

**JOINT WORKSHOP BY
GSTPAM, AIFTP(WZ), BCAS, CTC, MCTC,
WIRC, ICAI
ON
01-03-2019**

**Input Tax Credit
Under GST**

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Introduction

- **Section 16 of CGST Act – Eligibility and conditions for taking ITC**
- Section 41(1) - credited in electronic credit ledger is available on provisional basis
- Section 42 - talks about matching, reversal and reclaim of ITC.
- Section 43 A
- Rule 59 and Rule 60 - confirmation ITC
- Section 49 deals with utilisation of ITC
- **Section 17 of CGST Act – Apportionment of credit and blocked credit**
- **Section 18 of CGST Act – Availability of credit in special circumstances**

Meaning of “Input Tax Credit”

“Input Tax Credit” defined u/s. 2(63) – Means credit of “input tax”.

“Input tax” defined u/s 2(62) – Means

- **SGST, CGST, UTGST** charged on any supply of **goods** or **services** or both
- Includes tax paid under RCM
- **But does not include tax paid under Composition**

How the recipient would identify whether such supplier is composition taxable person or normal taxable person?
Utility is available?

What about services, if capitalized?

S.2(59) “Input” – goods **other than capital goods** used or intended to be used by supplier in the course and furtherance of business.

S.2(19) “Capital goods” – **goods** value of which is capitalized in the books of account of the person claiming ITC and which are used or intended to be used in the course or furtherance of business

S.2(60) “Input Service” - service used or intended to be used by supplier in the course and furtherance of business.

Compensation Cess which is applicable on Tobacco, coal & Motor vehicle under GST (Compensation) Act. Is it eligible for ITC?

ITC of Cess can be utilized only for payment of Cess on outward supply

S.2(1) (h) of GST (Compensation) Act – ITC in relation to taxable person means Cess charged on (i) any supply, (ii) on import, including cess payable under RCM

S.11(1) of GST (Compensation) Act – Provisions of CGST Act relating to ITC shall apply in relation to levy and collection of cess u/s 8 of GST (Compensation) Act.

Section 16 of CGST Act – Eligibility and conditions for taking ITC

As per sub-section (1) of Section 16: -

- Every registered person shall be entitled to take credit of input tax charged on supplies made to him and shall be credited to electronic credit ledger of such person.
- Supply of goods or services used or intended to be used in the course or furtherance of business by registered taxable person.
- Subject to conditions and restrictions as may be prescribed and
- In the manner specified in Section 49.

Section 16 of CGST Act – Eligibility and conditions for taking ITC

- Eligible input tax shall be credited to “Electronic Credit Ledger” in the manner specified in Section 49.

Definition u/s 2(46) “Electronic Credit Ledger” means as referred in Section 49(2)

Section 49(2) - the input tax as self-assessed in 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.

S.43A newly inserted w.e.f.
01/02/2019.

Talks new procedure for matching ITC

- ITC as self-assessed in the return
- Credit of input tax in electronic credit ledger on provisional basis
- Credit of input tax shall be utilised for payment of output tax as per return

Section 16 of CGST Act – Eligibility and conditions for taking ITC

S.41 – Claim of ITC and provisional acceptance thereof.

ITC as self assessed in return

What is self assessment? ===== Provided in Section 59 ===== Every RP shall self assess tax payable by way of furnishing return u/s 39. ===== But GSTR-3 and Matching system is not available ===== GSTR 3B filed and ITC gets credited in ITC Ledger.

whether ITC as per GSTR-3B is as per the provisions Section 41 which refers to self-assessment?

Is the return in Form GSTR-3B a self-assessment as provided in Section 39?

Credit of input tax in electronic credit ledger on provisional basis

So when is ITC going to be final? ===== Provided in S.42 (ITC Matching & reversal) ===== Lengthy Process of confirming ITC u/r 59 & 60 is not made available.

In absence of matching mechanism, does it mean ITC by way of GSTR-3B is never final and always provisional?

can the revenue disallow ITC, if on the basis of GSTR-2A ITC is in excess of what is declared by supplier?

S.41(2) ITC = payment of output tax as per return

Output tax – S. 2(82) = tax chargeable on taxable supplies Excluding RCM

AS PER RETURN

If apparently there is liability as per as per Annual Return in Form GSTR-9, can that liability be paid by using ITC lying in electronic credit ledger? Ref instructions at Sr. No.9 of GSTR- 9.

Section 16 of CGST Act – Eligibility and conditions for taking ITC

S.16(1) - Inward supplies used or intended to be used in the course or furtherance of business

- Definition of “Business” u/s 2(17) is very wide
- Clause (b) - includes any activity or transactions in connection with or incidental or ancillary to main business activity.
- All expenses such Staff-welfare, Diwali Expenses etc. are eligible for ITC

Section 16 of CGST Act – Eligibility and conditions for taking ITC

• Manner in which ITC shall be utilised

S.49(5) - Manner of ITC utilization

- IGST to be utilized against IGST, then CGST & SGST
- CGST to be utilized against CGST, & then IGST
- SGST to be utilized against SGST, & then against IGST. But CGST credit must be first utilized before utilizing SGST credit.
- **CGST & SGST/UTGST cannot be inter utilized.**

S. 49A Manner in which ITC shall be utilised w.e.f. 01/02/2019

- **Notwithstanding anything contained in S.49**
- ITC of CGST, SGST or UTGST shall be utilized towards payment of IGST, CGST, SGST or UTIGST
- **But only after ITC of IGST has been fully utilized**

Go by to restriction on inter-adjustment?
"NO"

- Does it means it will be applicable for the periods starting from 01/02/2019 ?
- What about old returns filed after 01/02/2019?

S.49B – Order of Utilization of ITC would be prescribed by GOVT

- Notwithstanding Ch.X (i.e. other provisions of payment of tax)
- Subject to clause (c) & (f) of S.49(5) (**restriction of inter-adjustment.**)
- Effective from 01/02/2019 but order is not yet prescribed.

Section 16 of CGST Act – Eligibility and conditions for taking ITC

As per sub-section (1) of Section 16 :- Conditions For Entitlement to ITC

- Possession of a tax invoice or debit note or such any other tax paying documents as may be prescribed.
- Goods or services must be received by taxable person.
- Tax in respect of ITC must be actually paid to Government either in cash or through ITC.
- Returns must be furnished u/s 39.
 - In case of receipt of goods in lots or instalments in respect of an invoice, then ITC will be available on the receipt of last instalment.
 - Payment must be made to the supplier within 180 days of issue of invoice by the supplier.
- The tax component of the capital assets shall not be allowed for ITC, if depreciation is claimed on the same under Income-tax Act, 1961.
- ITC cannot be claimed after due date of furnishing return for the month of September of subsequent year or due date of annual return whichever is earlier.

Section 16 of CGST Act – Eligibility and conditions for taking ITC

- Possession of a tax invoice or debit note or such any other tax paying documents for ITC

Rule 36- deals with this requirement: (i) Invoice u/s 31. (ii) Invoice for inward supply form URP u/s 9(4). (iii) Debit Notes issued u/s 34. (iv) Bill of entry or any similar document prescribed under Customs Act for assessment of IGST. (v) Invoice or credit note or any other document issued by an ISD u/r 54(1).

Sub-rule (2) - ITC shall be available only if all the applicable particulars are filled on the documents AND Furnished GSTR-2

w.e.f. 01/02/2019 – New Proviso

Mention of following details sufficient for ITC:

Amount of tax charged, description of goods or services, total value of supplies, GSTN of supplier and recipient, and place of supply in case of interstate supply

Sub-rule (3) - no ITC if demand confirmed for fraud, will-full mis-statement or suppression of fact

why the recipient should be responsible, and why he should not be allowed ITC if the tax is recovered from the supplier?

Section 16 of CGST Act – Eligibility and conditions for taking ITC

- Goods or services must be received by taxable person

Explanations have been appended w.e.f. 01/02/2019

- deeming fiction for receipt of goods or services even if the goods or services are supplied to any other third person on the direction of registered person who is actual or original recipient of supplies.

What would be the situation in case of constructive delivery?

Transfer of document of title to the goods or any document purporting to be the ownership over the goods should be considered to be the delivery of goods.

What kind of proof the recipient of service would have, if the authority examining the records raises doubt about the receipt of service and thereby proposes to disallow ITC?

- **Some clarification is required.**
- **completion certificate or engineers certificate etc. depending on the nature of work.**

What would be the situation in case of AMC contracts where period is of 3 years and if the supplier of services performs service only for one year? Will the ITC be reversed in respect of whole invoice which was issued in advance?

Section 16 of CGST Act – Eligibility and conditions for taking ITC

- Tax in respect of ITC must be actually paid to Government either in cash or through ITC

=== Is this condition reasonable?

=== Judgment of Delhi High Court in the case of Arise India and Others Vs Government of NCT of Delhi & Ors. & Commissioner of Trade & Taxes, Delhi and Ors (2017 (10) TMI 1020 - DELHI HIGH COURT).

In the said case it is held by the Hon'ble Delhi High Court,

- In the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer,
- the remedy for the Department would be to proceed against the defaulting selling dealer to recover such tax and not to deny the purchasing dealer the ITC.
- Where, however, the Department is able to come across material to show that the purchasing dealer and the selling dealer acted in collusion then the Department can proceed under Section 40A of the DVAT Act.

Section 16 of CGST Act – Eligibility and conditions for taking ITC

- Returns must be furnished u/s 39.
- In case of receipt of goods in lots or instalments in respect of an invoice, ITC will be available on the receipt of last instalment.
 - = What if last lot is received after 20th October of subsequent year?
- Payment must be made to the supplier within 180 days of issue of invoice by the supplier.
 - = What about Trade Discount where payment is not made to supplier?
 - = Can such retention money amount to failure to make payment of consideration?
- If consideration not paid ITC will be added to the output tax liability, along with interest thereon. Again, when the payment is made to the supplier, the recipient will become entitled for ITC.
 - = Why interest is required to be paid because supplier is paying tax into Govt Treasury?
 - = Isn't it unjust enrichment on the part of the Govt?

Section 16 of CGST Act – Eligibility and conditions for taking ITC

- The tax component of the capital goods shall not be allowed for ITC, if depreciation is claimed on the same under Income-tax Act, 1961.

What about Service Component in Capital assets? It will still remain eligible for ITC as if input and this condition will not be applicable to Service which are capitalized

- **Dead line for claiming ITC**

- ITC cannot be claimed after due date for furnishing of the return u/s 39 for the month of September of subsequent year or after the due date of furnishing annual return, whichever is earlier.
- This dead line is extended till 31st March 2019 for Year 2017-18.

- ❖ Can the due date for furnishing GSTR-3B be considered as due date for furnishing return u/s 39? Is it return u/s 39?
- ❖ Isn't the due date for furnishing return u/s 39 been extended perpetually since facilities GSTR-2 and GSTR-3 are not made available on the GSTN Portal?

Section 17 – Apportionment of credit and blocked credit

- Apportionment of credit means division ITC in respect of inward supplies, where part ITC is eligible and part ITC is not eligible credit.
- Whereas blocked credit is completely ineligible credit which is also called as 'Negative list'.

Section 17 – Apportionment of credit and blocked credit

• Apportionment of credit

(i) u/s 17(1) = inward supplies are partly used for non-business purposes.

Rule 42 = credit on non-business or other purposes = common credit of input tax x 5 %

(ii) u/s 17(2) where inward supplies are partially used for exempt supplies

Rule 42 = credit attributable toward exempt supplies = (Aggregate value of exempt supplies / total turnover) x common credit of input tax

Section 17(3)

- RCM Supply;
- Transactions in securities;
- Sale of land, and
- sale of Building or flat after receipt of completion certificate.

(iv) Apportionment of ITC for banking or financial institution u/s 17(4)

1st Option = to comply with identification common supplies and calculate accordingly u/r 42

2nd Option = avail only 50% ITC and lapse the balance ITC

Not applicable for TP's with same PAN

Once this option is exercised, it cannot be changed during remaining F.Y.

Section 17(5) Blocked Credit- input tax credit shall not be available in respect of the following, namely

Pre-amendment

(a) motor vehicles and other conveyances except when they are used—

(i) for making the following taxable supplies, namely:-

(A) further supply of such vehicles or conveyances ; or

(B) transportation of passengers; or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods;

Post-amendment w.e.f. 01/02/2019

(a) motor vehicles for 13 persons (including the driver),

Exception :-

(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

Exception — 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 if they relate to motor vehicles, vessels or aircraft in clause (a) or (aa):

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

(i) motor vehicles, vessels or aircraft in clause (a) or (aa) used for the exceptions specified;

(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;

Section 17 – Blocked credit

- Queries in pre-amendment scenario

1. Delivery Van is used by out door caterer for Transportation of food from one place to another, is ITC eligible prior to 01/02/2019?

- Out door catering is as a service per Schedule-II, Entry -6 (b)
- Exception is for transportation of goods & caterer is not supplying goods 2.

2. Bus used for Transport of own employees. Is ITC eligible?

- What if transport is charged to employees?
- What if not charged to employee?

3. Is ITC eligible on Crain and earth movers?

- DefN of Motor Vehicle u/MV Act – Excludes a vehicle of a special type adapted for use only in a factory
- Can crain & earth mover cover in the word “Conveyance”?

Section 17(5) Blocked Credit- input tax credit shall not be available in respect of the following, namely

Pre-Amendment –

(b) the following supply of goods or services or both:-

(i) **food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery** **except** where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness center;

(iii) **rent-a-cab, life insurance and health insurance except where —**
(A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or

(B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and

(iv) travel benefits extended to employees on vacation such as leave or home travel concession;"

Post Amendment – W.e.f.01/02/2019

b) the following supply of goods or services or both-

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

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

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

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

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

Section 17 – Blocked credit

1. Is catering service eligible for ITC in case of conferences organized by associations ?
2. Canteen services made available to employees, is ITC eligible?
 - Example 1 – Canteen Service supplier charging to the company at Rs.100/- but company recovering only Rs.50/- from employees.
 - ❖ Tax would be payable as per valuation provisions u/s. 15 & Rules [Open Mkt Value.] == ITC will become eligible
 - Example 2 – Nothing is charged to Employees
 - ❖ Schedule – I comes into picture – Related Persons – gift value Rs.50k non-taxable, so ITC.
3. Is beauty treatment, health services, cosmetic and plastic surgery etc. eligible for ITC of professional artists and actors?
4. Can an obligation under a contract of employment for facility of canteen be construed as an obligation under the law i.e. under Indian Contract Act?

Section 17(5) Blocked Credit- input tax credit shall not be available in respect of the following, namely

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

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

Explanation.—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;

1) Can repairs which are not capitalized be eligible for ITC?

2) Are Works Contract Service & Construction of building two separate categories of services as they are differently categorized one under Entry- 5(b) of Schedule-II for Building and other under Entry-6(a) of Schedule-II for works contract? **Rate of Tax also separately categorized for Works contract 18 % & for Construction of building 12%.**

❖ If answer to above question is “Yes”, can proper officer deny ITC to builders saying WCT service is used for construction of building and not for Works Contract?

3) Whether the hotel building can be construed as plant?

In the case of CIT Vs. Taj Mahal Hotel (1971) 82 ITR 44(SC) [AIR 1972 SC 168 – 1971 (3) SCC 550. In this case Supreme Court has held that sanitary fittings and pipes and pipelines shall be installed in a hotel are plant.

Section 17(5) Blocked Credit- input tax credit shall not be available in respect of the following, namely

- Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.

1) Can the goods lost in manufacturing such as evaporation or generation of scrap be liable for disallowance of ITC?

❖ Soya Industries Vs. State of Madhya Pradesh (2014) 70 VST 40 (MP HC DB),
CST Vs. Bharat Petroleum Corporation Ltd.(1992) 2 SCC220.

❖ It was held in these cases that, entire ITC was available, even if part of input goes in by-product or waste like sludge which is not applicable.

2) free sample supplied to unrelated persons, input tax credit is not available. is it advisable to pay tax on free samples taking stand that it is permanent transfer of business assets where ITC has been availed and hence it is supply though there is no consideration, as per clause 1 of Schedule I of CGST Act?

Section 18 of CGST Act – Availability of credit in special circumstances

- **ITC on stock prior to registration in case of registration on exceeding specified turnover OR Voluntary Registration [u/s.18(1)(a) & (b)]**
 - ❖ Application for registration should be made in time i.e. 30 days in case of exceeding specified T/O
 - ❖ ITC is available only in respect of inputs and not capital goods
- **ITC on stock in case where Composition taxable person gets converted into normal taxable Person [u/s.18(1)(c)]**
 - ❖ ITC is allowed on inputs held in stock
 - ❖ Also ITC is allowed on capital goods after deduction 20% per annum (Rule 40)
- **ITC on stock in case where exempt supplies become taxable supplies [u/s.18(1)(d)]**
 - ❖ ITC is allowed on inputs held in stock
 - ❖ Also ITC is allowed on capital goods after deduction 20% per annum (Rule 40)
- **Restriction of 1 year on above ITC [u/s.18(2)]**
- **Conditions [u/s 18(1) & R.40 &41] – Form GST ITC 01 == Certified by CA & CMA if above Rs.2 Lac**

Section 18 of CGST Act – Availability of credit in special circumstances

- **Transfer of ITC in case of change in constitution [u/s.18(3)]**
- **Conditions for availing ITC in case of change in constitution u/s 18(3) [u/r. 41]**
 - ❑ Details of unutilised ITC to be filed in Form ITC-02 with request for transfer with request to transfer the same. [Rule 41]
 - ❑ In case of demerge ITC to be apportioned in the ratio of the value of assets of the new units as specified in demerger scheme.
 - ❑ Submit certificate issued by a practicing CA certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with specific provision for transfer.
 - ❑ The transferee should accept the details so furnished in ITC-02
 - ❑ The inputs and capital goods so transferred should be duly accounted for by the transferee in his books of account.

Section 18 of CGST Act – Availability of credit in special circumstances

- **Reversal of ITC in case of opting for composition or outwards supplies become exempt supplies [u/s.18(4)]**
 - ❖ **forgo whole credit balance in his input credit ledger.**
 - ❖ **if there is no balance in input credit ledger, pay tax on account of ITC which he would have availed in respect of inputs or capital goods lying in stock.**
- **Reversal - of ITC in case of supply of capital goods [u/s.18(6)]**
 - ❖ **reverse ITC or pay tax on the transaction of supply whichever is higher.**
 - ❖ **Useful life of Cap Asset is assumed to 5 year, so no reduction is Asset is older than 5 year or else proportionate reduction.**
- **Section 19 of CGST Act – ITC in respect of inputs and capital goods sent for job work and not received within 1 year or 3 years respectively – deemed supply – tax with interest will be payable**
- **Section 29 (5) of CGST Act – reversal of ITC in case of cancellation of registration**



Thank you

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