

# Western India Regional Council of ICAI

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**GST: ITC – PART I: CONCEPT AND BLOCKED CREDIT**

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# Concepts:-

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- GST–VAT-Tax on final consumption.
- Tax only on Value Addition.
- Staged collection process -Invoice based Method.
- Remove cascading effect.
- Neutrality.
- Concession given by the state.
- Vested right?
- No one to one co-relation.

# 1. Eligibility & Conditions for availing ITC

# Definitions: CGST Act 2017

- Section 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;
- Section 2 (59) “input” means any goods **other than capital goods** used or intended to be used by a supplier in the course or furtherance of business;
- Section 2 (60) “input service” means any service used or intended to be used by a supplier in the course or furtherance of business;
- ***SECTION 16. Eligibility and conditions for taking input tax credit. — (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.***

# Eligibility & Conditions of Input Tax Credit: Sec. 16



# Condition 1: Possession of Tax Invoice / Debit Note: Section 16 (2) (a) read with Rule 36 of the CGST Rules

*“(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 manner specified under section 37”*

- Whether ITC eligible if Original Invoice is lost?

# Condition 2: Receipt of the goods or services Section 16 (2) (b)

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***“(b) he has received the goods or services or both.”***

- Recipient of the supply?
  - Section 2 (93) of the CGST Act.
  - Commissioner v. Redrow Group Plc. — 1999 Simon Tax Cases 161
  - CocaCola India Vs. CCE Pune -2009 (242) ELT 168 (Bom.)
- Implication in ‘Bill To/ Ship To’ transactions?
  - Explanation to Section 16(2) (b)
- Compulsorily to be received inside the factory?

# Condition 3: Tax actually paid to government Section 16 (2) (c)

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***“(c) subject to the provisions of 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 utilization of input tax credit admissible in respect of the said supply;”***

- Bonafide Purchaser
  - M/s Mahalaxmi Cotton Ginning Pressing & Oil Industries Vs State of Maharashtra – WP no. 33 of 2012 –Bom (HC)
  - Quest Merchandising India Pvt Ltd [2017-TIOL-2251-HC-DEL-VAT] Delhi High Court Decision.
  - SLP filed by Department before SC dismissed - Arise India Limited [2018-TIOL-11-SC-VAT]



Condition 4: Filing of Return - Section 16 (2) (d) and  
Condition 5: receipt in lot/installment - 1<sup>st</sup> proviso to Section 16 (2) (d)

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***“(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:”***

- What if last lot is not received?

# Condition 6: Failure to pay consideration -II<sup>ND</sup> & III<sup>RD</sup> proviso to Section 16 (2) (d) r/w Rule 37 of the CGST Rules

*“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.”*

- What if payment to Supplier is Not due?
  - **The Advanced Law Lexicon, P. Ramanatha Aiyar (Ed.), II 1760 (3rd ed., 2007)**  
*“Failure must connote that there is an obligation which has not been carried out and if there was no obligation upon the assessee to make a return then it would not be a failure on his part to carry out that obligation.”*
- Retention Money in Works Contract & Construction Contract
  - Circular No. F. 122/3/2010-S.T., dated 30-4-2010.
  - CCE Pune-I Vs Thermax Engineering Construction 2019 (22) GSTL 80 (Tri-Mum)

## Condition 7: Depreciation – Section 16(3) and Time period for availment of the credit - Section 16 (4)

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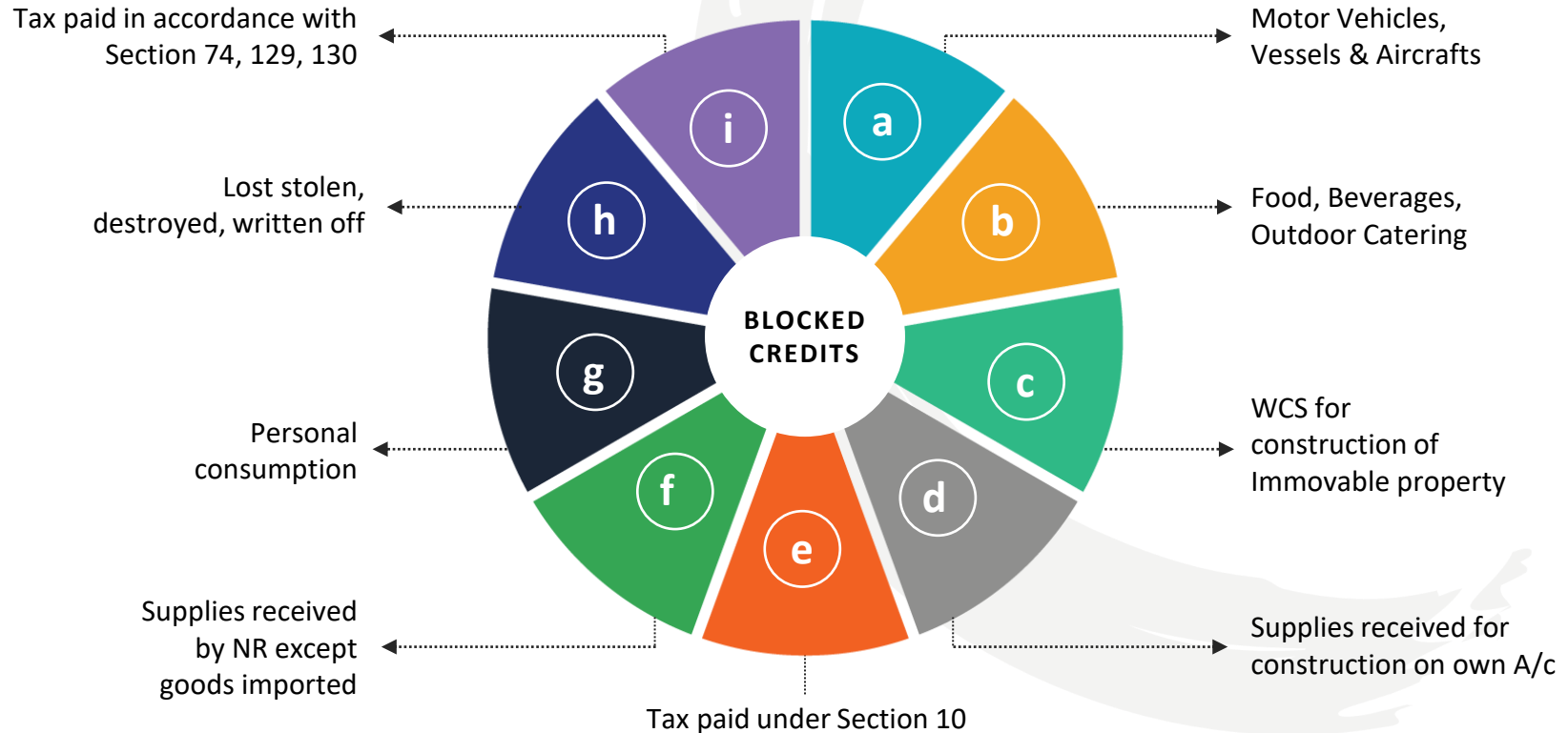
***“(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.***

***(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or 4[\*\*\*\*] debit note pertains or furnishing of the relevant annual return, whichever is earlier.”***

- Whether the time limit for availment of the credit will apply on taking credit under reverse charge Mechanism?
- Whether any time limit will apply for recrediting the amount which was reversed due to non payment of consideration?

## 2. Blocked Credits

# Eligibility & Conditions of Input Tax Credit: Sec. 16



# Blocked Credits:

## (a) Motor Vehicles

*(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen 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;*

# Blocked Credits:

## (aa) Vessels & Aircrafts (ab) repairs etc.

*(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;*

# Blocked Credits:

## (b) Employees Benefit

(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.]*

- Membership of Business Associations & Trade Associations?
- Food and Beverages served on Offshore Vessel for Official purposes?
  - Whether the proviso relating to statutory obligation will apply with respect to all the items in Section 17(5)(b) or only with respect to travel benefits.
    - Tata Motors Ltd. 2021-TIOL-197-AAR-GST



# Blocked Credits:

## (c) & (d) Works Contract & Construction Services

*(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 reconstruction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;*

- Construction of Immovable Property to be used for letting out-ITC?
  - **M/s Safari Retreats Pvt Ltd. & Another Vs CGST 2019-TIOL-1088-HC-Orissa-GST**

# Blocked Credits:

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## (e) Tax paid under Section 10 & (f) supplies received by Non-Resident

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

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

# Blocked Credits:

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## (g) Personal consumption

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

Whether the following items will be considered as for Personal Consumption?

- Employee attendance cards
- Bus transportation services (To and Fro from Residence to factory and back)
- Bus transportation services (External training)
- Medicines/vaccines purchased for employees.
- T-shirts for office get-together, offsites etc.

# Blocked Credits:

## (h) goods stolen, destroyed etc. & (i) Tax paid in certain cases

*“(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.”*

- Value written down in books of accounts whether ITS is required to reversed?
- Conditional offers?
- Tax paid immediately after SCN issued U/s 74 or paid after order is passed?

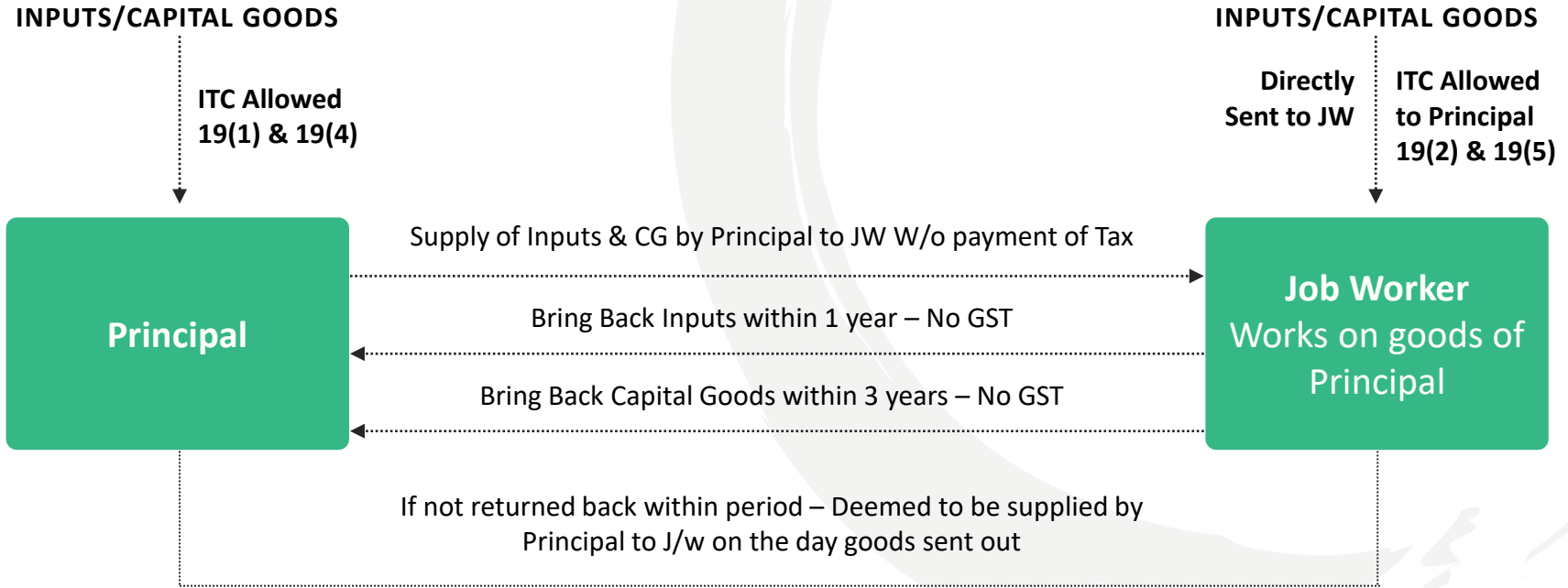
# ITC in Special Circumstances

Section	Particulars
18(1)(a)	<b><u>Applied for registration within 30 days</u></b> from date of liability – Can Claim credit if Inputs held in Stock, in Semi Finished Goods or Finished Goods <b><u>from date of liability</u></b>
18(1)(b)	<b><u>Voluntary Registration</u></b> - Entitled to take Credit of input tax, on the <b><u>day immediately</u></b> preceding the date of grant of registration.
18(1)(c)	Composition Scheme - <b><u>Ceases to pay tax under Composition Scheme</u></b> - Entitled to ITC on the <b><u>day immediately</u></b> preceding the date from liability as Normal Tax payer  Credit on capital goods shall be reduced by 5% for every quarter, from date of invoice
18(1)(d)	<b><u>Exempt Supply becomes Taxable:</u></b> An exempt supply becomes taxable supply - Entitled to ITC related to such exempt Supply on the <b><u>day immediately</u></b> preceding the date from which such Supply becomes taxable.  Credit on capital goods - Reduced by 5% for every quarter, from date of invoice

# ITC in Special Circumstances

Section	Particulars
18(2)	<b><u>Time limit from Invoice Date:-</u></b> Not entitled to take ITC after expiry of <b><u>one year</u></b> from Invoice
18(3)	Change in Constitution due to Sale, Merger, Demerger, Amalgamation or Transfer of Business with <b>transfer of liabilities – Allowed to transfer unutilized ITC</b>
18(4)	Registration cancelled or goods / services become wholly exempt – ITC of inputs and Capital goods to be reversed.  <b><u>Reversal of Credit in Inputs:-</u></b> ITC to be calculated proportionately based on invoices on which ITC availed. Inputs lying in stock are not available - Estimate amount based on the prevailing market price of goods on the effective date of cancellation or the date goods/ services becomes exempted.
18(6)	Sale of capital goods on which ITC taken - Pay amount equal to ITC taken on CG reduced by @ 5% per quarter or tax on the transaction value, <i>whichever is higher</i> .  Proviso - Bricks, moulds and dies, jigs and fixtures are supplied as scrap, may pay tax on TV of such goods

# Section 19: ITC in case of Job Work



## RULE 45 OF CGST RULES, 2017