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INPUT TAX CREDIT

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INPUT

- **Input** means **any goods other than capital goods** *used or intended to be used by a supplier in the course or furtherance of business.*
- Used or intended to be used
- *In the course or furtherance of*
- Section 2(17) of the CGST Act, 2017 defines 'Business' and includes
 - Any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity whether or not it is for pecuniary benefit
 - Any activity or transaction in connection with or incidental or ancillary to sub clause (a)
 - Any activity or transaction in the nature of sub clause (a) whether or not there is volume, frequency, continuity or regularity of such transaction.

CAPITAL GOODS

- Capital Goods means goods the value of which is capitalized 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.
- If depreciation is claimed on the tax component of the cost of capital goods and the plant and machinery under the provisions of the IT Act, 1961 by the registered person, ITC on the said tax component shall not be allowed.
- *If GST credit is sought to be claimed then depreciation cannot be claimed on the tax portion.*
- *Capital Expenditure Vs. Revenue Expenditure?*
- *Replacement of parts of machinery – repairs?*
- *Cost benefit exercise.*

INPUT SERVICE

- **Input service** means **any service** used or intended to be used by a supplier in the course or furtherance of business.

ITC

- Nexus to business
- Scope much wider than cenvat credit and VAT credit
- What is 'furtherance of business'?
- The Supreme Court in ***CIT Vs. Walchand 65 ITR 381***, observed that it is not open to the Department to adopt a subjective standard of reasonableness and disallow part of business expenditure as being unreasonably large
- The Supreme Court in the case of ***CIT Vs. Dhanraj Giri 91 ITR 544***, observed that it is not open to the Department to decide what type of expenditure the assessee should incur and in what circumstances

ITC – PAST Vs. PRESENT

- Manufacturers
- Traders
- Service Providers
- Interesting decisions in the past
 - Balarpur Industries – Chemicals
 - HMM Industries – Horlicks Bottle Cap
 - Ponds India – Plastic Granules
 - Indirect inputs
 - Inputs lost during manufacture
 - Inputs used as fuel and sale of electricity
 - Usage outside the factory

ITC and COVID 19

- Sanitation, Thermometers , Safety
- Group Medical Insurance
- Work form Home
- Gadgets , Equipment's , Installation services at employee residences
- Reimbursement of incremental cost
- Corporate Social Responsibility
- Special Insurance schemes
- Lock down and stoppage of production
- Delay in payments to vendors

INPUT TAX CREDIT

- Input Tax Credit contingent upon
 - Possession of tax invoice / debit note or such other prescribed document
 - **Receipt of goods or services or both.**
 - **Tax charged in respect of supply and has been actually paid to the credit of the Government either in cash or through utilization of admissible input tax credit**
 - Furnishing of return

INPUT TAX CREDIT

- Conditions in Section 16(2) requiring the buyer to verify whether the supplier has paid the tax to the Government account has been challenged before the Delhi High Court in the case of ***Bharti Telemedia Ltd. Vs. Union of India***.
- The Madras High court in the case of ***Sri Vinayaga Agencies Vs. The Assistant Commissioner (CT), Chennai and another (2013) 60 VST 283*** held that the department is not empowered under Section 19(16) of the TNVAT act, to revoke the input tax credit availed on the plea that the selling dealer has not paid the tax when the petitioner-dealer has paid tax to the selling dealer and claimed Input tax credit by way of self-assessment.

INPUT TAX CREDIT

- ***Arise India Ltd. Vs. Commissioner of Trade Taxes [TS-314-HC-2017(Del)-VAT]***
 - Section 9(2)(g) of the DVAT Act does not make any distinction between bonafide purchasing dealer and others.
 - The provisions should be read down whereby dealer or class of dealer shall not include a purchasing dealer who has bonafide entered into purchase transaction with validly registered selling dealer who had issued tax invoices .



INPUT TAX CREDIT

- The Bombay High Court on the other hand in the case of *Mahalaxmi Cotton Ginning Pressing and Oil Industries Vs. State of Maharashtra (2012) 51 VST 1* had upheld similar provisions of the MVAT Act.
- *Can filing of GSTR 1 be a condition for availment of ITC by the recipient?*
- *Can payment of tax by the Supplier be a condition for availment of ITC by recipient?*

Rule 36(4)

- Input tax credit to be availed by the registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-Section (1) of Section 37, *shall not exceed 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-Section (1) of Section 37.*”
- Subsequently reduced to 10%.
- Condition for availing ITC under Rule 36(4) shall cumulatively apply for period February 2020 to August 2020 and cumulative adjustment of ITC shall be done in GSTR 3B of September 2020- COVID related amendments.

Rule 36(4)

- *The Board vide Circular No.123/42/2019 dated 11.11.2019 has clarified that this being a new provision, the restriction is not imposed through the common portal and it is the responsibility of the taxpayer that credit is availed in terms of the said rule and therefore, the availment of restricted credit in terms of sub-rule (4) of rule 36 of CGST Rules shall be done on self-assessment basis by the tax payers.*

Is Rule 36(4) valid?

- Source of power for a rule which refers to a ceiling limit of 20% in the context of suppliers who have not uploaded invoice data?
- The ostensible reference to 20% in the context of ITC restriction is only Section 43A which is yet to come into force.
- Possible to interpret that Rules would be effective only from the date Section 43A is brought into force
- Alternatively, in the absence of a source of power, the rule which provides for restriction is cannot be considered as valid.
- No power to restrict a credit which is validly available under Section 16(2) of the CGST Act, 2017 and all restrictions with reference to credit are set out only in Section 17 of the CGST Act, 2017.

BLOCKED CREDITS-I

- **Section 17(5)**
- **ITC shall not be available in respect of the following:**
- Motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons including driver except when they are used for making the following taxable supplies
 - (A) Further supply of such vehicles or
 - (B) Transportation of passengers
 - (C) Imparting training on driving such motor vehicles.
- General Insurance, servicing, repair and maintenance in so far they relate to motor vehicles

BLOCKED CREDITS-I

- ***Can ITC be claimed on motor vehicle repairs; maintenance; and insurance prior to 01.02.2019?***
- What is the meaning of the phrase 'in respect of motor vehicles'?
- The Supreme Court in the case of ***State of Madras Vs. Swastik Tobacco Factory AIR 1966 SC 1000***, has held that Indian tax laws use the expression 'in respect of' as synonymous with 'on'. When the Rule says 'excise duty in respect of goods', the excise duty referred to is the ED on *the goods*. The term 'in respect of' means only on the goods and hence duty that was paid on raw material used to manufacture the goods cannot be considered as in 'respect of the goods'.

BLOCKED CREDITS-II

- ITC shall not be available in respect of vessels and aircrafts except when they are used for making the following taxable supplies:
 - (i) Further supply of such vessel or aircraft; or
 - (ii) Transportation of passengers; or
 - (iii) Imparting training on navigation of such vessels; or
 - (iv) Imparting training on flying such aircraft

BLOCKED CREDITS- II

- *Can ITC be claimed on aircrafts used by the Company?*
- *Can ITC be claimed on aircrafts by an airline which has both economy and other than economy tickets?*

BLOCKED CREDITS-II

- In the case of *Global Vectra Helicorp Ltd. Vs. CST (2016) 42 STR 118*, the Tribunal has held that
 - The service is provided to various companies, who chartered the aircraft for specific time or for specific journey.
 - The payment is not based on number of passengers. No tickets are issued to the passengers and no charges are collected from the passengers.
 - The service provided cannot be considered as transport of passengers, but has to be considered as charter of aircraft. There is no doubt that the right of possession and effective control while in use by the charterer is not parted with.

BLOCKED CREDITS-II

- The term 'passenger' came up for interpretation before the Tribunal in the case of *King Rotors & Air Charter (P) Ltd. Vs. CC (2011) 269 ELT 343*, wherein it was held that the word 'passenger' refers to natural persons and when an aircraft is chartered by an offshore oil company to ferry their personnel, the aircraft is used by the independent third party, namely, offshore oil extraction/drilling company. It was further observed that such flights undertaken by aircraft are commercial, revenue flights paid for by such offshore companies which are third parties and the end-users of the helicopters cannot be called members of the public and such services cannot be considered as provided to passengers.

BLOCKED CREDITS-II

- Can it be said that when the employees of the Company travel by aircraft from one location to another, the aircraft is used for 'transportation of passengers'.
- Flight plans, passenger manifest, security etc.
- DGCA Air Transport Circular provides that in respect of private aircrafts owned by companies or corporations, only the employees, including chairman and members of the Board of Directors of the Company / Corporation *may be permitted as passengers.*

BLOCKED CREDITS-III

- What is food and beverages?
- Can ITC be availed on restaurant services?
- Can ITC be availed on coffee powder and coffee making machines used in a consultant's office for making coffee?

BLOCKED CREDITS-III

- ITC not available in respect of *the following supplies of goods or services or both:*
- **Food and Beverages**, Outdoor catering... 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.
- And?
- What is food ?
- In the service tax law, a Notification defined food *as a substantial and satisfying meal.*
- High Tea ?

BLOCKED CREDITS-III

- What is food?
- Beverages made using materials
- Can coffee powder be considered as food?
- The SC in the case of ***Swastik Udyog Vs. CCE (2006) 198 ELT 485*** has held that
 - Pan Chutney is certainly edible.
 - Sauce or a ketchup is normally an accompaniment to food.
 - Pan is not food although it may be edible.
 - Food is a substance which is taken into the body to maintain life and growth.
 - Sauce is generally taken as an accompaniment with food.
 - Since Pan is not a food any accompaniment with it would not fall within T.H. 2103.11.

BLOCKED CREDITS- IV

- Can a Developer avail credit of GST charged by contractors?
- Can a Developer avail credit in respect of GST charged by suppliers of services?
- Can a contractor avail credit of GST charged by sub-contractors?
- Can a Mall avail credit of the GST charged by contractors for building its mall ?

BLOCKED CREDITS -IV

- Section 17(5) (c) and Section 17 (5) (d)
- WCT 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 WCT service*.
- Goods or services or both received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account including when such goods or services or both are used in the course of furtherance of business
- Impact on factories, warehouses, godowns, theatres, malls, commercial buildings.

BLOCKED CREDITS-IV

- *What is immovable property?*
- WCT vs. Composite Supply
- **Goods or services or both *received* by a taxable person for *construction* of an immovable property (other than plant and machinery) on his *own account* including when such goods or services or both *are used in the course or furtherance of business*.**
- Construction includes reconstruction, renovation, additions, alterations or repair to the extent of *capitalization to the said immovable property*.
 - *Capital expenditure vs. Revenue expenditure*
 - *Repair being revenue expenditure*
- AC plants, power plants, cement plants, ropeways, escalators, lifts – WCT or composite supply?
- Object of Annexation
- Degree of Annexation

BLOCKED CREDITS -IV

- ***Safari Retreats Pvt ltd & another Vs. Chief commissioner of CGST & others (2019) 25 GSTL 351,***
 - Narrow construction of interpretation of Section 17(5)(d) is frustrating the very objective of the GST Act .
 - Section 17(5)(d) has to be read down and the narrow restriction as imposed in reading of the provision by the Department is not required to be accepted, keeping in mind the language used in ***Eicher Motors Ltd. – (1999) 2 SCC 361*** the very purpose of the credit is to give benefit to the assessee.
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GOODS DISPOSED OF BY WAY OF GIFT OR FREE SAMPLES

- Gifts to employees where value exceeds Rs. 50,000
- Gifts to dealers and distributors on achievement of targets
- What is gift?
- *“Gift is the transfer of certain existing movable or immovable property made voluntarily and without consideration by one person called the donor to another called the donee and accepted by on behalf of the donee.”* – Transfer of Property Act
- Gift as a concept is diametrically opposed to the presence of consideration in any form.

GOODS

LOST, STOLEN, DESTROYED, WRITTEN OFF

- What is 'goods' in the context of Section 17(5)(h)
- Can it cover Final Products?
- What are inputs?
- What is the meaning of lost?
- What is the meaning of destroyed?
- What is written off?

EXEMPT SUPPLY

- Section 17(2) provides that where the *goods or services or both are **used** for effecting taxable supplies including zero rated supplies and **partly for effecting exempt supplies**, credit shall be restricted to so much of the input tax as is attributable to the taxable supplies including zero rated supplies.*
 - *For Section 17(2) to apply, the goods or services or both must be used for effecting exempted supplies.*
 - *What happens if there are goods or services that are never used for an exempt supply but used in business?*

HOTELS & RESTAURANTS

- Hotel accommodation in another State and ITC
- Hotels and restaurants – 5% without ITC
- Hotel accommodation – 12%/18% with ITC
- Bar sales – VAT
- GST credit management

DEVELOPER

- Is 5% without ITC mandatory?
- Can mere issue of CC warrant reversal of ITC?
- Is sale of flat after CC an exempt supply?
- Can there be 5% for customers and 18% for land owner share?

OPEN ISSUES

- What is an exempt supply?
- Is invoice matching the best solution?
- Refund of ITC on exports
- Non availability of ITC on some items
- Time Limit for availment of ITC
- Complex Rule 42 & 43

THANK YOU