

Input tax credit

BY:

CA AANCHAL ROHIT KAPOOR M. NO. 9988692699,9888069269



DEFINITIONS

Sec. 2(63) :- Input tax credit

"Input tax credit" means the credit of input tax;

Sec. 2(62) :- Input tax

<u>"input tax"</u> in relation to a registered person, means the <u>central tax, State tax, integrated tax or Union</u> <u>territory tax charged on any supply of goods or services or both made to him and includes</u>—

- a. the integrated goods and services tax charged on import of goods;
- b. the tax payable under the provisions of sub-sections (3) and (4) of section 9;
- c. the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
- d. the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
- e. the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,

but does not include the tax paid under the composition levy;



But **does not include** tax paid under **composition levy**.



SECTION 16

Section 16:- Eligibility and condition for taking input tax credit.

Section 16(1):-

Rule 36

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.



Sec. 16 :- Eligibility and condition for taking input tax credit

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed⁷⁵ 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.



Sec. 2(46) "electronic credit ledger" means the electronic credit ledger referred to in sub-section (2) of section 49; Sec. 49(2) of CGSt Act, 2017:- The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with [section 41 or section 43A], to be maintained in such manner as may be prescribed. Course OR Furtherance= Commercial Motive

Profitmay or may not

Regular/ Onetime

Eg. Exhibition/ trade fair

Used or intended to be used in course or furtherance of business

Bansal Wire Industries Ltd. v. State of U.P. 2011 (269) E.L.T. 145 (SC)

 Increase in the scope of ITC consequent upon inclusion of the phrase 'furtherance of his business'. It clearly means that credit shall be available either goods or service being used for existing business or furtherance of business. A few examples of furtherance of business on context of traders can be opening of a new showroom, new marketing office to develop trading of other similar products connected with the existing business of trading.

State of Travancore Cochin v. Shanmugha Vilas Cashewnut Factory AIR 1953 SC 333

• The word " course" conveys the idea of a gradual and continuous flow, an advance, a journey, a passage or progress from one place to another.

Md. Yusuf v. D. AIR 1968 Bom 112

• "In the course of business" means in the way that business (which may be purely private or trival nature) is conducted.

CIT v. Malyalam Plantations 53 ITR 140 (SC)

• The expression "for the purpose of business" is wider in scope than the expression "for the purpose of earning profits". Its range is wide: it may take in not only the day to day running of a business but also the realization of its administration and modernization of its machinery; it may include measure for the preservation of the business and for the protection of its assets and property from expropriation, coercive process or assertion of hostile titles; it may also comprehend payment of statutory dues and taxes imposed as a pre condition to commence or for carrying on of a business; it may comprehend many other acts incidental to the carrying on of a business.

Coca Cola India Pvt. Ltd. 2009 (242) E.L.T. 168 (Bom.)

 Service tax is destination based consumption tax and is value added tax with tax burden on ultimate consumer and not manufacturer or service provider. Service tax paid on advertisements, sales promotion and market research admissible as credit for payment of excise duty on concentrate particularly when such expenses form part of price of final product on which excise duty is paid.



Advance Ruling:- [2018] 98 taxmann.com 355 (AAAR-KERALA)(APPELLATE AUTHORITY FOR ADVANCE RULING, KERALA Caltech Polymers (P.) Ltd., *In re*, where it is held that:-

"Section 7, read with section 2(83), of the Central Goods and Services Tax Act, 2017/Section 7, read with section 2(83), of the Kerala State Goods and Services Tax Act, 2017 - Supply - Scope of (NR) - Whether supply of food items to employees for consideration in canteen run by company would come under definition of 'outward supply' as defined in section 2(83) and hence taxable as supply of service under GST - Held, yes [Para 17]

Circulars and Notifications: Notification No. 25 of 2012-ST, dated 20-6-2012 and Notification No. 14 of 2013-ST, dated 22-10-2013



Schedule 1 ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

Entry 1 PERMANENT TRANSFER OR DISPOSAL OF BUSINESS ASSETS WHERE INPUT TAX CREDIT HAS BEEN AVAILED





Valuation



Sec. 18(6) r.w. Rule 44 ITC on Capital Goods or Plant & machinery for Remaining Life of Asset on PRO RATA BASIS

Eg. ITC on useful remaining life on pro rata basis= 100000*5/60=8333 Used 4 years 6 months & 15 days 100000/60*5=8333



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

- 1. The <u>input tax credit shall be availed by a registered person, including the Input Service Distributor</u>, on the basis of <u>any of the</u> 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) <u>a debit note</u> issued by a supplier in accordance with the provisions of section 34;
 - *d) a bill of entry* or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of *integrated tax on imports;*
 - e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

2) Input tax credit <u>shall be availed</u> by a registered person <u>only if all the applicable particulars</u> 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:

Provided that if the said document <u>does not contain all the specified particulars</u> but contains the details of the amount of tax charged, <u>description of goods or services</u>, total value of supply of goods or services or both, GSTIN of the supplier and recipient and <u>place of supply in case of inter-State supply, input tax credit</u> may be availed by such registered person.

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

Tax paid in pursuance of any order where any demand has been confirmed on account of any fraud, wilful misstatement or suppression of facts.

36(4) Invoices not uploaded by supplier in his GSTR -1 or IFF

36(3)





ITC allowed/ not

Rule 36(4):- Documentary requirements and conditions for claiming input tax credit

Rule 36(4) Inserted vide N.N. 49/2019-Ct dated 09.10.2019 Rule 36(4) provides restriction in availment of input tax credit (ITC) in respect of <u>invoices or debit notes</u>, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37ofthe CGST Act, 2017



(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been $\frac{3}{2}$ [furnished] by the suppliers under sub-section (1) of section 37, $\frac{4}{2}$ [in **FORM GSTR-1** or using the invoice furnishing facility] shall not exceed $\frac{5}{2}$ [5 per cent] of the eligible credit available in respect of invoices or debit notes the details of which have been $\frac{3}{2}$ [furnished] by the suppliers under sub-section (1) of section 37 $\frac{4}{2}$ [in **FORM GSTR-1** or using the invoice furnishing facility]:]



Rule 36(4) is a Guiding factor and NOT Decisive factor

Rule 36(4) is not an authentic proof of section 16(2)(c) (Tax Payment)

Rule 36(4) cannot be decisive factor for Availment of credit. As there might be cases like:-

- Wrong GSTIN mentioned in the return
- B2B supplies inadvertently filed in the return as B2C
- Place of supply is mentioned wrong in GSTR-1
- GSTR 3B filed, but GSTR 1 not filed.

Thus Rule 36(4) cannot be a decisive factor for Availment of credit

Section 16(2)(aa) Amendment is a Prospective Clause

Section (16(2)(aa) "The details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37"

- There is no mention of Rule 36(4) in the parent section 16(2). So there was no legal backing for the Rule 36(4).
- Section 16(2)(aa) cannot be assumed as a legal backing for rule 36(4) as section 16(2)(aa) is prospective in nature. Being Substantial provision cannot be Retrospective.
- The provisions of Rule 36(4) compels one person to force action of another person.
 Lex non cogit ad impossibilia the law does not compel a man to do what require the performance of an impossible act.
- For compliance of Rule 36(4), Genuineness of Purchase is not doubted except in fake invoicing cases but ITC denied merely on procedural issue of Non Reflection in GSTR-2, although other conditions fulfilled.

Amendment in Section 16

Eligibility and Conditions for taking Input Tax Credit

Budgetary Amendment (Effective date to be notified)

Section 16

(1).....

(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;

(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement

of outward supplies **and** such details have been communicated to the recipient of such invoice or debit note in the <u>manner specified under section 37;".</u>

Impact

Rule 36(4) (inserted vide N.N. 49/2019-CT)provided statutory backing to the most disputed CGST Rules.
 This provision would give force to entries appearing in GSTR 2A/ 2B as a valid proof of supply.

Reason

- To put end to litigation, regarding Legal sanctity of Rule 36(4) which was challenged being ultra vires the Act in various Writ Petitions.
- To overcome in a way to pre-GST legal jurisprudence that supports the view that as long as the purchasing dealer has taken all the steps required for being eligible for ITC, he could not be expected to keep track of whether the selling dealer has in fact deposited the tax collected with the government or has lawfully adjusted it against his output tax liability.
- □ To overcome Fake Invoicing issues, when read in conjunction with other Amendments pertaining Suspension of GSTN in case of mismatch of ITC in returns as per GSTR 2A/2B and blocking on non filing of GSTR 1.

Critical Analysis

- The proposed amendment although giving force to Rule 36(4), but somewhere challenging the leverage of Additional 5% as provided by the Rule.
- Asking the impossible:- The above provision leads to controls the action of supplier by the recipient, thereby overruling the past decisions like Arise India .Ltd (Delhi HC), Kay Kay Industries(SC), On Quest Merchandising India Pvt. Ltd. (DHC), Gheru Lal Bal Chand(P&H), Infiniti Wholesale Ltd., Althaf Shoes (P) Ltd., Britannia India Ltd.(MHC), Tarapore &Co. where it was held to be unreasonable.
- The amendment being prospective in nature. the validity of Rule 36(4) prior to its insertion is highly disputed.

2021 (3) TMI 1020 – [MADRAS] M/S. D.Y. BEATHEL ENTERPRISES

Input Tax Credit (ITC) - Liability of tax on petitioners - petitioners believes that the tax had already been remitted to the Government by their sellers - petitioners could not furnish any proof for the payment of tax - HELD THAT:-

- The assessee must have received the goods and the tax charged in respect of its supply, must have been actually paid to the Government either in cash or through utilization of input tax credit, admissible in respect of the said supply –
- if the tax <u>had not reached the kitty of the Government</u>, then the <u>liability may have to be eventually borne by one</u> party, either the seller or the buyer.
- In the case on hand, the respondent does not appear to have taken any recovery action against the seller / Charles and his wife Shanthi, on the present transactions.

When it has come out that the seller has collected tax from the purchasing dealers, the omission on the part of the seller to remit the tax in question must have been viewed very seriously and strict action ought to have been initiated against him.

 That apart in the enquiry in question, <u>the Person who supplied / sold the goods, ought to have been examined</u>. They should have been confronted. - This is all the more necessary, because the respondent has taken a stand that the petitioners have not even received the goods and had availed input tax credits on the strength of generated invoices.

The matters are remitted back to the file of the respondent - petition allowed by way of remand.

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 The matters are remitted back to the file of the respondent - petition allowed by way of remand.

Bharat Aluminium Company Ltd vs. Union of India Ors. [WPT No. 94 of 2021 decided on June 24, 2021]



Issue

Whether the ITC was correctly denied to the Petitioner on the basis of mis-matching of ITC availed in Form GSTR-3B with the details furnished by suppliers in Form GSTR-2A?

Held

The Hon'ble Chhattisgarh High Court in **WPT No. 94 of 2021 decided on June 24, 2021** held as under:

Observed that, a perusal of the notice and Recovery Order would show that the issue raised by the Petitioner needs consideration.

Directed the Respondent not to take any coercive steps pursuant to the Recovery Order passed, on depositing 5% of demand within 15 days by the Petitioner

Further directed the Respondent to file a reply within 4 weeks.

Listed the matter on August 2, 2021.

CASE LAWS

M/S. KARTHIKEYA PROJECTS (AAR-Andhra)

Sub-contractor providing Works Contract Service not eligible to take ITC of goods purchased.

Question: Whether the applicant can take Input Tax Credit on the following products which were Purchased on his own account for furtherance of his business.

- 1. PVC Ghamela, Insulation Tape, AG-4 Grading Machine, Led Torch Light, AG-4 Cutting wheel, Tarpaulin Sheet, Binding wire, Suction Hose Pipe, Auto Level Stand, Leveling Staff 5 mtrs 5 folds, Steel Tape, Safety Helmet, Safety Shoes etc. on which GST@18% is paid.
- 2. Wood cutting wheel etc. on which GST@12% is paid.
- 3. Cotton Yarn Waste Cloth etc., on which GST@ 5% is paid.
- 4. Cement on which GST@28% is paid.

Answer: Input Tax Credit shall not be available to the applicant on the above purchases made on applicant's own account for furtherance of business under Section 17 (5) (d) of the CGST/SGST Act, 2017.

Sahil Enterprises v. Union of India - [2021] 129 taxmann.com 233 (TRIPURA)

Section 16(2)(c) of Central Goods and Services Tax Act, 2017 provides that a registered dealer would be eligible for claiming input tax credit on the goods purchased on the condition that 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 such supply. In this case, the petitioner paid CGST on the purchases made from a registered dealer. But such dealer didn't pay tax and it submitted that it has no control over the seller to ensure that such tax is deposited with the Government revenue as it is statutorily obligation of seller. Denying to the petitioner input tax credit on such purchases on which the petitioner has already paid tax on the ground that the selling dealer did not deposit the tax with the Government revenue would amount to double taxation.

The petitioner filed writ petition and challenged the vires of Section 16(2)(c) being violative of Articles 14, 19(1)(g) and 300A of the Constitution of India. The Honorable High Court noted that with respect to certain purchases made by the petitioner from another registered dealer after paying full taxes, the selling dealer has not deposited the tax with the Government. The department therefore, put petitioner's input tax credit account under attachment. Since, this issue would require consideration and legislation framed by the Parliament is under challenge, notice is issued to the Attorney General.



Conditions for availing the Input tax credit (Section 16(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 prescribed⁷⁵;
- aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;
- b) he has received the goods or services or both.
- Explanation.—For the purposes of this clause, it shall be <u>deemed that the registered person has received</u> the goods or, as the case may be, services—
- I. where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;
- *II.* where the services are provided by the supplier to any person on the direction of and on account of such registered person.]
- c) subject to the provisions of ⁷⁷[section 41 or section 43A], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation 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 <u>recipient fails to pay to the supplier of goods or services or both</u>, 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 prescribed⁷⁸:

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.



Sec. 16 :- Eligibility and condition for taking input tax credit

(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,—

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

Details of outward supplies furnished by supplier in his GSTR 1 he has received the goods or services or both

Deeming fiction(Goods deemed to be received)

subject to the provisions of [section 41 or section 43A], the <u>tax charged</u> in respect of such supply has been <u>actually paid to the</u> <u>Government</u>, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

he has furnished the return under section 39:

Where the goods are <u>delivered</u> by the supplier to a recipient or any other person on the direction of such registered person either by way of transfer of documents of title to goods or otherwise: where the <u>services are</u> provided by the supplier to any person on the <u>direction</u> of and on account of such registered person.

Proviso to sec. 16(2)

1 Goods are received in lots or instalments

ITC available on receipt of last lot or installment.



Payment within 180 Days-

- Where the 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 the tax payable thereon
- Within a period of 180 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.

Proportionate reversal – Rule 37

Special riders to section 16(2)

Payment within 180 days – Interest

- 1. Reversal by way of addition in GSTR 2
- 2. Interest in case of non payment
- 3. No requirement of reversal on value of supplies made under Schedule I Proviso to r. 37
- Deemed value of supplies added as per S. 15(2)(b) shall be deemed to have been paid R. 37
- 5. No time limit to reavail ITC on payment R. 37(4)

Sec 16(3) & (4)

Registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery

- Invoice or debit note
- 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
 - annual return

16(4)

16(5)

• whichever is earlier.



ITC allowed or not
Time limit for availing ITC Section 16(4)

A registered person shall <u>not be entitled to take input tax credit</u> in respect of any <u>invoice</u> or <u>debit note</u> for supply of goods or services or both



Example:

ABC ltd has received invoice dated 10th December ,2018. In this case last date for taking ITC shall be 20th October 2019 but if annual return has been filed on 31st July 2019 then last date shall be 31st July 2019

Note:

If any debit note has been issued in connection with any invoice, date of invoice shall be taken into consideration for the purpose of

determining the time limit and not the date of debit note .

Example:

XYZ ltd issued an invoice on 10th January 2019, and debit note is issued on 20th April 2019 ,in this case ITC can be taken maximum up to 20th October 2019 or the date of filing of annual return whichever is earlier

Proposed Amendment:- (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

Document Type	Document date	Due date for availing credit					
Before Amendment	Before Amendment						
Debit note	15-08-2019 (Linked to Invoice dated 01-03- 2019)	Return for the month of sept. 2019					
Debit note	15-11-2019 (Linked to Invoice dated 01-03- 2019)Return for the month of sept. 2019. The credit was not getting availed for Debit notes issued after 6 months from end of 						
After amendment							
Debit note	15-08-2019 (Linked to Invoice dated 01-03- 2019) Invoice Linkage became irrelevant	Return for the month of sept. 2020					
Debit note	15-11-2019 (Linked to Invoice dated 01-03- 2019) Invoice Linkage became irrelevant	Return for the month of sept. 2020. The credit which was earlier not getting availed for Debit notes issued after 6 months from end of Financial Year to which Invoice pertains to will now be available.					





ITC Restriction provided in Rate notification 11/2017



Other View

> In both the cases, eligibility arises in 2021 on payment. Hence Both cases RCM available till Sep., 2022 . i.e on Payment eligibility arises. (Press Release dated 3rd July, 2019) Why not applicable on Forward Charge ?

PAYMENT OF TAXES UNDER WRONG HEADS



PAY TAXES UNDER THE CORRECT HEADS AND TAKE REFUND OF TAX PAID UNDER WRONG HEAD

NO INTEREST PAYBLE AS PER SEC 77 PROVISIONS

COURTS PROVIDED THE BENEFIT like in case of (Saji s. v.s Commissioner, State GST Department Tax Tower, Thiruvananthapuram*[2018] 99 taxmann.com 218 (Kerala)/[2018] 19 GSTL 385 (Kerala) <u>Whether, on facts, competent officials should allow petitioner's request and get amount</u> <u>transferred from head 'SGST' to 'IGST' - Held, yes [Paras 9 and 10] [In favour of assessee]</u> (INTERADJUSTMENT IS A GOVERNMENTAL ISSUE)

Section – 17:- Apportionment of credit and blocked credits.



Sec. 17(3) & (4) :- Apportionment of credit and blocked credits.

(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.

[Explanation.—For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.]

(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.



Value of exempt supply for Rule 42 and Rule 43



Apportionment as per Rule 42



	Intograted Tay				
	Integrated Tax Input Tax Credit			Date of	
Capital Goods		Usage	Date of Purchase	Shifting	
-					
No.1	/00000	Used Exclusively for Taxable supply	January, 2020	-	
No.2	200000	Used Exclusively for Exempt Supply	January, 2020	-	
No. 3	400000	Commonly used	January, 2020	-	
		1stly used for taxable supply then		January,	Full Credit of Rs. 480000 would
No. 4	480000	common	May, 2018	2020	have already availed in May,2018
		1stly used for Exempt supply then		January,	No credit wud have been
No. 5	600000	common	July,2019	2020	availed in July, 2019
Exempt Sales for					
Jan, 2020	4 crores				
Total Sales for					
Jan, 2020	10 crores				
		For the Month of Janu	ary,2020		
No. 1	Full Credit	700000	Rule 43(1)(b)		
No. 2	Credit	0	Rule 43(1)(a)		
No. 3	Credit	400000	Rule 43(1)©	Common Use	
No. 4	Credit	0	Already Availed	Now Common Use	Shift from (b) to ©
No. 5	Credit	600000		Now Common Use	Shift from (a) to ©
Amount to be add 2020	led in ECL in Jan,	1700000			

Reversal Calculation						
Tie on CG No. 5 @5% per Quarter	Rule Prov	43(1)© ⁄iso	60000	600000*.05*2	(Amendment)	
Rule 43(1)© Common Credit						
No. 3	А		400000			
No. 4	А		480000			
No. 5	А		600000		(Amendment)	
Rule 43(1)(d)	Тс		1480000	Only those Assets to be taken whose life remains during Tax Period		ring Tax Period
Rule 43(1)€	Tm=	Tc/60	24666.67			
Rule 43(1)(g)	Te=T	m*E/F	9866.667	Reversal of Credit on Capital Goods owing to Common /Usage		
Amount to be Reversed in .	Amount to be Reversed in January, 2020		<u>69866.67</u>			
In the Month of Feb, 2020						
No. 6		200000	Commonly used	February, 2020		
Amount to be added in ECL Feb, 2020	in	200000				

Reversal Calulation			
Tie on CG No. 5 @5% per Quarter		0	
Rule 43(1)© Common Credit			
No. 3	Α	400000	
No. 4	A	480000	
No. 5	Α	600000	
No. 6	Α	200000	
		1680000	
Rule 43(1)€	Tm=Tc/60	28000	
			Reversal of Credit on Capital Goods owing to Common
Rule 43(1)(g)	Te=Tm*E/F	11200	Usage
			(Assuming Same Sales this month)
Amount to be Reversed in Feb, 2020	_	<u>11200</u>	_



Sec. 17(5) :- Blocked credits.

- (5) Notwithstanding anything contained in sub-section (1) of section 16 and sub- section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—
- a) motor vehicles for transportation of persons having <u>approved seating capacity of not more than thirteen persons</u> (including the driver), except when they are used for making the following taxable supplies, namely:—
 - A. further supply of such motor vehicles; or
 - B. transportation of passengers; or
 - C. imparting training on driving such motor vehicles;

aa) vessels and aircraft except when they are used

- i. for making the following taxable supplies, namely:-
 - A. further supply of such vessels or aircraft; or
 - B. transportation of passengers; or
 - C. imparting training on navigating such vessels; or
 - D. imparting training on flying such aircraft;
- ii. for transportation of goods;

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

Provided that the input tax credit in respect of such services shall be available-

- i. where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;
- ii. where received by a taxable person engaged
 - i. in the manufacture of such motor vehicles, vessels or aircraft; or
 - ii. in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

Input Tax Credit on Demo Car

Case Law for eligibility of ITC

M. Motors (2018) 18 GSTL 93 (AAR, Kerala),

The assessee sought for advance ruling on whether input tax credit on the motor car purchased for demonstration purpose of the customer can be availed as credit on capital goods and set off against output tax payable under GST in the case of a motor car dealer. The Authority for Advance Ruling ruled that input tax paid by a vehicle dealer on the purchase of motor car used for demonstration purpose of the customer can be availed as input tax credit on capital goods and set off against output tax payable under GST.

Chowgule Industries (P.) Ltd. (2019) 107 taxmann.in 293 (AAR, Goa),

The applicant purchased demo vehicles for promotion of sale by providing trial run to customer against tax invoices from supplier after paying taxes and capitalized purchase of such vehicles in books of account, it was held that capital goods which are used in the course or furtherance of business are entitled for Input Tax Credit, and thus, Input Tax Credit on motor vehicle purchased for demonstration purpose can be availed as Input Tax Credit on capital goods and set off against output tax payable under GST.

Case Law for ineligibility of ITC

M/s. Khatwani Sales and Services LLP [Order No. 13/2020 dated July 23, 2020]

The Hon'ble AAR Madhya Pradesh in M/s. Khatwani Sales and Services LLP held that since the demo vehicles do not comply to any of the conditions prescribed in Clause (A), (B) and (C) of Section 17(5)(a) of the Central Goods and Service Tax Act, 2017 ('CGST Act'), therefore no Input Tax Credit ('ITC') can be claimed on the demo vehicles purchased by the authorized dealer of KIA.

Ineligible Credits [Section17(5)]

Input Tax Credit shall not be available in respect of the following, namely:



Ineligible Credits [Section17(5)]

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Ineligible Credits [Section17(5)]

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Note: Credit will be available if its obligatory for an employer to provide the same to its employee.

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

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

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

- ii. membership of a club, health and fitness centre; and
- *iii.* **<u>travel benefits extended to employees on vacation</u> such as leave or home travel concession:**

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

Section 17 Apportionment of credit and blocked credits.

Section 17(5)(c) Works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service.



No ITC restricted for further supply of works contract services



 As per explanation to section 17 expression <u>"plant and machinery" means</u> ➢ apparatus, equipment, and machinery ➢ fixed to earth by foundation or structural support 				
 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				

<u>Section 17(5)(d)</u> Goods or services or both received by a taxable person for <u>construction of an immovable property</u> (other than plant or machinery) on his own account including <u>when such goods or services or both are used in the</u> <u>course or furtherance of business.</u>



Illustration

- M/s Rajat & Co. gave the project to M/s Construct India to construct a Mall Building for them. M/s Rajat & Co. will not get credit of construction Services being received on own account pertaining to Immovable property.
- Mr. Neil gave works contract to M/s Construct India for repair and maintenance of office premises, debited as expense in the profit & loss A/c he shall be entitled to claim ITC on the works contract services provided by XY the expense is not capitalised and as per definition of 'construction' as per explanation to section 17(5)(c) covers the repairs, to the extent of capitalised to the immovable property.
- M/s Dinesh &Co. awarded a works contract to M/s Build India Pvt. Ltd. to construct a road, who further sub-contracted to M/s Opto Construction.



Illustration

The works contractor B engages a contractor C for construction of B's office complex. B also separately provides certain maintenance services to person A which qualify as works contract services. Since inward works contract services from C availed by B for construction of its office complex bears no connection with maintenance services that B provides to person A, the credit of GST paid on input works contract services from C will not be available to the said works contractor b.



Explanation.—For the purposes of clauses (c) and (d), the expression <u>"construction" includes re-construction, renovation,</u> additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

ITC restricted in case of works contract services only to the extent expenses are capitalized

- > ITC of any expenditure related to construction that is capitalized in the books of accounts shall be blocked.
- This shall cover the construction services like inward supply of services from real estate agent, arch decorators as these are involved in the establishment of the immovable property to the extent capitalised.
- However, for any repairs and renovations that are in the nature of revenue expenditure, ITC shall be eligible as the restriction is only in respect of goods and services used for construction to the extent of capitalization.
- It is pertinent to note here that General Accounting Policies must be followed strictly while capitalizing or charging the expenditure to revenue as the accounting treatment shall be a good alibi in deciding whether or not ITC is eligible.
- However, mere nomenclature and capitalization in one head will not change the nature of supply and the actual intent, usage and other factors must also be vouched for.



EXAMPLES

Services	Type of 'Work Contract' Services	Whether Capitalised in books of Account	Whether ITC blocked under Section 17(5)(c)
Renovation of office building	Construction since it includes renovation	Yes	Yes
, other sanitation facilities		No	No
Painting to building, factory building, sub-stations etc.	Painting services may qualify as 'Improvement to Immovable property" and not "construction"	Irrelevant	No
Repair of Walls, Tiles etc.	Construction since it includes repairs, alterations etc.	No	No
Structural Painting	Improvement to Immovable property	Irrelevant	No



Plant and Machinery

'Plant and Machinery' as defined under GST

'Plant and Machinery' has been defined under the *Explanation* to Section 17 as excerpted earlier and is broken down below into its constituents in a tabular format for a better understanding:

Part of the	Understanding/explanation
definition	
	 Apparatus like a machine is a device or apparatus consisting of fixed or movable parts that work together to perform some function. Apparatus a) A set of materials or equipment designed for a particular use b) A group of anatomical or cytological parts functioning together mitotic apparatus c) An instrument or appliance designed for a specific operation an apparatus for measuring vision
Equipment	 The articles or implements used for a specific purpose or activity (esp. a business corporation) Equipment is the act of equipping or fitting or the state of being quipped; to supply with whatever is necessary to efficient action in the way
And machinery fixed to earth by foundation or structural support	The word machinery, when used in ordinary language prima facie, means some mechanical contrivances which, by themselves or in

IMMOVABLE P&M

Part of the definition	Understanding/explanation
	This is an important inclusion; the necessary implication of this is that a taxable person can avail ITC of works
	contract services received for construction of such 'foundation and structural supports; for placing of machinery. To
supports	end and avoid any litigation.
That are used for making outwar	rd supply of goods or services or both
But excludes-	This exclusion seems to be the crux of the credit restriction under Section 17(5)(c) and (d). Possibly driven by the
(i) Land, building or any	fact that in some Income Tax judicial pronouncements even Cine studios like buildings have been held as P& M.
other civil structures;	
(ii) Telecommunications Tower	Discussed Later
(lii) Pipelines laid outside the	The word " pipelines laid outside the factory premises " under explanation to section 17 should not include
factory premises	pipelines used for providing the output service of transport of liquids/ gases by a person engaged in the business
	of transport of gases/ liquids; Those words intend to capture and restrict credit in a scenario where factories use
	long distance pipelines to draw water/ other raw materials from sources far away from the factory.
	 Reference may be made to the decision in the case of Jaypee Bela Plant v. CCE [2007] 2007 tamann.com 1500
	where it was held that pipes and tubes constituting a pipeline which is used for carrying water from reservoir
	situated 5/6 kms. Away from the factory for use in the manufacture of the finished products, were eligible for
	credit- The words " Pipelines laid outside the factory premises" has to be interpreted by applying the ' Mischief
	Rule of statutory interpretation' and is intended to deny the benefits of judicial precedents like Jaypee Bala



Summary of items whether considered as movable or immovable property

Sr. No	Particulars	Movable/ Immovable	Plant & Machinery/ Building	Capitali zed	ITC	Supportive case law
1	Lift	Immovable	Building	Yes	No	 •M/s. Kone Elevator India Pvt. Ltd. Vs State of Tamil Nadu and Ors. •[2019] 110 taxmann.com 285 (AAR - KARNATAKA) Tarun Realtors (P.) Ltd., In re •[2020] 114 taxmann.com 233 (AAR - MAHARASHTRA)/[2020] 34 GSTL 293 (AAR - MAHARASHTRA)Las Palmas Co-operative Housing Society Ltd., In re vs.
2	Storage Tanks	Immovable	Building	Yes	No	Municipal Corporation of Greater Bombay . (AIR 1991 SC 686, (1991))
3	Blast furnace	Immovable	P & M	Yes	Yes	T.T.G. Industries Ltd. [2004] 2004 taxmann.com 1535 (SC)
4	Windows ,doors & Shutters	Immovable	Building	Yes	No	CCE v. Solid and Correct Engineering Works 2010 (252) ELT 481 (SC)
5	AC plant(Ducting)	Immovable	Plant & Machinery	Yes	Yes	[2008] 2008 taxmann.com 1316 (Bangalore - CESTAT) CESTAT, BANGALORE BENCH Commissioner of Central Excise, Banglore-III v. HVAC Systems (P) Ltd.* Nipro India Corporation GST AAR Maharashtra
6	Shed for Machinery	Immovable	Building	Yes	No	[2018]99 taxmann.com 103 (AAR Andhra Pradesh) Maruti Ispat & Energy (p) Ltd.
7	DG sets*	Immovabl e	Plant & Machinery	Yes	No	[2020] 116 taxmann.com 201 (AAAR-KARNATAKA) APPELLATE AUTHORITY FOR ADVANCE RULING, KARNATAKA Tarun Realtors (P.) Ltd., In re
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8	Detachable sliding and stackable glass partitions	Movable	-	Yes (furnitur e and fixture)	Yes	2020 (5) TMI 388 - APPELLATE AUTHORITY FOR ADVANCE RULING, KARNATAKA IN RE: M/S. WEWORK INDIA MANAGEMENT PRIVATE LIMITED
9	Paver Blocks	Immovable	No	Yes	No	2020 (7) TMI 511 - AUTHORITY FOR ADVANCE RULING, MAHARASHTRA IN RE: M/S. SUNDHARAMS PRIVATE LTD.
10	Tiles, Stone slabs or marble	Immovable	Building	Yes	No	2019 (5) TMI 248 - AUTHORITY FOR ADVANCE RULING - RAJASTHAN IN RE : M/S RAMBAGH PALACE HOTELS PVT. LTD
11	Electric fittings	Immovable	Building	Yes	No	2019 (5) TMI 248 - AUTHORITY FOR ADVANCE RULING - RAJASTHAN IN RE : M/S RAMBAGH PALACE HOTELS PVT. LTD
12	Building repair	Immovable	Building	Yes/No	No/Ye s	2019 (5) TMI 248 - AUTHORITY FOR ADVANCE RULING - RAJASTHAN IN RE : M/S RAMBAGH PALACE HOTELS PVT. LTD
13	AMC Contracts	Composite supply	-	-		2018 (10) TMI 257 - AUTHORITY FOR ADVANCE RULING - UTTAR PRADESH IN RE : <u>GE DIESEL LOCOMOTIVE PVT. LTD.</u>
14	Sanitary Fittigs	Immovable	Building	Yes	No	M/s Bahl Paper Mill Ltd. (2018-VIL-43 AAR Uttarakhand)
16	Office Furniture and Air Conditioners	Movable	P & M	Yes	Yes	Bal Krishna Industries vs. CCE, Jaipur-I(2016(335)ELT559(Tri-Del)

Safari Retreats Private Limited Vs Chief Commissioner of Central Goods & Service tax (Orissa High Court) [2019] 105 taxmann.com 324 (Orissa)

Que:- Whether if assessee is required to pay GST on rental income arising out of investment on which it has paid GST, it is eligible to have input credit on GST.



Authorities denied benefit of ITC in view of section 17(5)(d) - Whether since petitioner had not sold shops in mall but had let out same, petitioner was not liable to pay huge amount of GST on rent received and was entitled to utilise input credit tax charged on purchases made in construction- Yes

Reasoning: As Basic objective of GST is to allow Free flow of credit if the output is taxable, which is hindered by the provisions of Sec. 17(5).

As of now, SLP is filed in SC but there is no stay on order.

• <u>Advice:-</u> Avail ITC in GSTR-3B but don't utilise and stand in the books of accounts under letter to department, so that claim can stay alive, in case of favorable judgment as a safeguard against provisions of Sec. 16(4).

[2020] 116 taxmann.com 736 (AAAR-KARNATAKA)Wework India Management (P.) Ltd., In re



Que:- whether ITC can be availed by it on detachable sliding and stackable glass partition

AAR held that input tax credit is not available on detachable sliding and stackable glass partitions - Though detachable sliding and stackable glass partition are fixed to earth with nuts and bolts but they can be dismantled

without demolishing civil structure and, therefore, detachable sliding and stackable glass partitions do **NOT** qualify as immovable property –

Whether detachable sliding and stackable glass partitions will be eligible for input tax credit and will not be hit by provisions of section 17(5)(d) –

yes [Para 17]

[2019] 105 taxmann.com 248 (AAAR-WEST BENGAL) GGL Hotel and Resort Company Ltd.



Project is proposed to be completed within a period of 2 years and lease rent paid during preoperative period shall be capitalized in books of account by appellant - 'W' will be charging GST at rate of 18 per cent on lease rent

Que:- Whether input tax credit is available to appellant on lease rent paid during pre-operative period -

No

Where appellant for construction of an Eco Resort on Design, Built and Operate Model has taken certain land on lease from one 'W' and project is proposed to be completed within a period of two years and lease rent paid during preoperative period shall be capitalized in books of account by appellant and 'W' will be charging GST on lease rent, input tax credit is not available to appellant on lease rent paid during pre-operative period under 17(5)(d). Sec. 17(5) :- Blocked credits.

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

> (f) goods or services or both received by a nonresident 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

Ineligible Credits [Section17(5)]



Circular No. 92/11/2019-GST

Free samples and gifts:

- i. It is a common practice among certain sections of trade and industry, such as, pharmaceutical companies which often provide drug samples to their stockists, dealers, medical practitioners, etc. without charging any consideration. As per sub-clause (a) of sub-section (1) of section 7 of the said Act, the expression "supply" includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Therefore, the goods or services or both which are supplied free of cost (without any consideration) shall not be treated as 'supply' under GST (except in case of activities mentioned in Schedule I of the said Act). Accordingly, it is clarified that samples which are supplied free of cost, without any consideration, do not qualify as 'supply' under GST, except where the activity falls within the ambit of Schedule I of the said Act.
- ii. Further, clause (*h*) of sub-section (5) of section 17 of the said Act provides that **ITC shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples**. Thus, it is clarified that input tax credit shall not be available to the **supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration**. However, where the activity of distribution of gifts or free samples falls within the scope of 'supply' on account of the provisions contained in Schedule I of the said Act, the supplier would be eligible to avail of the ITC.
- iii. Buy one get one free: Consideration of additional item already included in the gross amount charged, no separate supply and no ITC reversal required. Composite or mixed supply needs to be checked.
- iv. Reimbursement to distributor etc. for expenses incurred by it Reimbursement not as a pure agent hence, leviable to GST.
- v. Family trips If given to sole distributor, schedule I transaction. Tax liable and ITC eligible. If given to unrelated party, no GST, ITC can be claimed as it is in the course or furtherance of business and not blocked otherwise.

Concept of Credit on Free Samples



ITC ON IMPORTS





High Sea Sales



CA Aanchal Kapoor

Merchant Trading Transaction



Goods sent directly from B to C without entering into India



ITC & RELATED PROVISIONS IN CASE OF Fake Invoicing TransactionS



Fake Invoicing

No definition of Fake Invoicing is given in GST Law.
 It is an Economic Offence . It can be Invoice Supply , Invoice but G/S Second Bill

2. Check <u>Jurisdiction</u> on receipt of summon and the other legal issues like DIN etc. For the checking the Jurisdiction one must check :- Who is the Proper Officer? (He must be an authorized person).

Person cannot be put to prejudice by having multiple assessments by center and state

3. Confirm whether the invoice is indeed fake or not.

=> If it is indeed fake and credit is reversed with interest – **Intimate the Department**

=> If it is not fake – <u>One can go for Writ Remedy in the High Court</u>

- In this case question of penalty may arise later on even if reversed
- Income tax disallowance will arise in case of fake invoice.
- Question whether reversal=not availed is still a question mark(Partibha Processors, Bombay Dyeing --If assessee reverses credit on his own without utilising then it will be presumed as never been taken.)

- One should submit the evidences and documents on receipt of DRC-01.
- For goods you have to submit: E-way Bill, Vehicle No., Toll Receipts, Transport Documents, For Services, its difficult as it leaves no trail but e.g in advertisement Services, hoarding etc. documents can be furnished.
- Statements can be cross verified. Statements made under duress can be retracted within reasonable time of Receipt of copy. Statement made, can be retracted but within a reasonable time as held in VINOD SOLANKI (SC)(Civil Appeal FEMA matter)- SC says Statement retracted are relevant but becomes weak and need corroborative Evidences)
- If person alleges that Statement is made under coercion/ duress then it will not be presumed but he needs to establish.
- It is not mandatory for a person to make statement appearing for the summon. One has a Right of Silence during Summon proceedings.

Fake Invoicing

Presence of Tax Professional during Statement –There are contradictory views available in this regard in various judgements . In few custom and other cases, it allowed Visible Distance but not Hearing Distance.

- Burden of proof is on Department to prove Fake Invoicing. If assessee furnishes documents, the officer cannot ignore the submissions, against principle of Natural Justice.
- You have to evaluate arrest provisions- whether these are applicable or not. Decision as to Anticipatory Bail is to be carefully examined. Its very difficult to get anticipatory bail in Economic Offences involving high stakes.
- Check that Principle of Natural Justice is followed and adherence to norms concerning Ladies. Can refer to Human Right Commission.

Other Points

1. Simultaneous Investigation by Center and State GST Authorities for same period is not allowed. A person cannot be put to adjudication under both.

Eg. If person has state jurisdiction then center cannot assess. It can be challenged as violation of Article 14 (Equality Before Law)

Sri Balaji Rice Mill, vs The State Of Andhra Pradesh (WRIT PETITION No. 20786 of 2020)

Krishna ShivRam Hegde – Kerala High Court Raj Metal Industries & Anr. Vs. Union of India & Ors (W.P.A. 1629 OF 2021) Anurag Suri Vs. DGGSIT (WP (c) no. 158 of 2020)

2. Maximum detention under section 167 CRPC is 60 days

3. Bail is the rule, not the jail, if a person cooperates even if Cognizable + Non Bailable -> No Need to arrest, held in case of *Naresh Kumar Mangla–SC. In Vimal Yashwantgiri Goswami vs. State Of Gujarat (GHC)* -The powers of arrest under section 69 are to be exercised with lot of care and circumspection. Prosecution should normally be launched only after the adjudication is completed. To put it in other words, there must be in the first place a determination that a person is liable to a penalty. Till that point of time, the entire case proceeds on the basis that there must be an apprehended evasion of tax by the assessee.

4. Any professional filing Returns cannot be arrested directly, unless found involved and defending client in Fake Invoice cases as a counsel is not challengeable, as ones job is to defend.

Canon India (P.) Ltd. v. Commissioner of Customs [2021] 125 taxmann.com 188 (SC)[09-03-2021]

N.N. 94/2020-CT Dated 22-12-2020



8/28/2021

Amendment in Suspension of registration. Rule 21A 1. Where a registered person has applied for cancellation of registration under rule 20, the registration shall be deemed to be suspended from the date of submission of the application or the date from which the cancellation is sought, whichever is later, pending the completion of proceedings for cancellation of registration under rule 22. **OBH** removed 2. Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29 or under rule 21, he may ²[***], suspend the registration of such person with effect from a date to be determined by him, pending the completion of the proceedings for cancellation of registration under rule 22. GSTR 3B (2A) Where, a comparison of the returns furnished by a registered person under section 39 with the details of outward supplies furnished in FORM GSTR-1; or a) GSTR 2A/2B the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their FORM b)GSTR-1. or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, his registration shall <u>be suspended</u> and the said person shall be <mark>intimated</mark> FORM GST REG-31, electronically, on the common portal, or by sending a communication to his e-mail address in provided at the time of registration or as amended from time to time, highlighting the said differences and anomalies and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled.] (3) A registered person, whose registration has been suspended under sub-rule (1) or sub-rule (2), $\frac{3}{2}$ [or sub-rule (2A)] shall not make any taxable supply during the period of suspension and shall not be required to furnish any return under section 39. 8/28/2021

Explanation.-For the purposes of this sub-rule, the expression "shall not make any taxable supply" shall mean that the registered person shall not issue a tax invoice and, accordingly, not charge tax on supplies made by him during the period of suspension

4) The suspension of registration under sub-rule (1) or sub-rule (2) ³[or sub-rule (2A)] shall be deemed to be revoked upon completion of the proceedings by the proper officer under rule 22 and such revocation shall be effective from the date on which the suspension had come into effect:]

<u>Provided that the suspension of registration under this rule may be revoked by the proper officer, anytime during the pendency of the proceedings for cancellation, if he deems fit.</u>]

5) Where any order having the effect of revocation of suspension of registration has been passed, the provisions of clause (a) of sub-section (3) of section 31 and section 40 in respect of the supplies made during the period of suspension and the procedure specified therein shall apply.]

Rule 36(4) amended (effective from January 1, 2021) Reduction in ITC entitlement for invoices not furnished by supplier from 10% to 5%

Rule 36(4):- Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details ofwhich have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using theinvoice furnishing facilityshall not exceed 5 per cent of the eligible credit availablein respect of invoices ordebit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-11 or using the invoice furnishing facility

Circular No. 145/01/2021-GST

SOP for implementation of the provision of suspension of registrations under sub-rule (2A) of rule 21A of CGST Rules, 2017



N.N. 94/2020-CT Dated 22-12-2020

Rule 59

GSTR-1 to be blocked in case of non filing of GSTR 3B

- ✓ Where a taxpayer fails to file GSTR 3B for two preceeding months, his GSTR 1 shall now be blocked.
- Similarly, for quarterly return filers, the taxpayer failing to file GSTR 3B for the preceding quarter shall not be permitted to file GSTR
 1 of subsequent quarter or IFF.
- Persons covered by provisions of Rule 86B, fails to file GSTR 3B for preceeding Tax Period(M/Q), his GSTR 1 shall now be blocked (Earlier non filing of GSTR 3B used to result in blocking of E-way Bill facility but from now on it shall also result in blocking of GSTR 1 of the taxpayer.)

Not. 94/2020 wrongly mentioned sub rule (5) of 59 Anomaly removed by not. 01/2021 by making it Rule 59(6)

CA AANCHAL KAPOOR

9 Provisional attachment to protect revenue in certain

cases.

Budgetary Amendment (Effective date to be notified)

(1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.

"(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, <u>he may, by order in writing, attach provisionally,</u> <u>any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such</u> <u>manner as may be prescribed."</u>.

	Analysis	Sec 62:-Assessment of non-filers of returns.
	7 (101) 313	Sec. 63:- Assessment of unregistered persons.
		Sec. 64:- Summary assessment in certain special cases.
Provisional a	• Chapter XIV: Inspection, search, seizure & Arrest.(Sec. 67-72)	ters:- Sec. 67:- Power of inspection, search and seizure.
	C I	Sec. 73:- Determination of tax not paid or short paid or erroneously refunded or
Chapter	XII : Assessment (sec. 59- 64) (Audit n	not covered Sec65,66)) input tax credit wrongly availed or utilised for any reason other than fraud or any
		wilful-misstatement or suppression of facts.
Chapter	XIV: Inspection, search, seizure & Arre	rest.(Sec. 67-72) Sec. 74:- Determination of tax not paid or short paid or erroneously refunded or
		input tax credit wrongly availed or utilised by reason of fraud or any wilfull-
Chapter 2	XV : Demand and recovery(sec. 73-84	4) misstatement or suppression of facts.

<u>Thu</u>s, in place of specified sections, entire Chapters have been prescribed to enlarge the scope of proceedings under which provisional attachment of property can be made.

- This proposed amendment has impact that the gravity and the reach is further widened meaning thereby this proposition intends to increase the ambit of provisional attachment by way of substitution of section by chapters of the CGST Act.
- Eg. Now even a proceeding u/s. 71(Access to business premises) empowers the officer to attach the property/bank accounts because Section 71 falls within Chapter XIV of the CGST Act.
- Attachment of property of person covered 122(1A)

To attach provisionally property including bank account of the taxable person or any person who retains the benefit and at whose order or instance the following transactions undertaken:

- **a.** Supply of any goods or services or both without issue of any invoice or issue of an incorrect or false invoice.
- b. <u>Issuing any invoice or bill without supply of goods or services</u> or both in violation of the provisions of this Act or the rules made thereunder.
- **c.** <u>Taking or utilising input tax credit</u> without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder.
- **d.** <u>Taking or distributing input tax credit</u> in contravention of section 20 (Input service distributor), or the rules made thereunder.

From the initiation of the proceeding under the provisions of Assessment, Inspection, Search, Seizure & Arrest and Demand & Recovery till the expiry of one year from the date of the order made thereunder.

Initiation of any proceeding

It is settled position of law that **property can be attached only when the authority is of the opinion that after closer of proceedings there may be ultimate default of tax payment.** How can the revenue officers determines the tax evasion or quantum of tax evasion or ultimate default of tax payment by the tax payer in the beginning of proceedings are not clear. These provisions are challengeable before the Court.

N.N. 94/2020-CT Dated 22-12-2020

Rule 138 amended (effective from January 1, 2021)

Validity of e-way bill narrowed by increasing distance from 100 km. to 200 km. per day

E-way bill will now be valid for 24 hours for every 200 km of travel, as against 100 km earlier, in cases other than Over Dimensional Cargo or multimodal shipment.

Rule 138E amended

Restriction on furnishing of information in Part A of FORM GST EWB-01.

Person shall not be allowed to furnish *information in PART A of* **FORM GST EWB-01** *in respect of a registered person, whether as a supplier or a recipient, who*

 being a person, whose registration has been <u>suspended</u> under the provisions of sub-rule (1) or sub-rule (2) or sub-rule (2A) of rule 21A:]

Rule 86B

Restrictions on use of amount available in electronic credit ledger

01.01.2021

Notwithstanding anything contained in these rules, the <u>registered person shall not use the amount available in electronic credit</u> <u>ledger to discharge his liability towards output tax in excess of ninety-nine per cent. of such tax liability,</u> in cases <u>where the</u> <u>value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds fifty lakh rupees:</u>

Provided that the said restriction shall not apply where -

- a) the said person or the proprietor or karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees, as the case may be, have paid more than one lakh rupees as income tax under the Income-tax Act, 1961(43 of 1961) in each of the last two financial years for which the time limit to file return of income under subsection (1) of section 139 of the said Act has expired; or
- b) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (i) of first proviso of sub-section (3) of section 54; or
- c) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit **under clause (ii) of first proviso of sub-section (3) of section 54;** or
- d) the registered person <u>has discharged his liability towards output tax through the electronic cash ledger for an amount</u> which is in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year; or
- e) the registered person is -
 - (i) Government Department; or
 - (ii) a Public Sector Undertaking; or
 - (iii) a local authority;or (
 - (iv) .statutory body:

Provided further that the Commissioner or an officer authorised by him in this behalf <u>may remove the said restriction after such</u> verifications and such safeguards as he may deem fit.".

8/28/2021



Provided further that the Commissioner or an officer authorised by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit.".

		CA	SE STUDY						
Registered Person	Exempt Turnover	Export turnover		Taxable turnover		Rule 8	Rule 86B applicable		
February,2021	1 crore	rore 2 crore		45 lakhs		No (Rs	No (Rs. 45 lakhs)		
March,2021	40 lakhs	15 lakhs		1 crore		Yes (Rs	Yes (Rs. 1 crore)		
March 2021 Taxable Sale = 1 Cro	ore Monthly turnover	- > 50 lakhs	Tax @ 5%	- = 500000	ITC = 8	00000	What if Export wit Payment of Taxes		
Old		New							
Output	500000	500000		Output			500000		
ITC utilized	500000	500000		ITC Utilized (99 % of 500000)			495000		
Tax payable	0.00	0.00		Tax payable (1%)			5000		
Exceptions:- 100 % ITC (Old Rule)									
1 F.Y. 19-20), F.Y. 18-19- 139(1) time ex	oired, Income	e Tax paid> 1000	00		2			

3 Refund > 1 lakh in April, 2020- FEb, 2021 F.Y 2019-20 Cash Ledger Output ITC Inverted Duty Exports or New Rule 10 Cr 99 Lacs 100000 structure ^{8/28/2021}98.5 Lacs CA AANCHAL KAPOOI 103 10Cr Old Rule 150000

Illustration 1									1
Particulars	CGST	CGST		SGST		IGST			Total
Output Turnover	500000	500000		500000		300000		00	1,30,00,000
Output Tax @18%	900000	900000 9		900000		540000)	23,40,000
Input Tax	960000	960000		960000)	24,20,000
Minimum Tax payable as per Rule 86B	9000	9000		9000		5400			23,400
Illustration 2									
Particulars				CGST SG		SGST		IGST	Total
Output Turnover				500000 50		500000 300		3000000	1,30,00,000
Output Tax @18%				900000		900000		540000	23,40,000
Input Tax				820000 82		820000		540000	21,80,000
Minimum Tax payable as per Rule 86B				9000 9		9000		5400	23,400
Minimum tax otherwise payable through cash ledger without 86B					80000		80000		1,60,000
By paying Rs. 5400 in cash, IGST ITC of 5400 adjusted with C & S, so now Net Payable				77300		77300		5400	1,60,000
Illustration 3					I			•	
Particulars	CGST	SGST	IGST					Total	
Output Tax	900000	900000	540000					23,40,000	
nput Tax 820000 1000000				540000					2360000
Minimum Tax payable as per Rule 86B90009000			00		5400			23400	
Payment if 86B not there	80000	0			0			80000	
Tax payable as per 86B 8/28/2021	bayable as per 86B 8/28/2021 80000-5400= 74600 CA ANCHAL KAPOOR with CGST)			table	5400 paid in IGST adjusted with CGST.			89000 104	

Rule 86A

Conditions of use of amount available in electronic credit ledger

86A. (1) The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as— (a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36—

- (i) issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or
- (ii) without receipt of goods or services or both; or

(b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or
(c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or

(d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36,

may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.

(2) The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.

(3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.

BLOCKING OF ITC

S. S. Industries v/s. Union of India [2020] 122 taxmann.com 296 (Guj)

Issues

Whether Rule 86A contemplate any passing of Order with an obligation to communicate the same to the affected person so that such person can take recourse to any legal remedy?

- 1. <u>'Reason to believe</u>' is necessary to be formed for blocking ITC. Existence of relevant material is a pre-condition to form opinion.
- 2. In **absence of any cogent or credible material**, action of blocking of ITC would be malice in law.
- 3. Indefeasible right to avail ITC vis-à-vis Rule 86A:
- Utilization of accrued credit is vested right. No vested right accrues before taking credit.
- Once the Credit is taken validity, the right is indefeasible.
- Since, the Petitioner is not able to avail ITC, in the circumstances, it cannot be said that it has indefeasible right.
- 4. Rule 86A casts an obligation upon the authority to form an opinion before blocking credit, but it is <u>silent with regard</u> to passing of any specific order assigning prima facie reasons for invoking Rule 86A.
- 5. **Interference with the proceedings** initiated by the Statutory Authority in exercise of the extraordinary writ jurisdiction, in 3 situations:
- a. Constitutional vires of the very enactment under which the proceedings initiated.
- b. b. Proceedings initiated or concluded in total violation of the principles of natural justice.
- c. c. Impugned orders are totally without jurisdiction.

6. Power under Rule 86A should neither be used a tool to harass the assessee nor in a manner which may have irreparable loss to the business of the assessee.

7. Power to block ITC under Rule 86A can be invoked when case of the department falls under any of the circumstances enumerated under sub-rule (1) of Rule 86A.


Rate of GST on Specific Supplies on which ITC will not be availed

Heading 9964 Passenger transport services)	 (i). Transport of passengers, with or without accompanied belongings, by rail <i>in first class or air conditioned coach</i>. (ii) Transport of passengers, with or without accompanied belongings by- (a) air conditioned contract carriage other than motorcab; (b) air conditioned stage carriage; 	2.5
•	(a) air conditioned contract carriage other than motorcab;	2.5
	(a) radio taxi.	
	Explanation1. "radio taxi" means a taxi including a radio cab	
	(iii) Transport of passengers, with or without accompanied belongings, by air <i>in economy class</i> .	2.5
	(v) Transport of passengers by air, with or without accompanied belongings, in other than economy class.	6
		 (iv) Transport of passengers, with or without accompanied belongings, by air, embarking from or terminating in a Regional Connectivity Scheme Airport, as notified by the Ministry of Civil Aviation. (v) Transport of passengers by air, with or without accompanied belongings, in other than

	Heading 9964 (Passenger transport services)	 (vi) Transport of passengers by motorcab where the cost of fuel is included in the consideration charged from the service recipient. (vii) Passenger transport services other than(i), (ii) (iii), (iv), (v) and (vi) above . 	2.5	
2.	Heading 9965 (Goods transport services)	 (i) Transport of goods by rail. (ii) Transport of goods in a vessel. (iii) Services of goods transport agency (GTA) in relation to transportation of goods (including used household goods for personal use). 	2.5 2.5 2.5	
3.	Heading 9966 (Rental services of transport vehicles)	(i) Renting of motorcab where the cost of fuel is included in the consideration charged from the service recipient.	2.5	
4.	Heading 9967 (Supporting services in transport)(i) Services of goods transport agency (GTA) in relation to transportation of goods (including used household goods for personal use).		2.5	

5.	Heading 9971 (Financial and related services)	 (i) Services provided by a foreman of a chit fund in relation to chit. (ii) Leasing of aircrafts by an operator for operating scheduled air transport service or scheduled air cargo service by way of transaction covered by clause (f) paragraph 5 of Schedule II of the Central Goods and Services Act, 2017 	6 2.5
6.	Heading 9973 (Leasing or rental services, with or without operator)	 (i) Leasing of aircrafts by an operator for operating scheduled air transport service or scheduled air cargo service by way of transaction covered by clause (f) paragraph 5 of Schedule II of the Central Goods and Services Act, 2017 Explanation (a) "operator" means a person, organisation or enterprise engaged in or offering to engage in aircraft operations; 	2.5
7.	Heading 9985 (Support services)	(i) Supply of tour operators services. Explanation "tour operator" means any person engaged in the business of planning, scheduling, organizing, arranging tours	2.5 Condition-The bill issued for supply of this service indicates that it is inclusive of charges of accommodation and transportation

Explanation of ITC conditions: a) credit of input tax charged on goods or services used exclusively in supplying such service has not been taken

b) credit of input tax charged on goods or services used partly for supplying such service and partly for effecting other supplies eligible for input tax credits, is reversed as if supply of such service is an exempt supply and attracts provisions of sub-section (2) of section 17 of the Central Goods and Services Tax Act, 2017 and the rules made thereunder.

Power to determine rate of tax with ITC condition-power under the law?

- In many sectors Lower GST rates have been put in force without input tax credit by inserting entry in the rate notification.
- Preamble to rate notification provides that the notification has been issued in exercise of power conferred upon *inter-alia* by section 16 (1) of CGST Act. If one peruses section 16 (1), it provides for availment of ITC on the supply used in the course or furtherance of business.
- Restriction on availment of ITC through rate notification without such provision under the law would create a dispute as to whether Government has power to issue rate notification with conditions on ITC availment and on this ground, it could be challenged in the Courts.

ITC denial – retrograde step

- The concept of taxation without providing ITC is contrary to the basic theme of the indirect taxation and statement of objects and reason for carrying out Constitutional Amendment at the time of GST introduction.
- This restriction is against the founding principles of GST, which is the seamless flow of ITC. For an indirect tax regime to be healthy, it is preferred to have a larger tax base, with less or negligible exemptions and blockage of ITC
 - Consequence: Due to withdrawal of ITC facility (i.e. blocking of credit chain), GST paid on inward supplies shall form part of cost, resulting in increase in the cost of construction and reduced profitability for builders in case of real estate.

Materials that form a part of any construction still get taxed at higher rates. For example, the rate of tax on cement is 28%, while that on elevator is at 18%. Such costs and taxes paid by the developer may be passed on to the consumer and residential properties outside affordable segment may in fact not see any price reduction

Case Laws

Hardcastle Restaurants Private Limited TS-1007-HC-2019



Whether the restriction of the ITC by such impugned notication is valid in the eyes of law?

Main Issue

Held

The Hon'ble Gujarat HC passed the following ruling in the matter of Special Civil Application No. 19835 of 2019 dated November 14th, 2019 observing as under:

"Having regard to the submissions advanced by learned counsel for the petitioner, issue notice, returnable on December 11th, 2019. In the meanwhile, the respondent shall consider and report to this court as to what amount can be taken to secure to the petitioners the option to discharge GST either at the rate of 18% with full ITC or at the rate of 5% without ITC."

Safari Retreats Private Limited Vs Chief Commissioner of Central Goods & Service tax (Orissa High Court) [2019] 105 taxmann.com 324 (Orissa)

Que:- Whether if assessee is required to pay GST on rental income arising out of investment on which it has paid GST, it is eligible to have input credit on GST.



Authorities denied benefit of ITC in view of section 17(5)(d) - Whether since petitioner had not sold shops in mall but had let out same, petitioner was not liable to pay huge amount of GST on rent received and was entitled to utilise input credit tax charged on purchases made in construction- Yes

Reasoning: As Basic objective of GST is to allow Free flow of credit if the o<u>utput is taxable</u>, which is hindered by the provisions of Sec. 17(5).

As of now, SLP is filed in SC but there is no stay on order.

<u>Advice:-</u> Avail ITC in GSTR-3B but don't utilise and stand in the books of accounts under letter to department, so that claim can stay alive, in case of favorable judgment as a safeguard against provisions of Sec. 16(4).

SECTION 18





Credit on Capital Goods to be available after reducing 5% per quarter of a year or part from the date of invoice or such other document on which capital goods were received by taxable person

Switching from regular to composition or supplies become wholly exempt - Sec 18(4)

Amount equivalent to the credit of input tax in respect of inputs held in stock or input contained in semi-finished goods or finished goods held in stock and

Capital goods reduced by percentage points

Such amount shall be payable by debiting the electronic credit ledger or cash lever

Balance in electronic credit ledger shall lapse

Declaration for input tax reversed to be submitted in Form GST ITC-03 Cancellation of Registration – Sec 29

- 1. Pay an amount
- 2. By way of debit in the electronic credit ledger or cash ledger
- 3. Equivalent to the credit of input tax or output tax payable (whichever is higher) i.r.o input, SFG & FG
- 4. In case of CG or P&M, tax on transaction value or ITC availed reduced by percentage points

Issues in Fixed Assets

Claiming credit on purchase of fixed assets Payment of output tax on sale/disposal of fixed assets



- There are two rule i.e. Rule 40(2) and 44(6). Both are referring section 18 (6) in which there is manner of reversal of ITC. So there is no clarity in section 18(6) as to which rule it is rereferring and with both the rules there is different amount of reversal that comes up.
- It appears there exists a dillema between the two provisions as both refers to 18(6), prescribing two different formula and hence, cannot be implemented together leaving taxpayers in a fix as to which provision is to be adopted. The matter must be taken up by CBIC.

However, it may not be out of place to mention here that there exists an anomaly between the Rule 40(2)(5%) and Rule 44(6) (pro-rata basis), as both refer to section 18(6), prescribing two different formula and hence, cannot be implemented together leaving taxpayers in a fix as to which provision is to be adopted. However, Rule 40(2) seems more appropriate as per section 18(6).

SECTION 19

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

19. (1) The principal shall, subject to such conditions and restrictions as may be prescribed⁹¹, be allowed input tax credit on inputs sent to a job worker for job work.



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



(3) Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise or are not supplied from the place of business of the job worker in accordance with clause (a) or clause (b) of sub-section (1) of section 143 within one year of being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out:

Provided that where the inputs are sent directly to a job worker, the period of one year shall be counted from the date of receipt of inputs by the job worker.



(4) The principal shall, <u>subject to such conditions and restrictions as may be prescribed⁹¹</u>, be allowed <u>input tax</u> 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 <u>capital goods are directly sent to a job worker for job work</u> 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 <u>period of three years of</u> <u>being sent out</u>, it shall be deemed that such capital <u>goods had been supplied by the principal to the job worker</u> <u>on the day when the said capital goods were sent out</u>:

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.

MANNER OF ADJUSTMENT



	OLC)		
	100	25	25	
	IGST INPUT	CGST INPUT	SGST INPUT	
				Balance of Rs 10 left in IGST INPUT
60 (IGST OUTPUT)	60			
40 (CGST OUTPUT)	15	25		
40 (SGST OUTPUT)	15		25	
	100	25	25	
	IGST INPUT	CGST INPUT	SGST INPUT	Although ITC available in CCST with
60 (IGST OUTPUT)	60			Although ITC available in CGST with
40 (CGST OUTPUT)	40			assessee but Rs. 15 Payable in SGST
40 (SGST OUTPUT)			25	
	100	25	25	
	IGST INPUT	CGST INPUT	SGST INPUT	Balance of Rs. 5 each left in CGST and SGST
	60			Input
60 (IGST OUTPUT)		20		
40 (CGST OUTPUT)	20	20		No Payable
40 (SGST OUTPUT)	20		20	



GSTR-2B









Return Filling		Examples			
GSTR1/5/6 filing period	Return	Filing Date	Period of GSTR 2	A	Period of GSTR 2B
July 2021	10 Augu	ıst 2021	July 2021		July 2021 generated on 14-08-2021
July 2021	15 Aug 2	2021(late filed)	July 2021		August 2021 generated on 14-09-2021
May 2021	9 Augus	t 2021	May 2021		July 2021 generated on 14-08-2021

Invoice

Invoice dated 10-08-2021 entered in GSTR 1 of September GSTR 2B generated on 14th October for September,2021.

GSTR 2B Table details







INTEREST & PENAL PROVISIONS

SECTION 50 (INTEREST)

Budgetary Amendment (Notified on 1st June, 21 vide Not. 16/2021-CT Effective date 01.7.2017)

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

¹[Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]

"Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.". Impact

- <u>Retrospective amendment</u> made that interest to be paid on Net liability and not on gross liability in case of short payment of Tax with effect from 01.07.2017.
- <u>Right to claim refund arises, wherever the interest has been paid on gross GST liability</u>.

Reason

• The said amendment was proposed to be retrospective in one of GST Council Meeting dated 14.03.2020 and later on the said proviso not being brought retrospectively, it was assured that no recovery would be made from the tax payers for the preceding periods.

Critical Analysis

This provision does not give relief on the following amounts:-

- On <u>Any unpaid tax amount, even if the balance is lying in electronic cash / credit ledger</u>. E.g Jan (Output Rs. 100000- 80000 credit) Rs.
 15000 deposited in Cash Ledger on 24th Feb , return filed on 26th March , Interest will be on 20000 from 21st Feb to 26th March.
- Tax payable in one tax period but paid later with subsequent return, would not enjoy such relief even when paid through ITC. As the words in poviso says, Payable and declared in the return for the said period.

eg. Jan return filed NIL. Jan (Output Rs. 100000- 80000 credit) added in Feb ,2021 return. The same was paid using the carried forward ITC in the month of Feb, 2021. But the interest on tax of Rs. 1,00,000/- for the period of delay is to be paid, even if the same is paid by ITC.

 <u>Return not filed and tax not paid upto initiation of any proceedings under Section 73/74</u> in respect of such tax period would not get this benefit even when amount is lying in Cash / Credit ledger of the taxpayer. (2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent, as may be notified^{25b} by the Government on the recommendations of the Council.

Matching , Reversal & Reclaim of Reduction in Output Tax Liability

Matching , Reversal & Reclaim of Input Tax Credit 24% NOT APPLICABLE AS SUCH

List of 21 offences as mentioned in sec. 122(1)



List of 21 offences as mentioned in sec. 122(1)



THANK YOU

