediately preceding the date from which he becomes liable to pay tax under section 9, in the case of a claim under clause (c) of sub-section (1) of section 18;
- (iv) on the day immediately preceding the date from which the supplies made by the registered person becomes taxable, in the case of a claim under clause (d) of sub-section (1) of section 18;

(d) the details furnished in the declaration under clause (b) shall be duly certified by a practicing chartered accountant or a cost accountant if the aggregate value of the claim because central tax, State tax, Union territory tax and integrated tax exceeds two lakh rupees;

(e) the input tax credit claimed in accordance with the provisions of clauses (c) and (d) of sub-section (1) of section 18 shall be verified with the corresponding details furnished by the corresponding supplier in FORM GSTR-1* or in FORM GSTR- 4* , on the common portal.

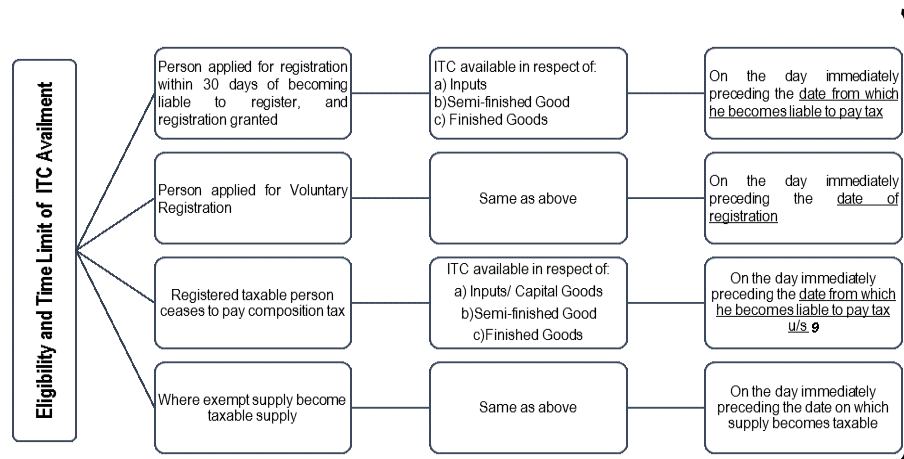
(2) The amount of credit in the case of supply of capital goods or plant and machinery, for the purposes of sub-section (6) of section 18, shall be calculated by reducing the input tax on the said goods at the rate of five percentage points for every quarter or part thereof from the date of the issue of the invoice for such goods.

18.1 Introduction

Input tax credit is available to a registered person on inputs held in stock, inputs contained in semi-finished and finished goods and on capital goods held in in some cases which are discussed below.

18.2 Analysis

Eligibility of input tax credit on inputs held in stock and contained in semi-finished and finished goods held in stock: The credit on inputs held in stock and inputs contained in semi-finished goods and finished goods held in stock is available in the following manner:



- Declaration in Form GST ITC 1 must be filed within thirty (30) days from the date of becoming eligible to input tax credit. Time limit for filing declaration in Form GST ITC - 1 has been extended by government from time to time* Rule 40 of Central Goods and Service Tax Rules, 2017 requires a declaration to be filed containing details of stocks and capital goods along with a certificate from a Chartered Accountant or Cost Accountant where the credit so claimed exceeds ₹2 lakhs.
- The supplier will not be entitled to credit of goods or services or both after expiry of 1 year from date of issue of tax invoice.
- The credit on capital goods shall be reduced by five (5) percentage per quarter or part thereof from the date of invoice.
- Such credits are subject to verification of details furnished by the supplier in GSTR - 1 or GSTR – 4 on the common portal.

To summarize, the credit of input tax can be taken as and when the person applies for the registration but the entitlement of credit of inputs would be from the day liability to pay tax arises.

Examples:

- (i) A person becomes liable to pay tax on 1st August 2017 and has obtained registration on 15th August 2017. Such person is eligible for input tax credit on inputs held in stock as on 31st July 2017.
- (ii) Mr. An applies for voluntary registration on 5th June 2017 and obtained registration on 22th June 2017. Mr. A is eligible for input tax credit on inputs in stock as on 21st June 2017.
- (iii) Mr. B, registered person was paying tax under composition rate upto 30th July 2017. However, w.e.f 31st July 2017. Mr. B becomes liable to pay tax under regular scheme. Mr. B is eligible for input tax credit on inputs held in stock as on closure of business hours on 30th July 2017.

Illustration (Rule 40): Manner of claiming credit in special circumstances

Akshat Steels Limited is a manufacturer of iron & steel. It procures raw materials and inputs such as iron ore, chemicals, gases, etc. and capital goods including plant & machinery, for the manufacture of such iron & steel. In this example, it has been assumed that iron & steel (which is the outward supply of Akshay Steels Ltd) is exempt from payment of taxes until 31-Mar-2020. Iron & steel become taxable with effect from 01-Apr-2020. The method of availment of input tax credits on inputs contained in stock and capital goods as on 31-Mar-2020 is covered by this illustration

Particulars	Amount (₹)
Value of inputs in stock on 31-Mar-2020	1,00,000
IGST @18%	18,000
All inputs were procured after 01-Jul-2019	

Value of inputs contained in semi-finished goods held in stock on 31-Mar-2020	4,00,000
CGST @ 6%	24,000
SGST @ 6%	24,000
All inputs contained in semi-finished goods were procured after 01-May-2019	
Value of inputs contained in finished goods held in stock on 31-Mar-2020	50,000
CGST @ 6%	3,000
SGST @ 6%	3,000
Capital Goods procured vide invoice dated 22.01.2020	20,00,000
IGST Paid @ 18%	3,60,000
Only inputs worth ₹ 40,000 in finished goods were procured after 01-Apr-2019	
Credit available in respect of inputs:	
CGST (Note 1)	26,400
SGST (Note 2)	26,400
IGST (Note 3)	18,000
Total credit available on inputs	70,800
Value of capital goods used exclusively in relation to exempted goods held on 31-Mar-2020	20,00,000
IGST @ 18%	3,60,000
Credit available in respect of capital goods:	
Date of invoice of capital goods	22-Jan-2020
Date from which the exempt goods become taxable	01-Apr-2020
No. of quarters from date of invoice	1
Percentage points to be reduced (5% per quarter) (Note 4)	5%
IGST paid on the capital goods used exclusively in relation to goods exempted up to 31-Mar-2020	3,60,000
ITC to be reduced by 5%	(18,000)
Credit (IGST) available on capital goods	3,42,000

Working notes:

Note 1: CGST credits on inputs in stock held on 31-Mar-2020:

a	ITC on the value of inputs		
b	ITC on the value of inputs contained in semi-finished goods: All inputs were acquired within 1 year prior to the effective date on which the goods become taxable. Hence, entire ITC would be allowed.	24,000	
c	ITC on the value of inputs contained in finished goods: Out of the total stock of ₹ 50,000/-, inputs totalling to ₹ 10,000/- are older than 1 year from the effective date on which the goods become taxable. Therefore, ITC to this extent stands disallowed. ITC on inputs contained in stock of ₹ 40,000 would be eligible. [Eligible credit = 40,000 * 6%]	2,400	
CGST credit available on inputs			26,400

Note 2: SGST credits on inputs in stock held on 31-Mar-2020:

a	ITC on the value of inputs		
b	ITC on the value of inputs contained in semi-finished goods: <i>Refer Note 1</i>	24,000	
c	ITC on the value of inputs contained in finished goods: <i>Refer Note 1</i>	2,400	
SGST credit available on inputs			26,400

Note 3: IGST credits on inputs on stock held on 31-Mar-2020:

a	ITC on the value of inputs: All inputs were acquired within 1 year prior to the effective date on which the goods become taxable. Hence, entire ITC would be allowed.	18,000	
b	Input tax credit on the value of inputs contained in semi-finished goods	-	
c	Input tax credit on the value of inputs contained in finished goods	-	
IGST credit available on inputs			18,000

Note 4: Rule 40(1)(a) of the Central Goods and Service Tax Rules, 2017 provides that input tax credit on capital goods can be claimed after reducing 5% per quarter of a year or part thereof, from the date of invoice in respect of which capital goods are received. Therefore, the number of quarters is 1, being the first quarter of the year 2020. The reversal of credit would therefore be, to the extent of 5% of the IGST credit of ₹3,60,000, i.e., IGST credit on capital goods would stand reduced to the extent of ₹ 18,000.

Illustration (Rule 42): Manner of determination of ITC in respect of inputs or input services and reversal thereof

Rule 42 of the Central Goods and Services Tax Rules, 2017

Sl. No	Particulars	Reference	CGST	SGST/UTGST	IGST
1	Total input tax on inputs and input services for the tax period May 2018	T	1,00,000	1,00,000	50,000
	Out of the total input tax (T):				
2	Input tax used exclusively for non-business purposes (Note 1)	T1	10,000	10,000	5,000
3	Input tax used exclusively for effecting exempt supplies (Note 1)	T2	10,000	10,000	5,000
4	Input tax ineligible under Section 17(5) (Note 1)	T3	5,000	5,000	2,500
	Total		25,000	25,000	12,500
	ITC credited to Electronic Credit Ledger (Note 1)	$C1 = T - (T1 + T2 + T3)$	75,000	75,000	37,500
	Input tax credit used exclusively for taxable supplies (including zero-rated supplies)	T4	50,000	50,000	25,000
	Common credit	$C2 = C1 - T4$	25,000	25,000	12,500
	Aggregate value of exempt supplies for the tax period May 2018 (Note 2 & 3)	E	25,00,000	25,00,000	25,00,000
	Total Turnover of the registered person for the tax period May 2018 (Note 2)	F	1,00,00,000	1,00,00,000	1,00,00,000
	Credit attributable to exempt supplies	$D1 = (E/F) * C2$	6,250	6,250	3,125

	Credit attributable to non-business purposes	$D2 = C2 * 5\%$	1,250	1,250	625
	Net eligible common credit	$C3 = C2 - (D1 + D2)$	17,500	17,500	8,750
	Total credit eligible (Exclusive + Common)	$G = T4 + C3$	67,500	67,500	33,750

Note 1: T1, T2, T3 and T4 shall be DETERMINED AS ABOVE and declared in Form GSTR-2

Note 2: If the registered person does not have any turnover for May 2018, then the value of E and F shall be considered for the last tax period for which such details are available

Note 3: Aggregate value excludes taxes

Note 4: The registered person is expected to make such computation for each tax period and for the whole year as well. In case the resultant computation results in short credit availed, then such credit can be claimed in the electronic credit ledger. Further, if on computation for the whole year, the registered person has claimed excess credit on a month on month basis, then such excess credit claimed for the year shall be added back to the output liability and will be liable for payment with interest.

Illustration (Rule 43): Manner of determination of ITC in respect of capital goods and reversal thereof in certain cases

Sl. No	Particulars	Reference	IGST
1	ITC on capital goods used exclusively for non-business purposes (Note 1)	T1	10,000
2	ITC on capital goods used exclusively for effecting exempt supplies (Note 1)	T2	10,000
	Total		20,000
3	ITC on capital goods used exclusively for taxable supplies (including zero-rated supplies) (Note 1)	T3	50,000
4	ITC on capital goods (other than T1, T2 and T3) (Annexure A)	$A = b+f$	3,90,000
5	ITC on capital goods whose residual life remain in beginning of tax period (Annexure A)	Tr	6,500
7	Aggregate value of exempt supplies for the tax period May 2018 (Note 2 & 3)	E	25,00,000
8	Total Turnover of the registered person for the tax period May 2018 (Note 2)	F	1,00,00,000
10	Credit attributable to exempt supplies	$Te = (E/F) * Tr$	1,625

Note 1: T1, T2 and T3 should be declared in Form GSTR-2. T3 alone will be credited to the electronic credit ledger

Note 2: If the registered person does not have any turnover for May 2018, then the value of E and F shall be considered for the last tax period for which such details are available

Note 3: Aggregate value excludes taxes

Annexure A - ITC on capital goods whose residual life is remaining

Sl. No	Particulars	Reference	Amount
For May 2018			
1	Inward supply value of Machinery X	A	12,50,000
	IGST @ 12%	B	1,50,000
	Invoice Value		14,00,000
	Date of inward supply		12 April 2018
	Life of the capital goods (in months) - for GST purpose is 5 years	C	60
	ITC attributable for 1 month	$Tm1 = b/c$	2500
2	Inward supply value of Machinery Y	E	20,00,000
	IGST @ 12%	F	2,40,000
	Invoice Value		22,40,000
	Date of inward supply		21 May 2018
	Life of the capital goods (in months) - for GST purpose is 5 years	G	60
	ITC attributable for May 2018 (1 month)	$Tm2 = f/g$	4000
	Aggregate of ITC on common credits	$Tr = Tm1 + Tm2$	6500

Rule 44 of the Central Goods and Service Tax Rules, 2017: Credit Reversal

Illustration 1: Where input tax credit lapses

Sl. No	Particulars	Reference	Amount
1	Value of capital goods		1,00,000
	IGST @ 12%	A	12,000
	Invoice Value		1,12,000
2	Date of shift to composition scheme		01 April 2019 (Can be opted in Financial year beginning)
3	Date of inward supply and use of capital goods		01 September 2017
4	Period of use (days)		577
	Period of use (months)		19
5	Residual life in months	B	41
	(Considering full life as 5 years)		
6	ITC attributable to residual life	$C = (A*B/60)$	8,200
	(To be added to the output tax liability of the registered person)		
5	Balance of ITC as on 31.03.2019		10,000
6	ITC utilized for capital goods for residual life		8,200
7	Balance ITC - will lapse		1,800

Illustration 2: Where input tax credit becomes payable

Sl. No	Particulars	Reference	Amount
1	Value of capital goods		1,00,000
	IGST @ 12%	A	12,000
	Invoice Value		1,12,000
2	Date of shift to composition scheme		1st April 2019
3	Date of inward supply and use of capital goods		01 September 2017
4	Period of use (days)		577
	Period of use (months)		19
5	Residual life in months	B	41
	(Considering full life as 5 years)		
6	ITC attributable to residual life	C = (A*B/60)	8,200
	(To be added to the output tax liability of the registered person)		
5	Balance of ITC as on 31.03.2019		1,500
6	ITC utilized for capital goods for residual life		8,200
7	Balance tax payable		6,700

Illustration 3: Where no payment is required

Sl. No	Particulars	Reference	Amount
1	Value of capital goods		1,00,000
	IGST @ 12%	A	12,000
	Invoice Value		1,12,000
2	Date of shift to composition scheme		1st April, 2023
3	Date of inward supply and use of capital goods		01 September 2017
4	Period of use (months)		67
	Period of use (years)		5 years 7 months
5	Residual life in months (Considering full life as 5 years)	B	-
6	ITC attributable to residual life (No payment required)	$C = (A*B/60)$	0

Rule 44A. Manner of reversal of credit of Additional duty of Customs in respect of Gold dore bar. -

The credit of Central tax in the electronic credit ledger taken in terms of the provisions of section 140 relating to the CENVAT Credit carried forward which had accrued on account of payment of the additional duty of customs levied under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975), paid at the time of importation of gold dore bar, on the stock of gold dore bar held on the 1st day of July, 2017 or contained in gold or gold jewellery held in stock on the 1st day of July, 2017 made out of such imported gold dore bar, shall be restricted to one-sixth of such credit and five-sixth of such credit shall be debited from the electronic credit ledger at the time of supply of such gold dore bar or the gold or the gold jewellery made therefrom and where such supply has already been made, such debit shall be within one week from the date of commencement of these Rules

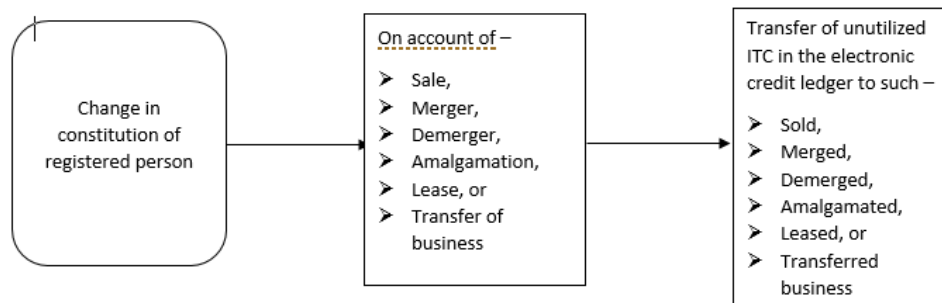
Input tax credit and change in constitution of registered person: The change in constitution of registered person due to sale merger, demerger, amalgamation, lease or transfer of business with provision for transfer of liabilities envisages that:

- (i) The registered person is allowed to transfer the input tax credit remaining unutilized in the electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business.

- (ii) Rule 41 prescribes such credit transfer be made on the Common Portal in FORM GST ITC 2 and in case of demerger, credit to be transferred must be apportioned to the value of assets transferred in the arrangement to each such unit.
- (iii) Chartered Accountant or Cost Accountant to certify that the arrangement contains a specific provision for the transfer of liabilities.
- (iv) Form GST ITC 2 filed by the transferor will have to be accepted by the transferee on the Common Portal. Please refer to discussion on Registrations in case of such arrangements to examine the timing of seeking registration by transferee.
- (v) Transferee to duly account for the stocks & capital goods received in books of accounts.

The analysis of above provision in a pictorial form is summarised as follows:

ITC: Change in Constitution of registered Person

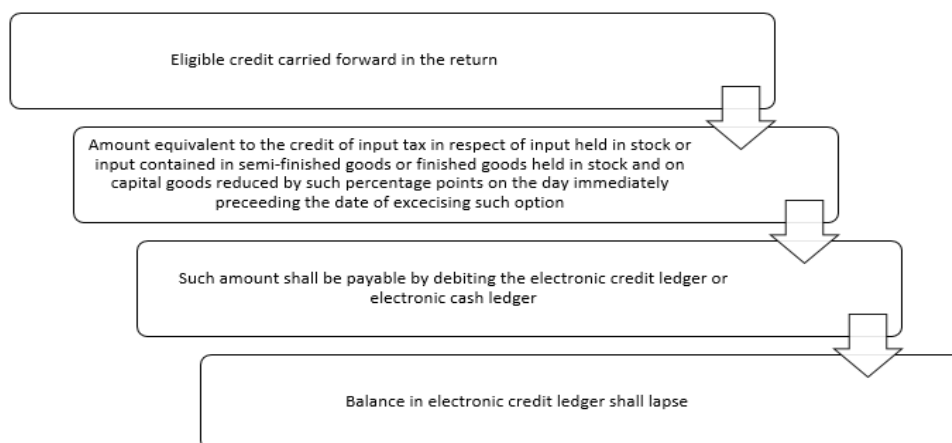


When registered person switches over from regular scheme to composition scheme:

- Pay an amount by debiting electronic cash ledger / credit ledger, equivalent to input tax credit of -
 - Inputs held in stock
 - Inputs contained in semi-finished or finished goods held in stock and
 - Capital goods
- On the day immediately preceding the date of such switch over.
- Balance of input tax credit lying in the electronic credit ledger, after payment of the above said amount, shall lapse.
- Such amount is calculated in manner to be prescribed

The above provision is also applicable where goods or services supplied by registered person is absolutely exempt.

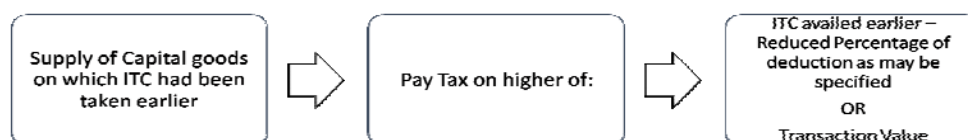
Switching from regular to composition- Pay and Exit



Supply of capital goods on which input tax credit is taken: The registered person shall pay an amount equal to:

- Input tax credit taken on such capital goods
- Reduced by
 - percentage points as prescribed or
 - tax on the transaction value of such capital goods, whichever is higher.

Supply of Capital goods on which ITC already taken



Please note that there is no saving clause in the event the taxable person entertained a *bona fide* view as to the non-taxability of certain supplies or availability of an exemption which is later overturned by a superior Court and demand crystallizes. In this scenario, limitation of availment of input tax credit lands a double blow to this taxable person. That is, not only would GST have been paid on inputs, input services and capital goods on which no credit would have been availed (due to this *bona fide* view having been entertained) but also, the full extent of the output tax becomes payable (without any relief towards credit that would otherwise have been available) due to the decision of the superior Court. Please exercise great caution while entertaining view about non-taxability or exemption. At the same time, please note it is not permitted to take a hyper-conservative view – where even with the availability of a clear and

absolute exemption, the taxable person chooses to pay GST in order to protect credit from the limitation – cannot be taken in view of the mandatory nature of such exemptions as clearly stated in explanation to section 11. Also, please note the difference between ‘taxable person’ and ‘registered person’ – are two deliberately dissimilar phrases used in the law – and credit is allowed u/s 16(1) only to a ‘registered person’ where as u/s 9(1) tax levied is payable by every ‘taxable person’ implying that the liability subsists even if not registered but credit avails, only if registered.

Refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap: Taxable person may pay tax on transaction value under section 15.

18.3 Comparative review:

Aspect	Credit under old regime	Input tax credit under GST regime
Credit on stock-in-hand	Rule 3(2) of CCR Rules, 2004	Specified persons in specified situations are eligible for input tax credit on stock
Credit on sale merger or transfer of business	Rule 10 of CCR Rules, 2004	Specific section covering the sale, merger etc
Reversal on goods becoming exempt	Rule 11(3) of CCR, 2004	To be reversed as per section 18(4)

Statutory Provision

19. Taking input tax credit in respect of inputs and capital goods sent for job work

- (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:

*If 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

Rule 45. Conditions and restrictions in respect of inputs and capital goods sent to the job worker.

- (1) The inputs, semi-finished goods or capital goods shall be sent to the job worker under the cover of a challan issued by the principal, including where such goods are sent directly to a job-worker.
- (2) The challan issued by the principal to the job worker shall contain the details specified in rule 55.
- (3) The details of challans in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another during a quarter shall be included in FORM GST ITC-04* furnished for that period on or before the twenty-fifth day of the month succeeding the said quarter [or within such further period as may be extended by the Commissioner by a notification in this behalf:

Provided that any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.]

- (4) Where the inputs or capital goods are not returned to the principal within the time stipulated in section 143, it shall be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital were sent out and the said supply shall be declared in FORM GSTR-1* and the principal shall be liable to pay the tax along with applicable interest.

Explanation.- For the purposes of this Chapter,-

- (1) the expressions “capital goods” shall include “plant and machinery” as defined in the Explanation to section 17;
- (2) for determining the value of an exempt supply as referred to in sub-section (3) of section 17-
- (a) the value of land and building shall be taken as the same as adopted for the purpose of paying stamp duty; and
- (b) the value of security shall be taken as one per cent. of the sale value of such security.

19.1 Introduction

This provision relates to availment of credit of input tax on goods sent for job work.

19.2 Analysis

(i) Relevant Definitions:

- **Job work:** Any treatment or process undertaken by a person on goods belonging to another registered person (section 2(68)).
- **Job worker:** A person who undertakes any treatment or process on goods belonging to another registered person.
- **Principal:** A person on whose behalf an agent carries on the business of supply or receipt of goods or services or both.

(ii) **Entitlement of credit on inputs:** The principal can take credit of input tax on inputs sent to job-worker subject to fulfilment of the following conditions:

- Rule 45 of Central Goods and Service Tax Rules, 2017 provides the following:
 - To issue a delivery challan for transfer of inputs to the job-worker including where they are sent directly (to maintain paper trail of transaction)
 - The details of delivery challans for goods dispatched to job worker or received from job worker or sent from one job worker to another during the quarter are to be included in Form GST ITC-04 to be furnished on or before 25th day of the month succeeding that quarter. Date of filing ITC - 4 has however been extended from time to time.
 - Delivery challan is to contain all details as required in respect of an invoice prescribed in Rule 55 of Central Goods and Service Tax Rules, 2017. All delivery challans issued in respect of inputs sent to job-worker and those received back are to be reported in GSTR-1
 - In case of non-receipt of the inputs within the time prescribed, the delivery challan issued will be deemed to be tax invoice for the implied supply of inputs
- The inputs, after completion of job-work, are to be received back by the principal within 1 year of their being sent out.
- In case of direct supply, the period of 1 year shall be reckoned from the date the job worker receives such inputs.
- The credit of inputs can be taken even if inputs are sent directly to job-worker's premises without bringing it to principal's place of business.
- If the inputs are not received back within 1 year, it shall be deemed that such inputs had been supplied by principal to the job worker on the day when the said inputs were sent out.

(iii) **Entitlement to credit on capital goods:** The principal can take credit of input tax on capital goods sent to job-worker subject to the fulfilment of the following conditions:

- The capital goods, after completion of job-work, are received back by him within 3 years of their being sent out.
- The principal can take credit of capital goods even if such capital goods are sent directly to job-worker's place without bringing to principal's place of business.
- If the capital goods are not received back within 3 years, it shall be deemed that such capital goods had been supplied by principal to the job worker on the day when the said capital goods were sent out.
- Procedures listed in respect of inputs under Rule 45 of the Central Goods and Service Tax Rules, 2017 will apply to capital goods also (refer above).

It may be noted that unless the Principal is 'registered', the activity will not be 'job-work'. And when the supply – treatment or process – is not job-work, then it will also not be eligible to be classified under HSN 9988 in the Annexure – Scheme of Classification of Services. Although the nature of work performed is the same whether the Principal is registered or not, the classification of supplies will need to be based on another suitable HSN code in chapter 99 because paragraph 3, Schedule II does not refer to 'another persons goods' and not 'another registered persons goods'. Hence, due to the registration status of the Principal, the treatment or process may or may not qualify as job-work but in either case, the work of the supplier will continue to be 'treated as supply of services' though not under HSN 9988.

Treatment of process undertaken may or may not result in manufacture (section 2(72)) where processing of raw material or inputs that results in the emergence of a new product. Whether it results in manufacture or not, the treatment or process will always be 'treated as supply of services' in view of the mandate in paragraph 3, schedule II.

Now, 'goods belonging to another' does not mean 100% of the goods required in the job-work must be provided by the Principal. It is common and often inevitable for the job-worker to apply his own goods. Goods required for job-work can generally be identified as primary, secondary and ancillary material. If the job-worker applies ancillary material in the course of carrying out the treatment or process, the transaction does not cease to be job-work. Similarly, if the Principal provides only ancillary material, it is not justifiable to regard the transaction as job-work. Hence, a reasonable construction of the definition of paragraph 3, schedule II requires the Principal to provide the 'primary material' at least to qualify. Although no one-rule can be prescribed, the classification into primary-secondary-ancillary itself is a subjective matter. Reasonable construction is required based on the role each component plays in relation to the finished product in terms of function and identity to determine 'goods belonging to another' correctly.

Please note that job-working must not be confused with repair or maintenance. Job-working creates the functionality of an article but repair or maintenance restores or improves the functionality already created and possessed by that article or thing.

As regards 'movement of goods' by Principal to job-worker, it is not a supply for the reason that the ingredients required to constitute supply (as detailed in the explanation of clause (a) to (d) under section 7(1)) are not satisfied. It is for this reason that section 19(3) and 19(6) is required to 'deem' this movement of goods to be a supply in the event of failure of job-worker to return processed goods within the permitted time (1 year for inputs and 3 years for capital goods, respectively) . Further, 19(3) and 19(6) 'deem' it be a supply not on the date of expiry of the permitted time to return them but retrospectively on the date when the inputs / capital goods were originally sent 'for' job-work. Deeming fiction is capable of providing a meaning that is otherwise not available to a work or phrase. Deeming fiction is used with great caution by the law-maker and when it is used, its construction must be with the same caution and seriousness. Hence, 'movement of goods' for the purpose of jo-work is not supply but is 'deemed' to be a supply by a failure of a contingency or condition-subsequent.

It is section 16 and not section 19 that allows input tax credit but section 19 permit availment of input tax credit even when the inputs (or capital goods) are not first received at the premises of the Principal but delivered directly to job-worker. Section 19 also does not deny or recover the input tax credit already availed by the Principal on the occasion of sending them to the job-worker. When movement of goods for job-work is not a supply, where is the need for a provision to permit continuation of credit that was already availed validly. Since credit has been availed, failure to use the inputs (or capital goods) as 'intended' under section 16(1) would cause a break-down of the credit scheme – to allow credit only when the said goods are subsequently supplied and are taxable. And for this reason, transfer of business assets on which credit availed is 'declared' to be supply in paragraph 1, schedule I and diversion for non-business use (in certain cases) is 'treated' as supply in paragraph 4(a) and 4(b), schedule II. But there is no provision to impute supply characteristics to 'movement of goods for job-work'. This responsibility falls on section 19(3) and 19(6), respectively.

This can be contrasted with the 'time of supply' of goods sent-on-approval under section 31(7). Here, the date of acceptance by customer (or end of 6th month) is recognized as supply and hence registers 'time of supply'. It is interesting to note that there is deeming fiction employed here because none is required. In other words, 'sending goods on approval' is not a supply for the same reason that the ingredients required to constitute supply (as detailed in the explanation of clause (a) to (d) under section 7(1)) are not satisfied. And such a test can validly be applied for verifying whether 'movement of goods for job-work' is supply or not. By applying the same test to 'sending goods on approval', the 'time of supply' is not the date of sending them but the date of their acceptance by customer (or end of 6th month).

19.3 Comparative review

Aspect	Credit under erstwhile system	Input tax credit under CGST
Definition of "job work"	Defined in Cenvat Credit Rules to mean processing of material supplied to job	Defined to mean undertaking any treatment or process by a person on goods belonging

	worker to complete whole or part of manufacturing process	to another registered person
Eligibility of Cenvat credit to principal manufacturer	Principal is eligible for Cenvat credit	Similar in CGST. Principal is eligible for Cenvat credit
Conditions for return of inputs and capital goods	For inputs – 180 days For capital goods – 2 years	For inputs – 1 year For capital goods – 3 years
Reversal of credit if inputs/capital goods not returned within specified time	Credit to be reversed	To be treated as deemed supply on the day when such inputs/capital goods are sent out
Re-credit if goods returned after specified time	Re-credit allowed	No such provision

19.4 Related provisions

Section	Description
143	Special procedure for removal of goods for certain purposes

19.5 FAQs

Q1. Whether the principal is eligible to avail input tax credit of inputs sent to job worker for job work?

Ans. Yes. The principal is eligible to avail the input tax credit on inputs sent to job worker for job work.

19.6 MCQs

Q1. The inputs sent to job work has to be received back within:

- (a) 1 year
- (b) 2 years
- (c) 180 days

Ans. (a) 1 year.

Q2. The principal is entitled to avail the credit on capital goods sent to job worker directly:

- (a) Yes
- (b) No
- (c) May be

Ans. (a) Yes.

- Q3. If the capital goods sent to job worker has not been received within 3 years from the date of being sent:
- Principal has to pay amount equal to credit taken on such capital goods
 - No need to pay amount equal to credit taken on such capital goods
 - It shall be treated as deemed supply of capital goods to the job worker
 - None of the above

Ans. (c) It shall be treated as deemed supply of capital goods to the job worker

Statutory provision

20. Manner of Distribution of Credit by Input Service Distributor (ISD)

(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, 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:*

- the credit can be distributed to recipients of credit against a document containing such details as may be prescribed;*
- the amount of the credit distributed shall not exceed the amount of credit available for distribution;*
- the credit of tax paid on input services attributable to recipient of credit shall be distributed only to that recipient;*
- the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipient(s) 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.*
- 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.*

Explanation –For the purposes of this section,

- the “relevant period” shall be-*
 - if the recipients of credit have turnover in their States or Union Territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or*
 - if some or all recipients of the credit do not have any turnover in their States or Union Territories in the financial year preceding the year during*

which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed.

- (b) the expression of 'recipient of credit' means the supplier of goods or services or both having the same Permanent Account Number as that of Input Service Distributor.
- (c) the term 'turnover' in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule

Rule 39. Procedure for distribution of input tax credit by Input Service Distributor. -

(1) An Input Service Distributor shall distribute input tax credit in the manner and subject to the following conditions, namely, -

- (a) the input tax credit available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in FORM GSTR 6* in accordance with the provisions of Chapter VIII of these rules;
- (b) the Input Service Distributor shall, in accordance with the provisions of clause (d), separately distribute the amount of ineligible input tax credit (ineligible under the provisions of sub-section (5) of section 17 or otherwise) and the amount of eligible input tax credit;
- (c) the input tax credit because central tax, State tax, Union territory tax and integrated tax shall be distributed separately in accordance with the provisions of clause (d);
- (d) the input tax credit that is required to be distributed in accordance with the provisions of clause (d) and (e) of sub-section (2) of section 20 to one of the recipients 'R₁', whether registered or not, from amongst the total of all the recipients to whom input tax credit is attributable, including the recipient(s) who are engaged in making exempt supply, or are otherwise not registered for any reason, shall be the amount, "C₁", to be calculated by applying the following formula –

$$C_1 = (t_1 \div T) \times C$$

where,

"C" is the amount of credit to be distributed,

"t₁" is the turnover, as referred to in section 20, of person R₁ during the relevant period, and

"T" is the aggregate of the turnover, during the relevant period, of all recipients to whom the input service is attributable in accordance with the provisions of section 20;

- (e) the input tax credit on account of integrated tax shall be distributed as input tax credit of integrated tax to every recipient;
- (f) the input tax credit on account of central tax and State tax or Union territory tax shall
 - (i) in respect of a recipient located in the same State or Union territory in which the Input Service Distributor is located, be distributed as input tax credit of central tax and State tax or Union territory tax respectively;
 - (ii) in respect of a recipient located in a State or Union territory other than that of the Input

Service Distributor, be distributed as integrated tax and the amount to be so distributed shall be equal to the aggregate of the amount of input tax credit of central tax and State tax or Union territory tax that qualifies for distribution to such recipient in accordance with clause (d);

- (g) the Input Service Distributor shall issue an Input Service Distributor invoice, as prescribed in sub-rule (1) of rule 54, clearly indicating in such invoice that it is issued only for distribution of input tax credit;
 - (h) the Input Service Distributor shall issue an Input Service Distributor credit note, as prescribed in sub-rule (1) of rule 54, for reduction of credit in case the input tax credit already distributed gets reduced for any reason;
 - (i) any additional amount of input tax credit on account of issuance of a debit note to an Input Service Distributor by the supplier shall be distributed in the manner and subject to the conditions specified in clauses (a) to (f) and the amount attributable to any recipient shall be calculated in the manner provided in clause (d) and such credit shall be distributed in the month in which the debit note is included in the return in FORM GSTR-6*;
 - (j) any input tax credit required to be reduced on account of issuance of a credit note to the Input Service Distributor by the supplier shall be apportioned to each recipient in the same ratio in which the input tax credit contained in the original invoice was distributed in terms of clause (d), and the amount so apportioned shall be
 - (i) reduced from the amount to be distributed in the month in which the credit note is included in the return in FORM GSTR-6*; or
 - (ii) added to the output tax liability of the recipient where the amount so apportioned is in the negative by the amount of credit under distribution being less than the amount to be adjusted.
- (2) If the amount of input tax credit distributed by an Input Service Distributor is reduced later for any other reason for any of the recipients, including that it was distributed to a wrong recipient by the Input Service Distributor, the process specified in clause (j) of sub-rule (1) shall apply, mutatis mutandis, for reduction of credit.
- (3) Subject to sub-rule (2), the Input Service Distributor shall, on the basis of the Input Service Distributor credit note specified in clause (h) of sub-rule (1), issue an Input Service Distributor invoice to the recipient entitled to such credit and include the Input Service Distributor credit note and the Input Service Distributor invoice in the return in FORM GSTR-6* for the month in which such credit note and invoice was issued.

20.1 Introduction

This Section sets forth the way input tax credit (of services) is distributed to supplier of goods or services or both of same entity having same PAN. Procedure for distribution is given in Rule 39 of Central Goods and Service Tax Rules, 2017.

20.2 Analysis

- (i) An ISD shall distribute the eligible ITC in accordance with Rule 39 elucidated in the following paras.

- (ii) Input Service Distributor (ISD) is an office of the supplier of goods or services or both where a document (like invoice) of services attributable to other locations are received (since they might be registered separately). Since the services relate to other locations the corresponding credit should be transferred to such locations (having separate registrations) as services are supplied from there. Care should be taken to ensure that an inter-branch supply of services should not be misinterpreted as a distribution by ISD. Please recollect that ISD cannot be an office that does any supply of its own but must be one that merely collects invoice for services and issues prescribed document for its distribution.

Examples hereunder are as per rules.

Illustration: Corporate office of XYZ company Ltd., is at New Delhi, having its business locations of selling and servicing of goods at New Delhi, Chennai, Mumbai and Kolkata. For example, if the software license and maintenance is used at all the locations, invoice indicating CGST and SGST is received at Corporate Office. Since the software is used at all the four locations, the input tax credit of entire services cannot be claimed at New Delhi. The same has to be distributed to all four locations. For that reason, the Delhi Corporate office has to act as ISD to distribute the credit.

Rule 39: Central Goods and Service Tax Rules, 2017

The example provided below illustrates the application of Rule 39 of the Central Goods and Service Tax Rules, 2017 for distribution of credits by an Input Service Distributor (ISD) in terms of Section 20.

Yoko Infotech Ltd. has its head office in Mumbai, for which it additionally has an ISD registration. The company has 12 units across India including its head office. It receives the following invoices in the name of the ISD at Mumbai, for the month of January 2018:

Invoice A: ₹ 100,000 @ IGST 18,000 issued by Peace Link Technologies (registered in Uttar Pradesh) for repairs executed in 3 units – **Bangalore, Kolkata, Gurgaon** (Note: Gurgaon location is not registered as it is engaged in making only exempt supplies);

Invoice B: ₹ 300,000 @ CGST 27,000, SGST 27,000 issued by M/s. Tec Force (registered in Pune) for repairs executed in 3 units – **Mumbai, Bangalore, Kolkata;**

Invoice C: ₹ 500,000 @ IGST 90,000 issued by M/s.Georgia Marketing (registered in Bangalore) for marketing services for the **company;**

Invoice D: ₹ 10,000 @ CGST 900 & SGST ₹900 issued by M/s. Gopal Coffee works (registered in Mumbai) for supply of beverages during the month to its **Mumbai unit.**

All taxes have been considered at 18% (CGST and SGST at 9% each).

The turnover of each of the units during the year 2016-17 is: Mumbai: 1 crore; Bangalore 2 crore; Kolkata 1 crore; Gurgaon 2 crore; each of the other 8 units: 50 lakhs, resulting in the aggregate turnover of the company in the previous financial year, of 10 crores.

Distribution of credits by the ISD:

Particulars	Invoice	Bangalore	Kolkata	Mumbai	Gurgaon	8 units	Total
Invoice A							
T/o in State	Note 1	2 crore	1 crore	-	2 crore	-	5 crore
Pro-rata ratio		40%	20%	-	40%	-	100%
Credit	18,000	7,200	3,600	-	7,200	-	18,000
Type	IGST	IGST	IGST	-	IGST	-	
Invoice B							
T/o in State	Note 2	2 crore	1 crore	1 crore	-	-	4 crore
Pro-rata ratio		50%	25%	25%	-	-	100%
CGST Credit	27,000						
• Distribution		13,500	6,750	6,750	-	-	27,000
Type	CGST	IGST	IGST	CGST	-	-	
SGST Credit	27,000						
• Distribution		13,500	6,750	6,750	-	-	27,000
Type	SGST	IGST	IGST	SGST	-	-	
Invoice C							
T/o in State	Note 3	2 crore	1 crore	1 crore	2 crore	0.5 * 8 crore	10 crore
Pro-rata ratio		20%	10%	10%	20%	5% * 8 units	100%
Credit	90,000	18,000	9,000	9,000	18,000	4,500 * 8 units	90,000
Type	IGST	IGST	IGST	IGST	IGST	IGST	
Invoice D							
Attributable to	Note 4	-	-	Yes	-	-	-
Credit (ineligible)	900	-	-	900	-	-	900
Type	CGST	-	-	CGST	-	-	
Credit	900	-	-	900	-	-	900

(ineligible)							
Type	SGST	-	-	SGST	-	-	

Credit of CGST, SGST and IGST on invoice		Total eligible credits distributed as CGST, SGST and IGST as applicable (Refer Note below)					
CGST	27,000	-	-	6,750	-	-	6,750
SGST	27,000	-	-	6,750	-	-	6,750
IGST	108,000	52,200	26,100	9,000	25,200	4,500 each (viz. total of 36,000)	148,500
TOTAL	162,000	52,200	26,100	22,500	25,200	36,000	162,000

It can be seen from the illustration that credit of CGST of ₹ 27,000 is distributed as CGST credit only to the extent of ₹ 6,750; likewise, credit of SGST of ₹ 27,000 is distributed as SGST credit only to the extent of ₹ 6,750. This is because, the intra-State service billed to the ISD is attributable to 1 unit in the same State as the ISD and 2 other units located in different State. Thus, the balance of CGST credit and SGST credit is distributed as IGST to such units. This is the reason why the credit of IGST lying with the ISD prior to distribution is only ₹ 108,000 while the credit of IGST that is distributed aggregates to ₹ 148,500.

Note 1: The credit of IGST should always be distributed as IGST credit to all the units to which the service is attributable, regardless of where they are located.

- The credits should be distributed only to those units to which the service is attributable. Given that the service mentioned in the case of Invoice A is attributable only to Bangalore, Kolkata and Gurgaon, the entire input tax credit applicable to the case should be distributed to the said 3 units, on a pro rata basis in the ratio of their respective 'Turnover in State' to the aggregate of the 3 'Turnover in State' (i.e., 2 Cr + 1Cr + 2 Cr). Further, no differentiation is made to whether the unit is registered or not, and therefore, credit attributable to the Gurgaon unit is distributed to that unit although it is not registered, which implies, it is a loss of credit.
- The 'turnover in State' is arrived at a value for the 'relevant period'. Since all 12 units were operational during the preceding financial year, the relevant period would be the preceding financial year.

Note 2: The credit of CGST and SGST should be distributed as IGST credit to all the units located outside the State in which the ISD is located, and as CGST and SGST respectively, in case of distribution of credit to a unit located in the same State as the ISD. Thus, the CGST and SGST credits are distributed as IGST credits to Bangalore and Kolkata, and as CGST & SGST respectively, to Mumbai.

- Given that the service supplied in terms of Invoice B is attributable only to Bangalore, Kolkata and Mumbai, the entire input tax credit applicable to the case should be distributed to the said 3 units, on a pro rata basis in the ratio of their respective 'Turnover in State' to the aggregate of the 3 'Turnover in State' (i.e., 2 Cr + 1Cr + 1 Cr).

Note 3: The credit of IGST is distributed as IGST to all the units to which the service is attributable.

- Invoice C relates to a supply of service that is attributable to all the units, and hence, the credits would be distributed on a pro-rata basis of the 'Turnover in State' of each of the units, to the aggregate of 'Turnover in State' of all the 12 units, i.e., ₹10 Cr.;
- For convenience of presentation, only one column is shown to reflect the distribution to each of the 8 units, having the same 'turnover in State', and to which the same invoice is attributable.

Note 4: Given that the services for receipt of food and beverages would not be eligible input services, the taxes relating to Invoice D should be distributed as ineligible input tax (900 + 900), and the distribution must be done separately.

Since the service is wholly attributable to the Mumbai unit, the distribution is done only to such unit.

- (iii) **Distribution of credit where ISD and recipient are located in different States under CGST Act:** As per Rule 39(1)(e) and (f) of Central Goods and Service Tax Rules, 2017 ISD shall distribute as prescribed, credit of CGST as CGST or IGST and credit of IGST as IGST by issuing prescribed document mentioning the amount of credit distributed to recipient of credit located in different States.

Illustration: In the above illustration, if the corporate office of XYZ Ltd being an ISD situated in Delhi receives invoices indicating ₹ 4 lakhs of CGST in one service and ₹ 7 lakhs as of IGST in another case. It shall distribute CGST of ₹ 4 Lakhs as CGST or as IGST and credit of IGST of ₹ 7 Lakhs also as IGST to its locations at Chennai, Mumbai and Kolkata under a prescribed document containing the amount of credit distributed.

- (iv) **Distribution of credit where ISD and recipient are located in different States under SGST Act:** ISD could distribute as prescribed credit of SGST as IGST only (and not as SGST of other State) by issuing a prescribed document containing the amount of credit distributed.

Illustration: In the above illustration, corporate office of XYZ Ltd., also received SGST of ₹ 6 Lakhs along with ₹ 4 Lakhs of CGST. It can distribute SGST credit as IGST to its locations at Chennai, Mumbai and Kolkata under a prescribed document containing the amount of credit distributed.

- (v) **Distribution of credit where ISD and recipient are located within the State under CGST Act:** In cases where an entity has different registration within the same State by an entity, it may have to distribute credit to such location also similar to locations with

different registrations outside the State. In order to enable the same, it is provided that ISD can distribute in the prescribed manner, credit of CGST as CGST and credit of IGST as IGST by issuing prescribed document mentioning the amount of credit distributed to recipient being a business vertical.

Illustration: ABC Ltd., having its office at Bangalore is having another business vertical in Mysore which is separately registered. In such a case out of input tax credit of ₹ 4 lakhs of CGST, the credit attributable to ABC Ltd, Bangalore, shall be distributed to Mysore location as CGST. Similarly out of input tax credit of ₹ 10 Lakh of IGST, the credit attributable to ABC Ltd, Bangalore shall be distributed to Mysore location as IGST.

- (vi) **Distribution of credit where ISD and recipient are located within the State under SGST Act:** Similar to the provisions of CGST as indicated supra under CGST Act, even under the SGST Act, it is provided that an ISD can distribute in the prescribed manner, credit of SGST and IGST as SGST (of the same State and none other State) by issuing prescribed document mentioning the amount of credit distributed to recipient being a business vertical.

Illustration: In the same example of ABC Ltd., above the input tax credit say ₹ 6 lakhs of SGST shall be distributed as SGST.

- (vii) **Conditions to distribute credit by ISD:** The conditions to distribute the credit by ISD are as follows:
- (a) Credit to be distributed to recipient under prescribed documents containing prescribed details. Such document should be issued to each of the recipient of credit.
 - (b) Credit distributed should not exceed the credit available for distribution.
 - (c) Tax paid on input services used by a particular location (registered as supplier), is to be distributed only to that location.
 - (d) Credit of tax paid on input service used by more than one location who are operational is to be distributed to all of them based on the pro rata basis of turnover of each location in a State to aggregate turnover of all such locations who have used such services.

Note: The period to be considered for computation is the previous financial year of that location. If it does not have any turnover in the previous financial year, then previous quarter of the month to which the credit is being distributed.

- (viii) For a detailed discussion on Tax invoice or Credit note to be issued by an ISD reference maybe made to Chapter VII. The said Chapter VII clearly indicates the particulars to be included in such a document.

Illustration 1: A Ltd as an ISD has input service credit of ₹ 35 lakhs used by more than one locations, to be distributed among recipients locations X, Y and Z. The turnover of X, Y, Z in preceding financial year, is ₹ 10 crores, ₹ 15 crores and ₹ 5 crores respectively. The credit of

₹ 5 lakhs pertains to input service received only by Z. The credit attributable to X, Y, Z are as follows:

Particulars	Amount (in ₹)
Total Credit to be distributed as ISD	35 Lakhs
Credit of service used only by Z location	5 Lakhs
Credit available for distribution for all units	30 Lakhs
Credit distributable to X 10 crores / 30 crores * 30 Lakhs	10 Lakhs
Credit distributable to Y 15 crores /30 crores * 30 Lakhs	15 Lakhs
Credit distributable to Z 5 crores / 30 crores * 30 Lakhs 5 Lakhs Credit directly attributable to Z 5 Lakhs	10 Lakhs

Illustration 2: Distribution of input tax credit by an ISD to its units is shown as under:

M/s XYZ Ltd, having its head Office at Delhi, is registered as ISD. It has three units in different State namely 'Delhi', 'Jaipur' and 'Gujarat' which are operational in the current year. M/s XYZ Ltd furnishes the following information for the month of July 2018 & asks to distribute the credit to various units.

- (i) CGST paid on services used only for Delhi Unit: ₹ 300000/-
- (ii) IGST, CGST & SGST paid on services used for all units: ₹ 1200000/-
- (iii) Total Turnover of the units for the Financial Year 2017-18 are as follows:-

Unit	Turnover (₹)
Delhi	5,00,00,000
Jaipur	3,00,00,000
Gujarat	2,00,00,000
Total	10,00,00,000

Solution: Computation of Input Tax Credit Distributed to various units: -

Particulars	Total Credit Available	Delhi	Jaipur	Gujarat
		Credit distributed to all Units		
CGST paid on services used only for Delhi Unit.	300000	300000	0	0
IGST, CGST & SGST paid on services used	1200000	600000	360000	240000

in all units- Distribution on pro rata basis to all the units which are operational in the current year (Refer Note1)				
Total	1500000	900000	360000	240000

Note 1: Credit distributed pro rata basis based on the turnover of all the units are as under: -

- Unit Delhi: $(50000000/100000000)*1200000 = ₹ 600000$
- Unit Jaipur: $(30000000/100000000)*1200000 = ₹ 360000$
- Unit Gujarat: $(20000000/100000000)*1200000 = ₹ 240000$

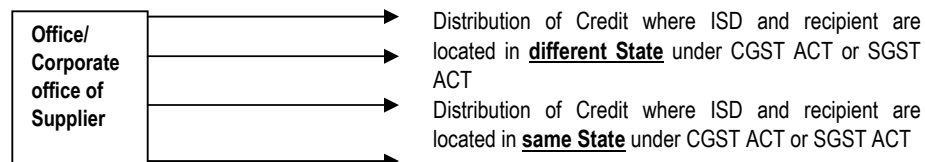
Relevant period for distribution of credit:

- If the recipient of credit has turnover in their State in preceding financial year of the year in which credit is distributed – Such financial year.
- If some or all recipients do not have any turnover in their State in preceding financial year of the year in which credit is distributed – Last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed.

The analysis of above provision in a pictorial form is summarised as follows:

Input Service Distributor – Sec. 20.

- ITC is distributed to supplier of goods or services or both of same entity having the same PAN
- Common Services used at for



Input Service Distributor

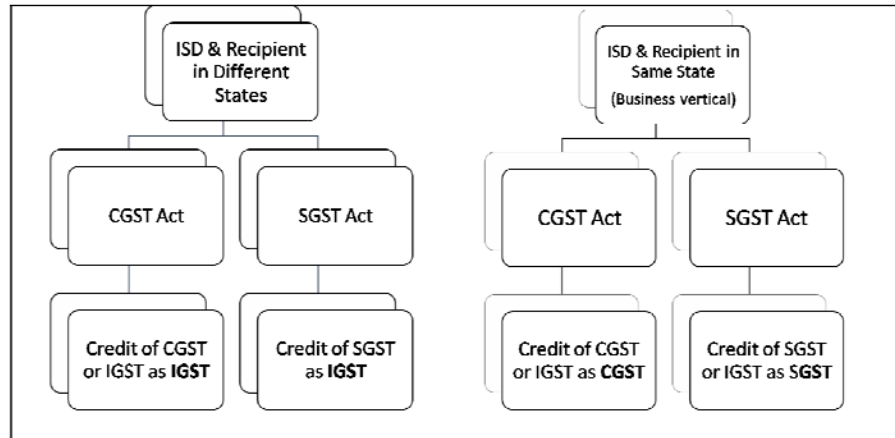


Illustration 3: Consider an example where a Company has a Branch-M in Mumbai and a Branch-D in Delhi. This Company is also incorporated in Delhi. Branch-M incurs various expenses that are supply of services in Delhi where CGST-SGST is liable to be charged in Delhi by that supplier. Obviously, credit of this tax cannot be availed by Branch-D because the underlying expense is not ‘in relation to business’ of Branch-D because it is exclusively in relation to business of Branch-M. When credit cannot be claimed by Branch-D and Branch-M does not want to forego this credit, the option available is for Branch-M to obtain ISD registration in Delhi. Now, in exactly, the same manner, if Branch-M incurs expenses in Maharashtra (say in Nasik), the implications would be that credit not allowable to Branch-M for these supplies and Branch-D is eligible to obtain ISD registration in Maharashtra, if credit is not to be foregone.

From this example, the following questions arise for careful consideration:

Question	Response
(i) Is ISD registration required in ‘all but one’ States for a registered taxable person? (All but one may all States/UT other than Home State)	Yes. If tax charged by the supplier is not IGST but CGST-SGST of the host-State where supplies are taking place, then a registered taxable person would require ISD registration in each those host-States except home-State
(ii) Is ISD registration an entity-level office in a given State or is it a registered taxable persons-specific office in other States (outside the home State of that registered taxable person)?	Yes, ISD is an entity-level office because section 2(61) defines ISD as “... means an office of the supplier which receives tax invoice....” It does not say it is an “office of the registered taxable person which receives tax invoice....”

(iii) Will ISD registration be required for each registered taxable person in 'all but one' States? (All but one may all States/UT other than Home State)	No. One entity-level ISD registration in all States will suffice for credit distribution requirement of all registered taxable persons having same PAN
(iv) Can an ISD distribute credit of taxes paid in that State alone (whether IGST or CGST-SGST) to registered taxable persons in all other States or only to that State for whose benefit the ISD registration was obtained?	No, since ISD is an entity-level registration, one ISD in a State can distribute credit to all registered taxable persons in all other States having same PAN. Further, this ISD can also distribute credit to separately registered business verticals in that same State
(v) When GSTIN registration is obtained in one State, is there any need to also obtain ISD in the same State or is GSTIN and ISD registrations mutually exclusive in a given State?	Yes, GSTIN registration does not permit distribution of credit. If taxes are paid that is not related to the business of that registered taxable person in that State, then for want of 'nexus', credit cannot be availed by him. And to save from loss of credit, ISD registration is the only option to distribute this credit whichever registered taxable person (called 'recipient of credit') satisfies this nexus test.
(vi) Can a Company who has independent operations in all 29 States and 2 UTs and is therefore registered in all 31 locations also be required to have 31 ISD registrations?	Yes, absolutely. This is because each registered taxable person stated to be truly independent of other business (of registered taxable persons) and receives supplies in those host-States where CGST-SGST paid in those host-States is to be distributed to the relevant home-State
(vii) Is it possible, when GSTIN registration is already available in any given State, for the Company to completely avoid ISD registration?	No, for the reasons stated in (vi) & (i) above, it would not be possible to avoid ISD registration
(viii) If a Company, to avoid ISD compliances, decides to avoid ISD registration in every State where it is already having GSTIN registration?	It is possible that a Company may consider the possibility doing so subject to legitimate credits which can be availed as an ISD
(ix) If a Company were to instruct all registered taxable persons in a State who may have credit loss in other States misdirect the suppliers into issuing tax invoice with GSTIN of that State?	Yes, it is possible for a Company to misdirect a supplier. This supplier will only look for genuine GSTIN and similarity of name. It is not the supplier's responsibility to examine 'nexus' while issuing tax invoice
(x) Is ISD registration, therefore, necessary	Yes, as explained in (vii) above, ISD

in every State where this 'nexus' test cannot be fulfilled by each registered taxable person?	registration is necessary in every State where 'nexus' test is not fulfilled
(xi) Therefore, if multiple ISD registrations or GSTIN-plus-ISD registrations are unavoidable (as explained above), is there any solution to resolve this multiplicity of monthly and quarterly compliances?	Yes, only if 'nexus' is established between the 'no nexus' supplies in a State and the registered taxable person in that same State. If no such 'nexus' exists, credit claim by registered taxable person becomes improper. If nexus is established, please examine valuation of inter-branch supply of services is as per proviso to Rule 28 or as per Rule 30 of Central Goods and Service Tax Rules, 2017 relating to Valuation.

ISD is not merely a matter of compliance but involves great revenue implications to a registered taxable person. Compliance will also not be nominal. So, this is yet another indicator that the business model that has been in place until now has reached end-of-life and a new model needs to be examined. Please consider the following example of a CA in practice with branches in 3 States where the facts are as follows:

Common facts for consideration:	
Head office	Maharashtra
Branch offices	West Bengal and Delhi
Client base	All 3 States
Skills based	Distributed in all offices, based on the assignment, staff from all offices join to complete the assignment
Completion	Sign-off only by Partners who are in Maharashtra and West Bengal

Business models and their comparison are as follows:

Criteria	Under Erstwhile Law	Under GST Law – A	Under GST Law – B
ST (GST) registration	Centralized at Mumbai	All 3 branches	All 3 branches
Billing to clients	From all 3 offices	From Mumbai only	From all 3 offices
Internal billing	None	Branches issue tax invoice to HO at 'cost plus 10%' as per Rule 30 of Central Goods and Service Tax Rules, 2017 relating to Valuation	Every branch including HO to bill each other for their respective contribution on 'revenue split' or 'proportion of contribution' method

ST credit of branches	Availed at Mumbai due to centralized registration (ISD registration not required)	Branches and HO avail input tax credit on tax invoices issued by respective suppliers	Branches and HO avail input tax credit on tax invoices issued by respective suppliers including internal bills
ST credit at HO	Mumbai credits, entity-level credits and branch-specific credits	HO retains credit of all entity-level credits and avails credit of tax invoice issued by branches	HO retains credit of all entity-level credits
Loss, cost or risk	None	IGST outflow on non-credit costs included in valuation and 10% mark-up. Non-credit costs of branches are salaries, depreciation, etc.	Nexus risk on credits: <ul style="list-style-type: none"> entity-level costs like audit fee central vendor bills like data-telecom, travel, etc. Administrative challenge in assignment-level billing allocation
Mitigation	NA	Branch to invoice HO on 30 th in respect of client-level billings due on 1 st of next month so that the incremental IGST outflow from HO to branches is recovered quickly	GST does not impose any 'one-to-one' correlation of credits. Entity-level credit can be contended to be allowed in HO. Assignment-level billing allocation left to each branch to self-regulate

There is no doubt that the above are not recommendations but case for comparative illustration regarding application of the law to a business and to highlight that it is impossible to continue the erstwhile business model in GST, at least in many sectors.

The illustrations considered in this section are matters to be considered for discussion/ deliberations only and are not views envisaged. The reader may or may not agree with the views in the discussion in this Chapter/section.

20.3 Comparative review

These provisions are similar to the provisions contained in the Rule 7 of CENVAT credit rules for distribution of credit of input service by an ISD.

It appears that the distribution of credit among the recipients prescribed in CENVAT credit Rules has been continued in proposed GST law. The conditions for distribution of credit for each recipient also appear to be continued as before.

20.4 Related provisions

Section	Description
Section 2(61)	Definition of Input Service Distributor
Explanation to Section 20(2)	Definition of relevant period.

20.5 FAQ

Q1. Whether CGST and IGST credit can be distributed by ISD as IGST credit to units located in different States?

Ans. Yes. CGST credit can be distributed as IGST and IGST credit can be distributed as IGST by an ISD for the units located in different States.

Q2. Whether SGST credit can be distributed as IGST credit by an ISD to units located in different States?

Ans. Yes. ISD can distribute SGST credit as IGST for the units located in different States.

Q3. Whether the SGST and IGST Credit can be distributed as SGST credit?

Ans. Yes. ISD can distribute SGST and IGST credit as SGST.

Q4. What are the conditions to be fulfilled by ISD to distribute the credit?

Ans. The conditions to be fulfilled by ISD to distribute credit are:

- (a) Credit distributed to recipient under prescribed documents, which is issued to each of the recipient of credit.
- (b) Credit distributed should not exceed the credit available for distribution.
- (c) Tax paid on input services used by a particular location (registered as supplier), to be distributed only to that location.
- (d) Credit of tax paid on input service used by more than one location who are operational is to be distributed to all of them based on the pro rata basis of turnover of each locations in a State to aggregate turnover of all such locations who have used such services.

Q5. What are the documents through which the credit can be distributed by ISD?

Ans. The document under which the credit can be distributed is yet to be prescribed. The act provides that the credit can be distributed only through prescribed document.

Q6. How to distribute common credit among all the units of a ISD?

Ans. The common credit used by all the units can be distributed by ISD on pro rata basis i.e. based on the turnover of each unit to the aggregate turnover of all the units to which credit is distributed.

20.6 MCQ

Q1. The ISD may distribute the CGST and IGST credit to recipient outside the State as _____

- (a) IGST
- (b) CGST
- (c) SGST

Ans. (a) IGST

Q2. The ISD may distribute the CGST credit within the State as_____

- (a) IGST
- (b) CGST
- (c) SGST
- (d) Any of the above.

Ans. (b) CGST

Q3. According to the condition laid down for distribution of credit, ISD can distribute_____

- (a) Credit in excess of credit available
- (b) Only certain percentage of total credit available
- (c) Credit equal to the total credit available for distribution.
- (d) All of the above.

Ans. (c) Credit equal to the total credit available for distribution.

Q4. The credit of tax paid on input service used by more than one supplier is _____

- (a) Distributed among the suppliers who used such input service on pro rata basis of turnover in such State.
- (b) Distributed equally among all the suppliers
- (c) Distributed only to one supplier.
- (d) Cannot be distributed.

Ans. (a) Distributed among the suppliers who used such input service on pro rata basis of turnover in such State.

Statutory provision

21. Manner of recovery of credit distributed in excess

Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipient(s) along with interest, and the provisions of section 73 or 74, as the case may be, shall mutatis mutandis apply for determination of amount to be recovered

21.1 Introduction

The CGST Act clearly lays down that credit distribution is not 'to self', that is, a registered taxable person cannot distribute credit to himself. Each registered person being a distinct person u/s 25, must distribute to another registered taxable person but having the same PAN

to whom the credit is most accurately attributable. And the consequence of incorrect distribution, due to inadvertence or misapplication of the provisions, are discussed here.

21.2 Analysis

(i) Excess Credit distributed in contravention of provision:

Excess credit distributed to one or more recipient of credit in contravention of ISD provision under Section 20 is recoverable from the recipient of such credit along with Interest. The recovery will be under the provisions of Section 73 or 74.

Example-1 Total Credit Available to ISD is 15,00,000/- & the credit distributed to all the units is ₹ 16,50,000/- (i.e. Delhi 10,00,000, unit Jaipur ₹ 4,00,000 & unit Gujarat ₹ 2,50,000). What will be the consequences?

Solution: The excess credit of 1,50,000 (₹ 16,50,000- ₹ 15,00,000) distributed will be recovered from the recipient along with interest and the provisions of section 73 or 74 shall apply mutatis mutandis for effecting such recovery.

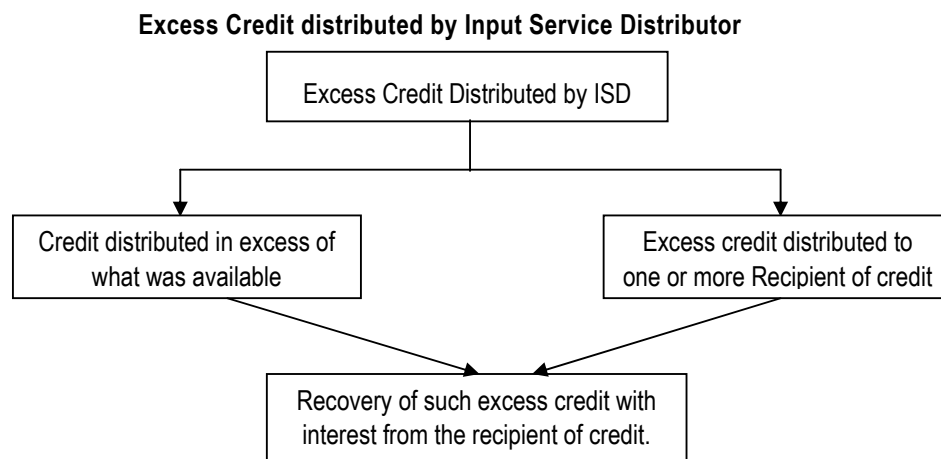
Example-2 Total Credit Available to ISD is ₹ 15,00,000/- & the credit should have been distributed equal to all the units as all units had equal turnover, however credit distributed in violation of Section 21, as under:

Delhi ₹ 7,00,000, Jaipur ₹ 6,00,000, Gujarat ₹ 2,00,000.

What will be the consequences?

Solution: The excess credit of ₹ 2,00,000 (₹ 7,00,000- ₹ 5,00,000) shall be recovered from Delhi and ₹ 1,00,000 (₹ 600,000 – ₹ 5,00,000) shall be recovered from Jaipur along with interest and the provisions of section 73 or 74 shall apply mutatis mutandis for effecting such recovery.

The analysis of above provision in a pictorial form is summarised as follows:



21.3 Comparative review

Earlier recovery provision was specified in Rule 14 of CENVAT Credit Rules. The CENVAT credit taken or utilized wrongly or has been erroneously refunded, was recovered along with interest under the provisions of sections 11A and 11AB of the Excise Act or sections 73 and 75 of the Finance Act.

Earlier, there was no specific provision for excess distribution of credit by ISD. Now specific provision is provided in the GST law providing for recovery of amount along with interest. Further, the relevant period for recovery of excess amount distributed is also provided in GST law.

21.4 Related provisions

Section	Description
Section 20	Manner of distribution of credit by Input service distributor
Section 73	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful misstatement or suppression of facts.
Section 74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized due to fraud or any wilful-misstatement or suppression of facts.

21.5 FAQ

Q1. Whether the excess credit distributed could be recovered by the department?

Ans. Yes. Excess credit distributed could be recovered along with interest from recipient by the department.

Q2. What are the consequences of credit distributed in contravention of the provision of the Act?

Ans. The credit distributed in contravention of the provision of the Act is to be recovered from the unit to which it is distributed along with interest.