



CHAPTER - 10

INPUT TAX CREDIT

Introduction :

“Input Tax” in relation to a taxable person, means the Goods and Services Tax charged on any inward supply of goods / services which are used or are intended to be used, during or in furtherance of his business.

Fulfillment of Input Tax Credit under GST and conditions to claim is one of the most critical activities for every business to settle its tax liability. Input Tax Credit (ITC) is the backbone of the GST regime as due to :-

- These provisions of Input Tax Credit makes GST a value added tax i.e., collection of tax at all points after allowing credit for the inputs.
- ITC has been defined as credit of IGST/CGST/SGST charged on any supply of goods and or services used or intended to be used in the course or furtherance of business and include tax payable under reverse charge.

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4	GST ITC - 04	Details of goods/capital goods sent to job worker and received back



Important definitions

Sec 2(59) "Input"

Means **any goods** used **other than capital goods** used or intended to be used by supplier **in course or furtherance of business**.

Sec 2(19) "Capital goods"

Means **goods, the value of which is capitalised in the books of account** of the person claiming the input tax credit and which are used or intended to be used **in the course or furtherance of business**

Important Explanation:- For the purpose of this chapter

The expressions "capital goods" shall include "plant and machinery" as defined in the Explanation to sec 17;

Analysis :

- ➔ Even if certain goods e.g., machinery, tools, spares item are not capitalized, same is still eligible for credit as input.
- ➔ **Intention to use is relevant** : Words 'intended to be used' mean that if certain goods are intended for use but are not actually used, then also, they would be capital goods, subject to other provisions.
- ➔ **Course of business** : The purchase must have been made in course of business i.e., to run or continue the business as per business needs.
- ➔ **Furtherance** : it means purchases for improvement or enhancement or advancement of business

Sec 2(60) "Input service"

Means **any service** used or intended to be used by a supplier in the course or furtherance of business

- ➔ The word 'service' would take its meaning from definition of service viz. anything other than goods
- ➔ **Capitalization not relevant** : Even if the input service is capitalized by way of cost of capital goods, then also, it will continue as input service only.

Sec 2(62) "Input Tax"

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

- | | |
|---|---|
| (a) | the integrated goods and services tax charged on import of goods |
| (b) | the tax payable under the provisions of sections 9(3) and 9(4) |
| (c) | the tax payable under the provisions of sections 5(3) and 5(4) of the Integrated Goods and Services Tax Act |
| (d) | the tax payable under the provisions of sections 9(3) and 9(4) of the respective State Goods and Services Tax Act; or |
| (e) | the tax payable under the provisions of sections 7(3) and 7(4) of the Union Territory Goods and Services Tax Act, |
| but does not include the tax paid under the composition levy | |

Comment - Following Duties/Taxes credit thereof is not admissible as ITC

- ➔ Central Excise duty paid on tobacco
- ➔ Central Excise duty and VAT/ Sales tax paid on petro products (Petrol, diesel etc.)
- ➔ Basic Customs duty paid on import of goods



**Sec 2(63) "Input Tax credit":**

means the credit of input tax

Sec 2(46) "Electronic credit ledger":

means the electronic credit ledger as referred in section 49(2) i.e. 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.

Sec 2(67) "Inward supply":

in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other with or without consideration.

Sec 2(47) "Exempt Supply":

means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the IGST Act, and includes non-taxable supply.

Sec 16(1) of IGST Act "Zero-rated supply":

means an of the following supplies of goods or services or both namely-

- (a) export of goods or services or both; or
- (b) Supply of goods or services or both to a Special Economic Zone (SEZ) developer or a Special Economic Zone unit

Sec 2(82) "Output Tax":

"Output tax" in relation to a taxable person,

means the tax chargeable under this Act on

- ➔ taxable supply
- ➔ of goods or services or both
- ➔ made by him or by his agent

but excludes tax payable by him on reverse charge basis.

Difference between Output Tax & Input Tax
Sec 155 "Burden of Proof":

As per Sec 155 of CGST Act, where any person claims that he is eligible for Input tax credit under this act, the burden of proof shall lie upon such person.





Understanding of Some important Terms in ITC

Availment, or, Taking Credit : It means recording Credit in statutory records i.e. in GSTR -2 (now currently in GSTR-3B). It results in increase in credit balance. Once credit is availed/taken, it becomes eligible for use as per law.

Utilization or Use of Credit : It means using credit availed/taken to pay output tax or other eligible sums (transfer to electronic liability register). It results in decrease in Credit balance.

Reversal : Reversal of credit also results in decrease in balance & is similar to utilization, with a difference that word "reversal" is generally required/used when

- ➡ credit is wrongly taken or
- ➡ becomes subsequently ineligible.





Sec 16 : Eligibility and conditions for taking input tax credit.

- 1 **Eligibility Criteria:-** 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.

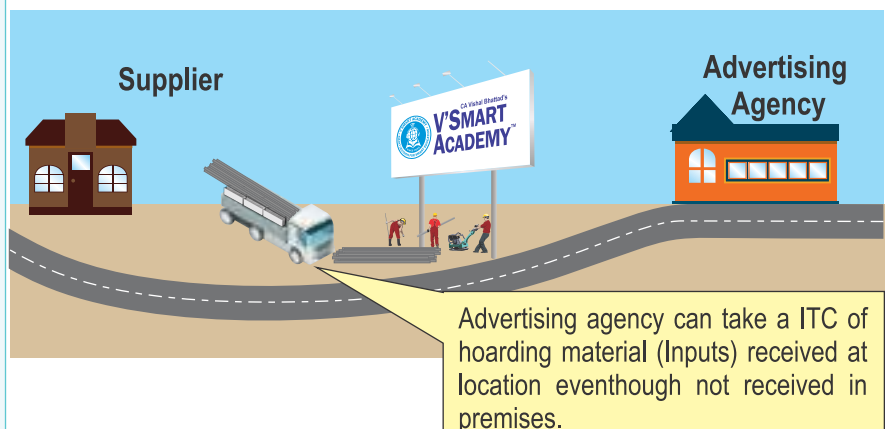
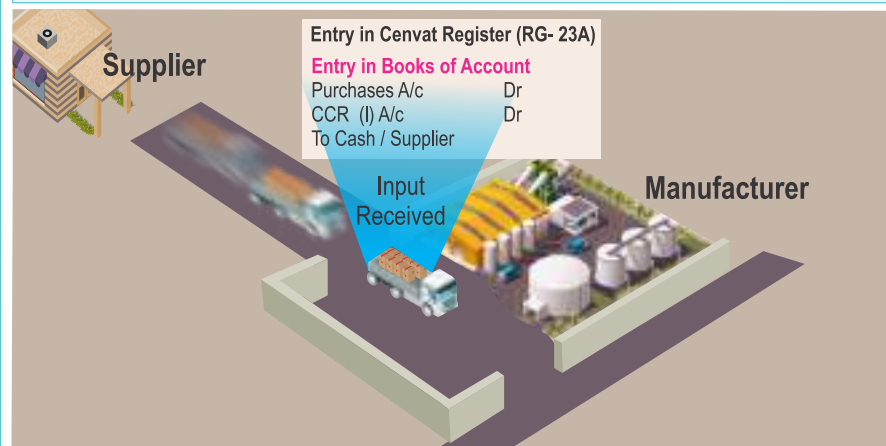


Tutorial Notes

1. As sec 49 of CGST act deals with the self assessment of ITC credited to Electronic Credit Ledger and it also covered restrictions on utilisation of CGST, SGST, IGST or UTGST credit for the purpose of payment of taxes provided that such inputs are used for the purpose of business only.
2. ITC will be available only if goods or services are **"used or intended to be used"** in the course of furtherance of his business. Thus, tax paid on goods and or/services which are used or intended to be used for non-business purposes cannot be availed as credit.

- 2 **Conditions for availment of ITC :-** 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 : Bill to Ship to Model : For the purposes of this clause, it shall be **deemed** that the registered person has received the goods **or as the case may be, services** Amended by CGST Amendment Act, 2018

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. Newly Inserted by CGST Amendment Act, 2018



Mr. Viraj located in Pune supplied raw material to Mr Sane of Goa on 23-11-2018. During the movement of the goods from Pune to Goa, Mr Sane directed Mr Viraj to supply the raw material to his agent Mr Ravi, located in Hubli (Karnataka) on 25-11-2018. Accordingly, Mr Viraj delivered raw material to Mr Ravi on 27-11-2018.

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

(1) **Eligible Document for ITC :** 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.
- (b) an **invoice issued by recipient** (receiving goods and/or services from unregistered supplier) along with proof of payment of tax (in case of reverse charge)
- (c) a **debit note** issued by a supplier
- (d) a **bill of entry** or any similar document prescribed under the Customs Act, 1962 for the assessment of integrated tax on imports;
- (e) **Revised invoice**
- (f) Documents issued by **input service distributor**.

(2) **Authenticity of Invoice - Requirement of all particulars for ITC :** Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI (invoice) 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.

Mandatory Requirement : *Provided that if the said document does not contain all the specified particulars but contains the*

- ➔ details of the amount of tax charged,
- ➔ description of goods or services,
- ➔ total value of supply of goods or services or both,
- ➔ GSTIN of the supplier and recipient and
- ➔ place of supply in case of inter-State supply,

input tax credit may be availed by such registered person (Inserted via N/N 39/2018 dt 04/09/2018)

Newly Inserted by N/N 49/2019 CT dt 09/10/2019





	<p>Example 1 : Mr. Umesh (GST registered) has procured inward supplies worth ₹ 1,00,000 from Mr Yuvraj (GST registered). Invoice issued by Mr Yuvraj is not containing GSTIN of Mr Umesh (Recipient). Can he claim ITC on such invoice?</p> <p>Answer : Sec 31 read with Rule 46 requires that in respect of B@B supply, invoice must contain GSTIN of recipient.</p> <p>Thus invoice without GSTIN is incomplete and thus, Mr Umesh cannot claim ITC on basis of such incomplete invoice.</p> <p>Example 2 : Mr Umesh (GST registered) has procured inward supplies worth ₹ 2,00,000 from Mr Yuvraj (GST registered). Supply is intra-state supply. Invoice is not mentioning Place of Supply and also HSN of the goods. Can he claim ITC on such invoice?</p> <p>Answer : Sec. 31 read with Rule 46 requires invoice to contain specific particulars for eligibility of ITC. The invoice issued by supplier is not containing all the requisites particulars and thus, is incomplete.</p> <p>However, as per proviso to Rule 36(2) ITC shall be admissible even if certain particulars are missing in invoice if otherwise it is containing specific substantial particulars like GSTIN of Supplier and recipient, place of supply in case of inter-state supply etc.</p> <p>In view of above even though HSN is not mentioned in invoice ITC may be availed by Mr. Umesh (GST Registered).</p>
(3)	<p>No ITC if Tax paid by Supplier Fraudulently : 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 account of any fraud willful misstatement or suppression of facts</p> <p>Example : Central Tax officer has served SCN (u/Sec 74) on Mr. Umesh for fraud by Mr. Umesh (deliberating charging GST@5%) resulting into tax evasion. Demand order passed on Mr. Umesh and differential tax element.</p> <p>Mr. Umesh now issuing 'debit note' to Mr. Yuvraj for recovering the differential tax. Whether Mr. Yuvraj is eligible to take ITC of differential tax element as mentioned in debit note?</p> <p>Answer : No.</p>
(4)	<p>Restriction on Taking Credit : Input tax credit to be availed by a registered person in respect of invoices or debit notes,</p> <p>➔ the details of which have not been uploaded furnished by the suppliers under section 37(1), In FORM GSTR -1 or using the invoice furnishing facility</p> <p>➔ shall not exceed 10% 5% of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded furnished by the suppliers under section 37(1) In FORM GSTR -1 or using the invoice furnishing facility.</p>

Clarification on Restriction on availment of input tax credit (ITC) in respect of invoices/debit notes not furnished by the suppliers in their GSTR-1 or Using the invoice furnishing Facility [New sub-rule (4) inserted in rule 36 of the CGST Rules] [Circular No. 123/42/2019 GST dt 11/11/2019]

Fact :- Restriction is not imposed through the common portal hence the taxpayer can avail credit on self-assessment basis for sub-rule (4) of rule 36

Following are the various issues relating to implementation

S. No.	Issue	Clarification
1	a) Where invoice/debit note has been furnished by the supplier in his GSTR-1 or Using the invoice furnishing Facility	Full ITC, if all other conditions of availing ITC are fulfilled
	b) Where invoice/debit note has not been furnished by supplier in his GSTR-1 or Using the invoice furnishing Facility	5 % of the eligible ITC available in respect of the invoices/debit notes furnished by supplier in GSTR-1 or Using the invoice furnishing Facility. However, the ITC so claimed should not exceed the actual eligible ITC available in respect of the invoices not furnished.



Taxpayer can avail full ITC in the respect of following :-

- a) IGST paid on import,
 - b) documents issued under RCM,
 - c) credit received from ISD etc.
- i.e. which are outside the ambit of sub-section (1) of section 37

2	Whether the said restriction is to be calculated supplier wise or on consolidated basis?	Credit available under rule 36(4) is linked to total eligible credit from all suppliers against all supplies whose details have been furnished by the suppliers. Hence restriction imposed is not supplier wise. Accordingly, those invoices on which ITC is not available under any of the provision (say under section 17(5)) would not be considered for calculating 5 % of the eligible credit available.
3	When can balance ITC be claimed in case availment of ITC is restricted as per the provisions of rule 36(4)?	The balance ITC may be claimed by the taxpayer in any of the succeeding months provided details of requisite invoices are furnished by the suppliers in GSTR-1 or Using the invoice furnishing Facility He can claim proportionate ITC as and when details of some invoices are furnished by the supplier provided that credit on invoices, the details of which are not furnished (under section 37(1)) or Using the invoice furnishing Facility remains under 5% of the eligible input tax credit, the details of which are furnished by the suppliers.

Illustration 1

Mr. Vijay, a registered supplier, receives 100 invoices (for inward supply of goods/services) involving GST of ₹10 lakh, from various suppliers during the month of October 20XX.

Compute the ITC that can be claimed by Mr. Vijay in his GSTR-3B for the month of October 20XX to be filed by 20th November 20XX in the following independent cases assuming that GST of ₹10 lakh is otherwise eligible for ITC:

Case I

Out of 100 invoices, 80 invoices involving GST of ₹6 lakh have been furnished by the suppliers in their respective GSTR-1 or Using the invoice furnishing Facility filed on the prescribed due date therefor.

Case II

Out of 100 invoices, 90 invoices involving GST of Rs. 9.8 lakh have been furnished by the suppliers in their respective GSTR-1 or Using the invoice furnishing Facility filed on the prescribed due date therefor.

Answer

As per sub-rule (4) of rule 36, ITC to be availed by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers in GSTR-1 or Using the invoice furnishing Facility, cannot exceed 5% of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers in GSTR-1 or Using the invoice furnishing Facility.

Case I

ITC to be claimed by Mr. Vijay in his GSTR-3B for the month of October 20XX to be filed by 20th November 20XX will be computed as under-

Invoice	Amount of ITC involved in the invoices (₹)	Amount of ITC that can be availed (₹)
In respect of 80 invoices furnished in GSTR - 1 or Using the invoice furnishing Facility	6 Lakh	₹6 lakh [Refer Note 1 below]
In respect of 20 invoices not furnished in GSTR - 1 or Using the invoice furnishing Facility	4 Lakh	₹0.30 lakh [Refer Note 1 below]
Total	10 Lakh	6.30 Lakh



**Notes:**

- (1) In respect of invoices furnished by the suppliers in their GSTR-1, or Using the invoice furnishing Facility full ITC can be availed.
- (2) The ITC in respect of invoices not furnished has to be restricted to 5% of eligible ITC in respect of invoices furnished in GSTR-1 or Using the invoice furnishing Facility. Thus, in respect of 20 invoices not furnished in GSTR-1 or Using the invoice furnishing Facility, the ITC has been restricted to Rs. 0.30 lakh [5% of Rs. 6 lakh].

Case II

ITC to be claimed by Mr. Vijay in his GSTR-3B for the month of October 20XX to be filed by 20th November 20XX will be computed as under-

Invoice	Amount of ITC involved in the invoices (₹)	Amount of ITC that can be availed (₹)
In respect of 90 invoices furnished in GSTR - 1 or Using the invoice furnishing Facility	9.8 Lakh	₹ 9.8 lakh [Refer Note 1 below]
In respect of 10 invoices not furnished in GSTR - 1 or Using the invoice furnishing Facility	0.2 Lakh	₹0.2 lakh [Refer Note 1 below]
Total	10 Lakh	10 Lakh

Notes:

- (1) In respect of invoices furnished by the suppliers in their GSTR-1 or Using the invoice furnishing Facility, full ITC can be availed.
- (2) The ITC in respect of invoices not furnished has to be restricted to 5% of eligible ITC in respect of invoices furnished in GSTR-1 or Using the invoice furnishing Facility. However, since in this case, the actual ITC [₹0.2 lakh] in respect of 10 invoices not furnished in GSTR-1 or Using the invoice furnishing Facility does not exceed 5% of the eligible ITC in respect of invoices furnished in GSTR-1 or Using the invoice furnishing Facility [₹ 0.49 lakh (5% of ₹ 9.8 lakh)], actual amount of ITC can be availed.

Full ITC of balance amount may be availed, in present illustration by "Vijay", in case total ITC pertaining to invoices the details of which have been furnished reaches ₹ 9.52 lakhs (₹ 10 lakhs /1.05). In other words, taxpayer may avail full ITC in respect of a tax period, as and when the invoices are furnished by the suppliers in GSTR - 1 or Using the invoice furnishing Facility to the extent Eligible ITC/ 1.05 The same is explained for Case

Case :-

"Vijay" may avail balance ITC of Rs. 3.7 lakhs in case suppliers upload details of some of the invoices for the tax period involving ITC of Rs. 3.52 lakhs out of invoices involving ITC of Rs. 4 lakhs details of which had not been furnished by the suppliers in GSTR- 1 or Using the invoice furnishing Facility. [Rs. 6 lakhs + Rs. 3.52 lakhs = Rs. 9.52 lakhs]

Note : Feb to August, 2020 - Restrictions to be applied in Sep 2020 return (Proviso w.e.f. 21-4-20) : This Rule applies cumulatively for February to August, 2020 & return in FORM GSTR-3B for September 2020 shall be furnished with cumulative adjustment of ITC applying this condition for February to August, 2020

Students for their knowledge also can refer CBIC circular 142/12/2020-GST dated 9th Oct. 2020 for manner availing ITC during this period. (not relevant for exam.)





- (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 utilisation of input tax credit admissible in respect of the said supply; and



Tutorial Notes

As per section 41 of CGST act:-

- (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.
- (2) The credit referred to in sub-section (1) shall be utilised only for payment of self assessed output tax as per the return referred to in the said sub-section.

Example : Mr Vishal purchased spare parts worth ₹ 75000 as on 01/8/2018 on which CGST @ 9% i.e. ₹ 6750 & SGST @ 9% i.e. ₹ 6750 were charged, thus total amount payable against such purchases is ₹88500/-. The consignment is received on same date explain the eligibility of ITC of Mr Vishal if supplier is failed to make the payment of GST to Government within due date.

Ans.

- (d) He has furnished the return under section 39:

Analysis

	Jan, 2019	Feb, 2019	Mar, 2019
Status of GSTR-3	Filed	Not filed	Cannot be filed unless return for tax period is filed Sec 39(10)
	ITC allowed	ITC not allowed	ITC not allowed

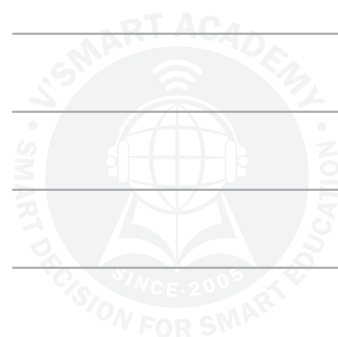
ITC if Goods received in a Lots

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

Example : M/s Asha Trading Co purchased certain goods from Venus traders, Mumbai who agreed to deliver the goods in following installments :-

Date	Installment	Value of goods
10.6.2018	1 st	₹ 15000
10.7.2018	2 nd	₹ 35000
10.8.2018	last	₹ 42000
Total		₹ 92000

The above goods are be charged GST @ 5 %. Consequently the ITC of ₹ 4600/- (92000*5%) shall be available only after receipt of last installment of goods i.e after 10.8.2018





Payment for the invoice to be made within 180 days

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.

Rule 37. Reversal of input tax credit in the 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 sub-section (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 subsection (2) of section 16.

Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16 (Inserted via N/N 26/2018- CT dt 13/06/2018)

- (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 (i.e. 18% P.A.) 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.
- (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.**





Example 1 : Girija automobiles a recipient of auto parts submits the following information:-

i	Value of invoice dated 11.07.2018	₹ 75000
ii	CGST levied on the above value @ 9%	₹ 6750
iii	SGST levied on the above value @ 9%	₹ 6750
iv	Total amount payable	₹ 88500

If Girija automobiles as made the payment on 15-2-2019 to supplier for ₹ 88,500. Explain the implication of ITC

Example 2 : Due to a quality dispute, PZP Ltd withheld payment on a machine supplied by a vendor till it could be rectified. Over 180 days went by in this dispute. The credit taken by PZP on the invoice got added to the output tax liability of PZP and thus, it had to pay back the credit. Only after the vendor rectified the machine and PZP released the payment, could PZP take the credit again. (ICAI Material)



3

No ITC if depreciation is claimed on Tax component of C.G.

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.

Example : AK pvt ltd purchased machinery as on 20.07.2018 for its unit in Nashik, worth ₹ 12, 50,000 & GST @ 12% was levied .i.e. ₹ 1, 50,000 thus total cost of machinery including taxes was ₹ 14, 00,000. The machinery was put to use as on 26.07.2018. AK pvt ltd has capitalized the value of machinery including its tax component amounting to ₹ 1, 50,000 and claim the depreciation on ₹ 14,00,000 under income tax Act, 1962. Can AK Pvt. Ltd. take ITC on C.G.? would your answer differ if depreciation is claimed on 12,50,000.



4

Time limit for availing ITC

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.**

Omitted by
F.A. 2020

Comment : It may be noted that the return for the month of September is to be filed by 20th October and annual return of a financial year is to be filed by 31st December of the succeeding financial year.

So, the upper time limit for taking ITC is 20th October of the next financial year or the date of filing of annual return, whichever is earlier. The underlying reasoning for this restriction is that no change in return is permitted after September of next financial year. If annual return is filed before the month of September, then no change can be made after filing of annual return.

Exception

The time limit u/s 16(4) does not apply to claim for re-availing of credit that had been reversed earlier.

Provided that for any invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18. The details of which have been uploaded by the supplier till the due date for the month of March, 2019. Registered person is eligible to take ITC till the due date of furnishing of the return for the month of March, 2019 (Order no. 2/2018-CT dt 31/12/2018)

Example : Hercules Machinery delivered a machine to XYZ in January 2019 under Invoice no. 49 dated 28th January, 2019 for ₹ 4,15,000 plus GST, and undertook trial runs and calibration of the machine as per the requirements of XYZ. The amount chargeable for the post delivery activities was covered in a debit note raised in April 2019 for ₹ 50,000 plus GST. Hercules Machinery did not file its annual return till October, 2019.

Discuss eligibility of ITC. (ICAI Material)



Sec 17(5) : Blocked credits.

Non eligibility of Credit : Input tax credit shall not be available in respect of the following, namely

- (a) **Motor vehicles** for transportation of persons having approved seating capacity of not more than 13 persons (including the driver), except when they are used for making the following taxable supplies namely :
- | | |
|-----|--|
| (A) | Further supply of such motor vehicles or |
| (B) | Transportation of passengers or |
| (C) | Imparting training on driving, such motor vehicles |

Question 1 SRS Cars Pvt Ltd, a car manufacturer, purchased a tempo Traveler (Seating capacity of 15 persons) for the transport of its employees within the factory premises. Can SRS Cars pvt. ltd. avail ITC on such purchase? Will your answer differ if seating capacity on tempo traveler is 10 persons

Answer:-

Question 2 Kesari tours & Travels, a tour operator, purchased a Tempo Traveler (Seating capacity of 20 persons) for the purpose of transporting tourists passenger during their package tours. Can Kesari Tours & Travels avail ITC on such purchase?

Answer:-

Students
Notes





(aa) Vessel & 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
Example 1	Katraj dairy uses tempo service for delivery of its milk products. In this case as supply of milk products is in course of business, Thus here ITC will be allowed.

(ab) **Services of general insurance, servicing, repair & maintenance in so far as they relate to motor vehicle, vessel or aircraft referred to in clause (a) or (aa).**

Proviso - 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 purpose 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.



Let's determine the eligibility of ITC in the following cases:-

Students
Notes



Case -1

Manufacturer



1. Car & Bus used for employees transportation (Seating capacity of 10 persons)
2. Truck used for Goods Transportation

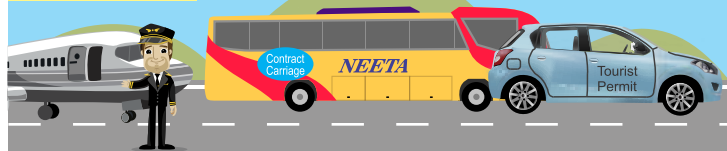
Case -2

Authorised Dealer



Motor Vehicle purchased by authorised dealer for further supply

Case -3



1. Bus used by travel company for transportation of Passenger
2. Motor car(seating capacity of 5 persons) used by supplier of taxi service
3. Aircraft purchased by Indigo for passenger transportation

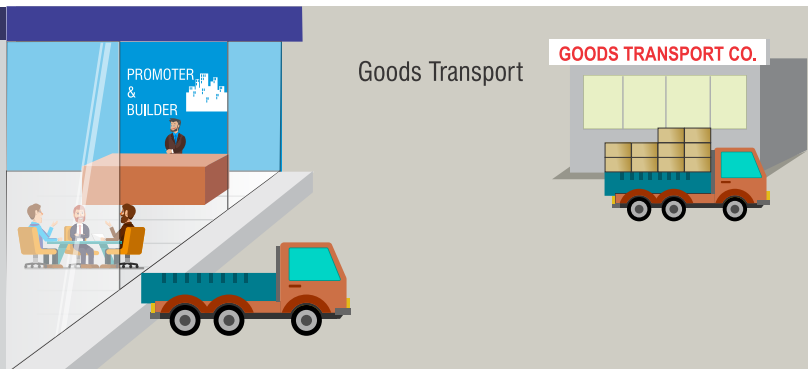
Case - 4

1. Aircraft used by Institute imparting navigation training to pilots
2. Motor vehicle used by motor driving school



Case - 5

1. Truck used by GTA for transportation of goods
2. Truck used by builder contractor for transportation of goods



Case - 6

JCB/Dumper/Tipper used by construction Company



Case - 7

Cash carrying van of bank for transportation of Cash from Bank to ATM

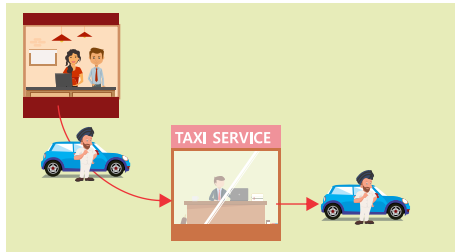




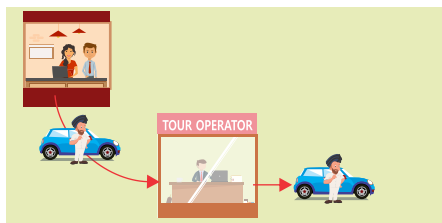
(b)	<p>the following supply of goods or services or both</p> <p>(i)</p> <ul style="list-style-type: none"> ➤ food and beverages, ➤ outdoor catering, ➤ beauty treatment, ➤ health services, ➤ cosmetic and plastic surgery ➤ Leasing, renting or hiring of motor vehicles, vessels or aircraft referred in clause (a) or (aa) except when used for purposes specified therein, ➤ life insurance & health insurance <p>Proviso - <i>Provided that the input tax credit in respect of such goods or services or both shall be available where in inward supply of such goods or services or both is used by a registered person for</i></p> <ul style="list-style-type: none"> ◆ 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
	<div data-bbox="597 741 857 883"> </div> <div data-bbox="961 741 1546 883"> <p>Inward Supply of Food & Beverages by Reliance Fresh who is further supplying Food & Beverages</p> </div> <div data-bbox="586 913 979 1086"> </div> <div data-bbox="1002 913 1546 1086"> <p>Inward Supply of Food & Beverages to a supplier is providing restaurant service</p> </div> <div data-bbox="609 1104 907 1299"> </div> <div data-bbox="971 1131 1546 1299"> <p>Inward supply of food packets to Airline. The packets are used for in-flight catering which is considered as part of the composite supply of air travel services.</p> </div> <div data-bbox="587 1333 907 1517"> </div> <div data-bbox="971 1333 1546 1517"> <p>Inward supply of Health care service to a Hospital who is providing healthcare services</p> </div> <div data-bbox="587 1547 924 1740"> </div> <div data-bbox="971 1547 1546 1740"> <p>Inward supply of Health care service to a Manufacturer/ Trader/ Service Provider</p> </div> <div data-bbox="587 1761 943 1949"> </div> <div data-bbox="971 1761 1546 1949"> <p>Inward Supply of outdoor catering to a manufacturing company for celebrating its 25 years of success</p> </div> <div data-bbox="587 1972 870 2192"> </div> <div data-bbox="971 1972 1546 2192"> <p>Inward Supply of beauty treatment services by a Film Production Company.</p> </div>



Inward Supply of rent a Cab service taken by software company.



Inward Supply of rent-a-cab service to supplier who himself is into same line of business providing rent-a cab service



Inward Supply of rent-a-cab service to a Tour Operator

(ii) **membership of a club, health and fitness centre**

Example 1 Smart pvt ltd takes an annual membership of a fitness centre, Hi Fi, for the use of its employees. Here, Smart pvt ltd cannot avail ITC on the GST paid on membership charges.



(iii) **travel benefits extended to employees on vacation such as leave or home travel concession**

Example 1 VB Ltd reimburses its senior employees on travel expenses as part of LTA (Leave Travel Allowance). VB Ltd cannot avail ITC on the GST component of the travel fare reimbursed.

Proviso - 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.

(c) **works contract services when supplied for construction of an immovable property (other than plant and machinery)**

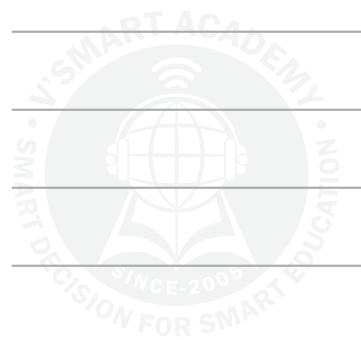
except where it is an input service for further supply of works contract service



Tutorial Notes

As per section 2(119) of CGST act 2017 works contract 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

Analysis :- Credit may be taken for outward suppliers even if classified as construction services : If works contract services are used for further providing works contract services, then credit is allowed. A contractor may take credit of sub-contractor's services. Even if contractor's services are reclassified as construction services and sub-contractor's services are classified as work contract services, then also credit would be allowed because use of work contract services is in general sense.





Case : 1

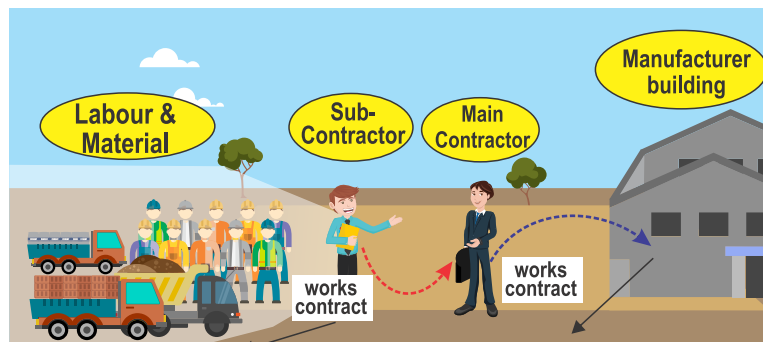


Works Contract Service used construction of building of manufacturer/trader or service provider

Case : 1



Works Contract Service used construction of Plant & Machinery of manufacturer/trader or service provider



Works Contract Service used by main contractor who further supply works contract service.

Invoice-works contract 1

1. Gross amount charged	20 lacs.
GST @12%	2.4 lacs

ITC available

Invoice-works contract 2

1. Gross amount charged	30 lacs.
GST @12%	3.6 lacs

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery)

- ➔ on his own account
- ➔ including when such goods or services or both are used in the course or furtherance of business.

Explanation 1

For the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or **repairs, to the extent of capitalisation, to the said immovable property**

Explanation 2

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

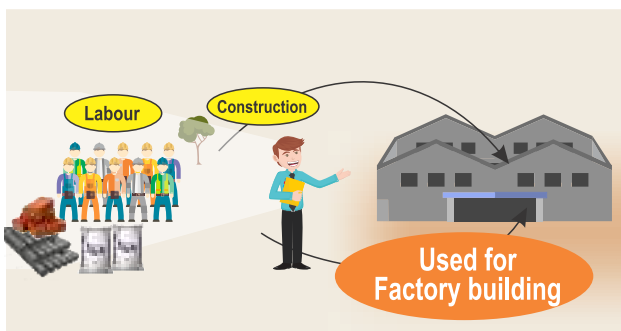
➔ that are used for making outward supply of goods or services or both and

includes such foundation and structural supports

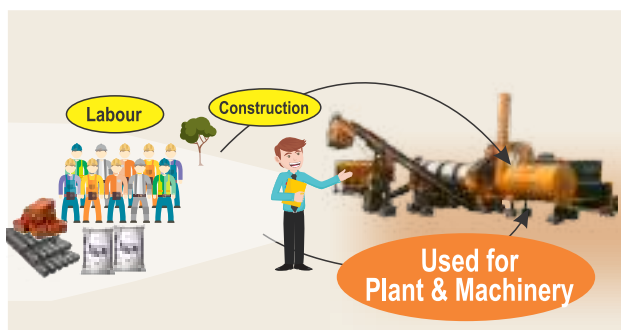
but excludes

- (i) Land, building or any other civil structures
- (ii) Telecommunication towers; and
- (iii) Pipelines laid outside the factory premises





Construction Service & Construction Material used construction of building of manufacturer/trader or service provider



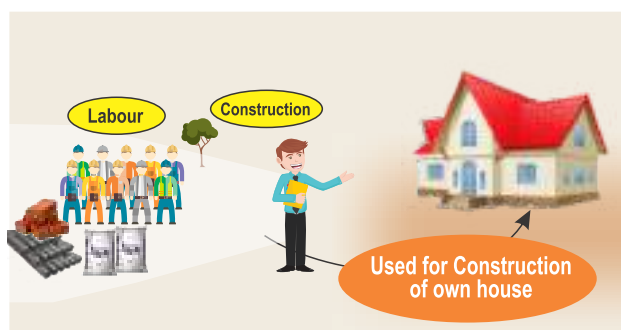
Construction Service & Construction Material used construction of plant & machinery of manufacturer/trader or service provider



Construction Service & Construction Material used construction of tele-communication tower



Construction Service & Construction Material used builder for further supply intended for sale.



Construction Service & Construction Material used builder for own house.

Analysis :- Case Laws and Advance Rulings

Activity	Eligibility of ITC	Reference
Repair etc. of residential quarters given to employees	No ITC	National Aluminum Co. Ltd[2019 (22) G.S.T.L. 526 (App. A.A.R - GST)]
Establishment , maintaining and furnishing guest houses/transit hotels for accommodation to guest/employee on tour	No ITC	
Plantation/gaedening services in Plant/mining/ office Area	Yes ITC available	
Plantation/gaedening services in Residential Area	No ITC	Safari retreats Pvt. Ltd. v. Chief commissioner, CGST [2019 (25)G.S.T.L. 341 (Ori.)]
Material using construction of shopping mall and used it on renting of said mall	Yes ITC available	
Lease, rent of land for pre-operation construction period expenditure is capitalized in books	No ITC	GGL Hotel and Resort Company Ltd. [2019(25) G.S.T.L. 153 (App A.A.R. - GST)]



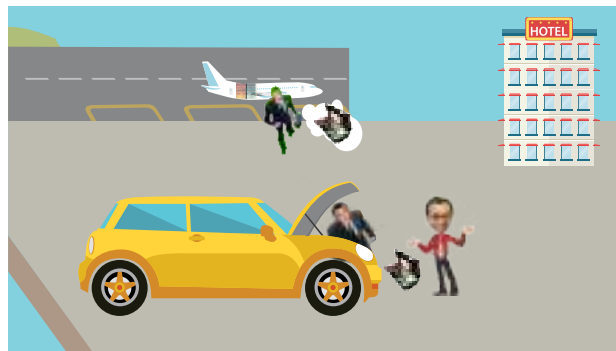
(e) **goods or services or both on which tax has been paid under section 10**



Tutorial Notes

A Registered person who has opted for composition scheme not eligible to claim input tax credit it's an absolute restriction.

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



Non resident taxable person used following goods or services

- (a) Imported Toolkit
- (b) Hotel service in India

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



Bike of showroom is used for personal purpose

(h) **goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and**

Example 1

ABC pvt Ltd is an electronic goods dealer. On 1st Nov, 2018, purchased 20 computers @ ₹ 25,000 each from the manufacturer. GST charged is ₹90,000 @ 18%. On 2nd Nov, 2018, While on transit 1 of the computer gets destroyed completely and cannot be used any more. Thus ABC pvt Ltd cannot avail the ITC on a computer which is destroyed in transit i.e., ₹ 4,500.



(i)	any tax paid in accordance with the provisions of sections 74, 129 and 130.	
	Sec 74	IT deals with recovery of tax not paid or short paid by reason of fraud, willful misstatement or suppression of facts
	Sec 129	It deals with detention, seizure and release of goods in transit which had been removed in contravention of legal provisions
	Sec 130	It deals with confiscation of goods in certain circumstances



Important Case Study

Clarification on Taxable Persons offering various promotional schemes to increase sales volume and to attract new customers for their products. Some of these schemes like

- ➔ Free samples and gifts,
- ➔ Buy one get one free offer,
- ➔ Discounts including 'Buy more, save more' offers
- ➔ Secondary discount etc.

in respect of tax treatment of this have been examined by the CBIC vide Circular No. 92/11/2019-GST dated 07/03/2019

Free samples and gifts treatment under GST :-


Not a supply except in case of Schedule I	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 CGST Act.
No Credit	Further as per provisions of 17(5)(h) of act, ITC shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. 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.
Example	Pharmaceutical companies which often provide drug samples to their stockists, dealers, medical practitioners, etc. without charging any consideration.



Buy One, Get One Offer

Supply in of goods for single price (no free Supply involved)	It is not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.
Full Credit is available	ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.
Example	"buy one soap and get one soap free" or "Get one tooth brush free along with the purchase of tooth paste"



Discount Including Buy More ,Save More	
Discount allowed	As per sec 15(3) of CGST Act - Discounts offered by the suppliers to customers (including staggered discount under 'Buy more, save more" scheme and post supply/ volume discounts established before or at the time of supply) shall be excluded to determine the value of supply
Credit reversal by recipient for discount	reversal of ITC shall be made by the recipient of the supply as is attributable to the discount on the basis of document(s) issued by the supplier.
Full credit to the supplier	Supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts
Example	XYZ Ltd offers staggered discount to his customers (increase in discount rate with increase in purchase volume) i.e. get 10 % discount for purchases above ₹ 5000/-, 20% discount for purchases above ₹10,000/- and 30% discount for purchases above ₹20,000/-. Such discounts are shown on the invoice itself & hence as per sec 15(3) of CGST Act are allowed to be excluded from the value of supply.
	
Secondary Discount	
No deduction from value	such secondary discounts shall not be excluded while determining the value of supply as such discounts are not known at the time of supply and the conditions laid down in section 15(3)(b) of the said Act are not satisfied.
No GST Credit note	No GST can be issued, there will be no credit reversal
Financial credit not may be issued	Financial /Commercial credit note (s) can be issued by supplier for financial accounting to give credit but, GST will not be reduced.
Example	M/s A supplies 10000 packets of biscuits to M/s B at ₹10/- per packet. Afterwards M/s A re-values it at ₹ 9/- per packet. Subsequently, M/s A issues credit note to M/s B for ₹1/- per packet.

**Question : 1**

ABC Co. Ltd. is engaged in the manufacture of heavy machinery. It procured the following items during the month of July. (ICAI Material)

Sr. No.	Items	GST paid (₹)
1.	Electrical transformers to be used in the manufacturing process	5,20,000
2.	Trucks used for the transport of raw material	1,00,000
3.	Raw material	2,00,000
4.	Confectionery items for consumption of employees working in the factory	25,000

Determine the amount of ITC available with ABC Co. Ltd., for the month of July by giving necessary explanations for treatment of various items.

Note:

- (i) All the conditions necessary for availing the ITC have been fulfilled.
- (ii) ABC Co. Ltd. is not eligible for any threshold exemption.

Solution :



Question : 2

XYZ Ltd., is engaged in manufacture of taxable goods. Compute the ITC available with XYZ Ltd. for the month of October, 2018 from the following particulars:-

Sr.No.	Inward supplies	GST (₹)	Remarks
1.	Inputs 'A'	1,00,000	One invoice on which GST payable was ₹ 10,000, is missing
2.	Inputs 'B'	50,000	Inputs are to be received in two installments. First installment has been received in October, 2018.
3.	Capital goods	1,20,000	XYZ Ltd. has capitalized the capital goods at full invoice value inclusive of GST as it will avail depreciation on the full invoice value.
4.	Input services	2,25,000	One invoice dated 20.01.2018 on which GST payable was ₹ 50,000 has been received in October, 2018.

Note:

- (i) All the conditions necessary for availing the ITC have been fulfilled.
- (ii) XYZ Co. Ltd. is not eligible for any threshold exemption.
- (iii) The annual return for the financial year 2017-18 was filed on 15th September, 2018.

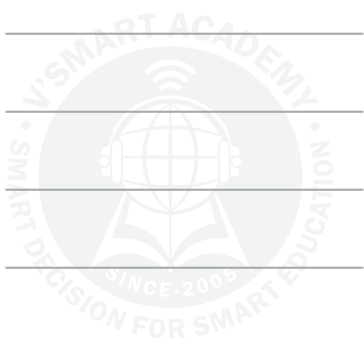
Solution :

Students
Notes

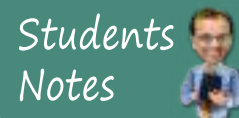




Apportionment of Credit



Sec 17 : Apportionment of credit (Sec 17(1) to Sec 17(4))



- 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, (i.e. for the purpose other than business)**
- the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

Example : Mr Raju a trader owning a bakery provides the following information for the month of September 2018:-

- a) Total ITC in respect of bakery products received ₹ 70000
- b) Bakery product sold in the course of business 70%
- c) Bakery product used in the function of his brother 30%

Ans:- In the above case, Mr Raju shall be entitled to take credit of 49000 (70000*70%) in terms of provisions of section 17 (1) of CGST act.

- 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 IGST 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.

Basic difference between “Zero rated Supply” and “exempted supplies”

Exempt Supplies (Define in sec 2(47) of CGST Act)	Zero rated Supplies defined in Sec 16 of CGST Act
<p>“Exempt Supply” covers following supply,</p> <ul style="list-style-type: none"> ➤ Nil rated Supply ➤ Wholly exempt supply ➤ Non-taxable supply <p>Note : For ITC purpose Exempt supplies also includes supplies mention in sec 17(3) given below</p> <p>Credit of input tax needs to reverse if taken no ITC on the exempted supplies</p>	<p>“Zero rated Supply” covers following supply,</p> <ul style="list-style-type: none"> ➤ Export of goods or services or both or ➤ Supply of goods or services or both to SEZ developer or a SEZ unit <p>Credit of input tax may be availed for making zero rated supplies, even if such supply is without GST, ITC allowed on zero rated supply</p>

Example 2 : A technical testing agency tests and certifies each batch of machine tools before dispatch by B Ltd. Some of these tools are dispatched to a unit in a SEZ without payment of GST as these supplies are not taxable. The finance personnel of want to know whether they need to carry out reversal of ITC on the testing agency's services to the extent attributable to the SEZ supplies. Give your comments. (ICAI Material)

Answer :

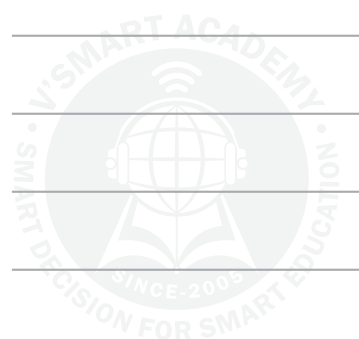
- 3 The value of exempt supply under sub-section (2) shall be
- such as may be prescribed, and shall include**
- supplies on which the recipient is liable to pay tax on reverse charge basis,
 - transactions in securities,
 - sale of land and,
 - subject to clause (b) of paragraph 5 of Schedule II, sale of building.
- Explanation :-** For the purposes of this sec, the expression “value of exempt supply”, shall not include the value of activities or transactions specified in Schedule III, except those specified in para 5 of the said Schedule.

Chart

Important Explanation:- For the purpose of this chapter

For determining the value of an exempt supply as referred to in section 17(3) –

- (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.





Rule 42. Manner of determination of input tax credit in respect of inputs or input services and reversal thereof

- (1) The input tax credit in respect of inputs or input services, which attract the provisions of section 17(1) or section 17(2) being


- partly used for the purposes of business and partly for other purposes, or
- partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies,

shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

Step 1 – Compute common credit

(a)	Total input tax involved on inputs & input services in a tax period	(T)
(b)	Less: Input tax on inputs & input services that are intended to be used exclusively for non-business purposes	(T ₁)
(c)	Less: Input tax on inputs & input services that are intended to be used exclusively for exempt supplies	(T ₂)
(d)	Less: Input tax on inputs & input services which are ineligible for credit [blocked credits- see discussion under point Sec 17(5)]	(T ₃)
(e)	ITC credited to Electronic Credit Ledger [$C_1 = T - (T_1 + T_2 + T_3)$]	(C ₁)
(f)	Less: ITC on inputs & input services that are intended to be used exclusively for taxable supplies including zero rated supplies	(T ₄)
(g)	'T ₁ ', 'T ₂ ', 'T ₃ ' and 'T ₄ ' shall be determined and declared by the registered person at the invoice level in FORM GSTR 2;	
(h)	Common ITC available for apportionment [$C_2 = C_1 - T_4$]	(C ₂)

Step 2 – Compute credit attributable to exempt supplies (ineligible credit) by apportionment of common credit

(i)	<p>the amount of input tax credit attributable towards exempt supplies</p> $D_1 = (E \div F) \times C_2$ <p>where, 'E' is the aggregate value of exempt supplies during the tax period, and 'F' is the total turnover in the State of the registered person during the tax period:</p> <table><tr><td>Proviso</td><td>Provided that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of E/F' is to be calculated;</td></tr><tr><td>Explanation</td><td>For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 and entry 92 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;</td></tr></table> <div>Entry 84: Duties of excise on all excisable goods manufactured or produced in India Entry 92A:- Tax on inter state sales (CST) Tutorial Notes Entry 51: State Excise Duty on liquor, opium, etc. Entry 54 : Taxes on the sale or purchase of goods other than Inter state supply</div>	Proviso	Provided that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of E/F' is to be calculated;	Explanation	For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 and entry 92 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;	(D ₁)
Proviso	Provided that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of E/F' is to be calculated;					
Explanation	For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 and entry 92 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;					
(j)	<p>the amount of credit attributable to non-business purposes</p> <p>if common inputs and input services are used partly for business and partly for non-business purposes [D₂ = 5% of C₂]</p>	(D ₂)				
(k)	<p>the remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies [C₃ = C₂ - (D₁+D₂)]</p>	(C ₃)				
(l)	<p>the amount 'C₃' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax</p>					
(m)	<p>the amount equal to aggregate of 'D₁' and 'D₂' shall be added to the output tax liability of the registered person</p>					