

SEMINAR ON GST

DATE : 15th April, 2017

VENUE : Bandra Kurla Complex Bandra East

Topic : Input Tax Credit, ISD, Transfer of Input Tax Credit,
Related Transitional Provisions, Documentation,
Refund.

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A. Transitional Provision

A. 1) Credit of Excise Duty or Service Tax

✧ Transfer of credit to new registration

The Section 140 of the GST Model Law provides that the registered taxable person shall be allowed to carry forward the credit shown in the returns furnished under the earlier law by him for the period ending 30/06/2017. Therefore, it is essential that all the credits which the Company intends to avail by 30/06/2017 is reflected either in ER-1 Returns, ST-3 Returns or VAT Returns or entry tax return any other return. It must be ensured that –

- a) All credit shown in the books of account is reflected in the return.
- b) In many cases because of dispute with the department, the Company does not take the credit in order to avoid the Show Cause Notice. It is advised that the Company should take all such credits on or before 31/03/2017 and reflect in the ST-3 Return.
- c) The department have been disputing availment of credit on commission on sales, service tax on effluent treatment etc.² Many companies were availing the credit and immediately reversing the

d) Many companies take the credit only after payments have been made to the input service provider. Therefore, availment of credit may be delayed. Such credit shall also be taken prior to 31-3-2017.

e) Many services are received regularly, but the invoices are raised after the month end only. These services are like security services, renting of immovable property, telephone, etc. The effort should be made to ensure that the bills for these input services are received prior to 31/03/2017 and the credit is availed prior to 31/03/2017 so that the credit is reflected in the returns.

f) Similarly, in many cases, the Company is required to pay the service tax under reverse charge. As per Rule 7 of the Point of Taxation Rules, 2011, the liability to pay service tax under reverse charge arises on the date of payment to the service provider. The date of payment for the invoices received in February or March may be after 31/03/2017. Therefore, the liability to pay service tax will arise only after 31/03/2017. As mentioned above as of now there is no provision for availment of credit after 31/03/2017 for the service tax paid for the

A.2) Section 140(2) - Unavailed Cenvat credit on capital goods

A registered taxable person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the Unavailed Cenvat credit in respect of capital goods, not carried forward in a return, furnished under the earlier law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

PROVIDED that the registered taxable person shall not be allowed to take credit unless the said credit was admissible as cenvat credit under the earlier law and is also admissible as input tax credit under this Act:

Explanation 1.- For the purposes of this section, the expression “unavailed Cenvat credit” means the amount that remains after subtracting the amount of cenvat credit already availed in respect of capital goods by the taxable person under the earlier law from the aggregate amount of cenvat credit to which the said person was entitled in respect of the said capital goods under the earlier law.

The explanation attached to Chapter XX provides that capital goods means as defined in rule 2(a) of Cenvat Credit Rules 2004.

A.3) 140(3) -Credit of eligible duties and taxes in respect of inputs held in stock

- (1) A registered taxable person, who was not liable to be registered under the earlier law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012-Service Tax, dated 20.06.2012 or a first stage dealer or a second stage dealer or a registered importer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions:
 - (i) such inputs and / or goods are used or intended to be used for making taxable supplies under this Act;
 - (ii) the said taxable person is eligible for input tax credit on such inputs under this Act;

- (iii) the said taxable person is in possession of invoice and/or other prescribed documents evidencing payment of duty under the earlier law in respect of such inputs;
- (iv) such invoices and /or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and
- (v) the supplier of services is not eligible for any abatement under the Act.

Provided that where taxable person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such taxable person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

- (2) As per sub-section (10) the amount of credit shall be calculated in such manner as may be prescribed.

A.4) 140(4) - Credit of eligible duties and taxes in respect of inputs held in stock

(1) A registered taxable person, who was engaged in the manufacture of nonexempted as well as exempted goods under the Central Excise Act, 1944 (1 of 1944) or provision of non-exempted as well as exempted services under Chapter V of Finance Act, 1994 (32 of 1994), shall be entitled to take, in his electronic credit ledger,

- (a) the amount of Cenvat credit carried forward in a return furnished under the earlier law by him in terms of section 140(1); and
- (b) the amount of Cenvat credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to exempted goods or services, in terms of section 140(3).

A.5) 140(5) -Credit inputs or input services during transit

(1) A registered taxable person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid before the appointed day, subject to the condition that the invoice or any other duty/tax paying document of the same was recorded in the books of accounts of such person within a period of thirty days from the appointed day:

PROVIDED that the aforesaid period of thirty days may, on sufficient cause being shown, be extended by the competent authority for a further period not exceeding thirty days.

The Second proviso further provide. That the said registered taxable person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken.

The credit of service tax paid in relation to goods in transits is also available.

A.6) Input Service Distributor

140(7) - Credit distribution of service tax by ISD

Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as credit under this Act even if the invoices relating to such services is received on or after the appointed day.

A. 7) When input service provider is paid after April 2017

140(9) - Transitional provisions for availing Cenvat credit in certain cases

Where any Cenvat credit availed for the input services provided under the earlier law has been reversed due to non-payment of the consideration within a period of three months, such credit can be reclaimed provided that the taxable person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.

B. Current Provision

B. 1) Definition:

i) Section 2(63) defines 'input tax credit' as follows:

(63) "input tax credit" means credit of input tax;

ii) Section 2(62) defines 'input tax' as follows:

(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 sub-sections (3) and (4) of section 9; i.e. CGST.
- (c) the tax payable under the provisions of sub-section (3) and (4) of section 5 of the Integrated Goods and Services Tax Act i.e. IGST.
- (d) the tax payable under the provisions of sub-section (3) and sub-

iii) Section 2(60) defines 'Input Service' as follows:

(60) "input service" means any service used or intended to be used by a supplier in the course or furtherance of business;

iv) Section 2(19) defines 'Capital Goods' as follows:

(19) "capital goods" means goods, the value of which is capitalised in the books of accounts of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;

v) Section 2(59) defines 'input' as follows:

(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;

B.2) Analysis of in course of furtherance of business

- ❖ The following factors will be guideline factor for interpreting in the course or furtherance of business:
 - The words 'wholly and exclusively' refers to motive, objective and purposes of the expenditure and gives jurisdiction to the taxing authorities to examine these matters. – B.K. Khanna & Co (P) Ltd v. CIT (2001) 247 ITR 705, 709 (Del)
 - The expression 'wholly and exclusive' in section 37(1) does not mean 'necessarily'. Ordinarily, it is for the assessee to decide whether any expenditure should be incurred in the course of its or his business. Such expenditure may be incurred voluntarily and without any necessity, and if it is incurred for promoting the business and to earn profits, the assessee can claim deduction therefor under section 37(1) even though there was no compelling necessity to incur such expenditure. – Bralco Metal Industries Pvt. Ltd. V. CIT, (1994) 206 ITR 477, 482 (Bom).

The Hon. Supreme Court in the case of Eastern Investments Ltd v CIT (1951) 20 ITR 1, 4 (SC) laid down following principles –

- a) though the question must be decided on the facts of each case the final conclusion is one of law.
- b) It is not necessary to show that the expenditure was a profitable one or that in fact any profit was earned
- c) It is enough to show that the money was expended 'not necessity and with a view to a direct and immediate benefit to the trade, but voluntarily and on the ground of commercial end in order indirectly to facilitate the carrying on of the business
- d) Beyond that no hard and fast rule can be laid down to explain what is meant by the word 'solely' occurring in the pre-1939 law.

➤^①That expenditure made under a transaction which is so closely related to the business that it could be viewed as an integral part of

- The true test of an expenditure laid out wholly and exclusively for the purposes of trade or business is that it is incurred by the assessee as incidental to his trade for the purpose of keeping the trade going and of making it pay and not in any other capacity than that of a trade. CIT v. Delhi Safe Deposit Co Ltd (1982) 133 ITR.
- The manner to apply the test is to ask the question. Has the expense been incurred with the sole object of furthering the trade or business interest of the assessee unalloyed or unmixed with any other consideration? If the expense is found to bear an element other than the trade or business interest of the assessee the expenditure is not an allowable one. To arrive at the conclusion that the expenditure was dictated solely by business consideration one has to consider the nature of the business being adversely affected or its interest being promoted by the refusal or the incurring of the expenditure, as the case may be. When the assessee places all the facts and circumstances before the revenue authorities, the latter must examine the same and must make up their minds as to whether the expenditure was necessitated or justified by commercial expediency [Andrew Yule & Co Ltd v. CIT (1963) 49 ITR 57, 65 (Cal)]

- An expenditure to which one cannot apply an empirical or subjective standard is to be judged from the point of view of a businessman and it is relevant to consider how the businessman himself treats a particular item of expenditure, whether as revenue expenditure or as a capital expenditure [Ford & Macdonald Ltd v. CIT, (1964) 54 ITR 133, 143 (All.)]
- The test is not what a prudent man would do in similar circumstances. Though an assessee may be an imprudent businessman, yet if he incurs an expenditure voluntarily for the purposes of his own business, it would be allowable as a proper deduction. [J K Commercial Corporation Ltd v. CIT , (1969) 72 ITR 296 (All)]

B. 3) i) Credit not available for following :

Input tax credit shall not be available in respect of the following:

- (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.
- (b) supply of goods and services, namely,
 - (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where such inward supply of goods or services of a particular category is used by a registered taxable person for making an outward taxable supply of the same category of goods or services;

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

(iii) rent-a-cab, life insurance, health insurance except where 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; and

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

(c) works contract services when supplied for construction of 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 received by a taxable person for construction of an immovable property on his own account, other than plant and machinery, even when used in course or furtherance of business;

Explanation 1. - For the purpose of this clause, the word “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

Explanation 2. - ‘Plant and Machinery’ means apparatus, equipment, machinery, pipelines, telecommunication tower fixed to earth by foundation or structural support that are used for making outward supply and includes such foundation and structural supports but excludes land, building or any other civil structures.

- (e) goods and/or services on which tax has been paid under section 9;
- (f) goods and/or services used for personal consumption;
- (g) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and
- (h) any tax paid in terms of sections 74,129 or 130.

B.3) ii) 'Works Contract' defined in Section 2(119) as follows:

(119) "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;

B.3) iii) Section 74 - Relates to payment of demand by reason of fraud, willful-misstatement or suppression.

Section 129 – Tax paid on detention

Section 130 – Tax paid on confiscation

B. 3) iv) - Light Diesel Oil (LDO)

As per clause (5) of Article 279A of the constitution of India, GST Council shall recommend the date on which the goods and services tax be levied on items namely, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel. Therefore the GST will not be levied on this item from 01.04.2017. The current structure of tax i.e. levy of excise duty and sales tax will continue to be charged till the date is recommended by council.

The Light Diesel Oil (LDO) is not specified in clause (5). Therefore GST will be levied on LDO. The definition of input given in Section 2(52) is very wide. It will cover the LDO also. Therefore GST paid on LDO will be available as a credit.

B.4) Input Tax Credit

B. 4) i) Manner of Taking Credit:

Every registered taxable person shall be entitled to take credit of input tax charged on any supply of goods or services 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:

- (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.

B. 4) ii) Conditions for availing the credit

Notwithstanding anything contained in this section, no registered taxable person shall be entitled to the credit of any input tax in respect of any supply of goods and/or services 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 taxpaying document(s) as may be prescribed;
- (b) he has received the goods and/or services;
- (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 utilization of input tax credit admissible in respect of the said supply; and
- (d) he has furnished the return under section 39:

PROVIDED that where the goods against an invoice are received in lots or instalments, the registered taxable person shall be entitled to take credit upon receipt of the last lot or installment:

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 1(1) of Input tax credit provide that credit is available on following documents,
 - (a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;
 - (b) a debit note issued by a supplier in accordance with the provisions of section 34;
 - (c) a bill of entry;

- (a) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31;
- (b) a document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule invoice.7;
- (c) a document issued by an Input Service Distributor, as prescribed in clause (g) of sub-rule (1) of rule 4.

☎❖① Rule 1(2) Input tax credit shall be availed by a registered person only if all the applicable particulars as prescribed in Chapter ---- (Invoice Rules) 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.

☎❖① Rule 1(3) 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 raised on account of any fraud, willful misstatement or suppression of facts.

As per Rule 2, if supplier is not paid within 180 days Value of supply with tax, the details shall be furnished for the month immediately following period of 180 days and shall be added to output tax liability. He tax be paid with interest from the date of availment.

B. 4) iii) Time Limit

A taxable person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services after 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.

B. 4) iv) Depreciation

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

B.5) Reversal of Credit

- (1) Where the goods and/or services are used by the registered taxable person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.
- (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 under the Integrated Goods and Services Tax 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.
- (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.

The rule 7 and 8 respectively prescribes the manner in which amount of credit on input/input service and capital goods respectively, required to be computed for reversal.

A. For input

- (a) total input tax involved on inputs and input services in a tax period, be denoted as 'T';
- (b) the amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for purposes other than business, be denoted as 'T1';
- (c) the amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for effecting exempt supplies, be denoted as 'T2';
- (d) the amount of input tax, out of 'T', in respect of inputs on which credit is not available under sub-section (5) of section 17, be denoted as 'T3';
- (e) the amount of input tax credit credited to the electronic credit ledger of registered person, be denoted as 'C1' and calculated as: $C1 = T - (T1 + T2 + T3)$;
- (f) the amount of input tax credit attributable to inputs and input services used exclusively in or in relation to taxable supplies including zero rated supplies, be denoted as 'T4';
- (g) T1', 'T2', 'T3' and 'T4' shall be determined and declared by the registered person at the invoice level in FORM GSTR-2;
- (h) Input tax credit left after attribution of input tax credit under clause (g) shall be called common credit, be denoted as 'C2' and calculated as: $C2 = C1 - T4$;
- (i) The amount of input tax credit attributable towards exempt supplies, be denoted as 'D1' and calculated as: $D1 = (E \div F) \times C2$ where,

'E' is the aggregate value of exempt supplies, that is, all supplies other than taxable and zero rated supplies, during the tax period, and

'F' is the total turnover of the registered person during the tax period.

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 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, the aggregate value of exempt supplies and total turnover shall exclude the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule.

(j) the amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as 'D2', and shall be equal to five per cent. of C2; and

(k) the remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting taxable supplies including zero rated supplies and shall be denoted as 'C3', where, - $C3 = C2 - (D1 + D2)$;

(l) The amount 'C3' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax;

(m) The amount equal to 'D1' and 'D2' shall be added to the output tax liability of the registered person.

Provided that if the amount of input tax relating to inputs or input services which have been used partly for purposes other than business and partly for effecting exempt supplies has been identified and segregated at invoice level by the registered person, the same shall be included in 'T1' and 'T2' respectively, and the remaining amount of credit on such input or input services shall be included in 'T4'.

(2) The input tax credit determined under sub-rule (1) shall be calculated finally for the financial year before the due date for filing the return for the month of September following the end of the financial year to which such credit relates, in the manner prescribed in the said sub-rule and,

(a) where the aggregate of the amounts calculated finally in respect of 'D1' and 'D2' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2', such excess shall be added to the output tax liability of the registered person for a month not later than the month of September following the end of the financial year to which such credit relates and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from first day of April of the succeeding financial year till the date of payment; or

(b) where the aggregate of the amounts determined under sub-rule (1) in respect of 'D1' and 'D2' exceeds the aggregate of the amounts calculated finally in respect of 'D1' and 'D2', such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year to which such credit relates.

Thus reversal amount is separately required to be computed for non-business purpose and for exempt supply including nil rated.

B. For Capital Goods

(a) the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in **FORM GSTR-2** and shall not be credited to his electronic credit ledger;

(b) the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting taxable supplies including zero-rated supplies shall be indicated in **FORM GSTR-2** and shall be credited to the electronic credit ledger;

(c) the amount of input tax in respect of capital goods not covered under clauses (a) and (b), denoted as 'A', shall be credited to the electronic credit ledger and the useful life of such goods shall be taken as five years:

Provided that where any capital goods earlier covered under clause (a) is subsequently covered under this clause, the value of 'A' shall be arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof and the amount 'A' shall be credited to the electronic credit ledger;

(d) the aggregate of the amounts of 'A' credited to the electronic credit ledger under clause (c), to be denoted as 'Tc', shall be the common credit in respect of capital goods for a tax period:

Provided that where any capital goods earlier covered under clause (b) is subsequently covered under this clause, the value of 'A' arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof shall be added to the aggregate value 'Tc';

(e) the amount of input tax credit attributable to a tax period on common capital goods during their residual life, be denoted as 'Tm' and calculated as: $Tm = Te \div 60$

(f) the amount of input tax credit, at the beginning of a tax period, on all common capital goods whose residual life remains during the tax period, be denoted as 'Tr' and shall be the aggregate of 'Tm' for all such capital goods.

(g) the amount of common credit attributable towards exempted supplies, be denoted as 'Te', and calculated as: $Te = (E \div F) \times Tr$ where,

'E' is the aggregate value of exempt supplies, that is, all supplies other than taxable and zero rated supplies, during the tax period, and

'F' is the total turnover of the registered person during the tax period:

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' calculated by taking values of 'E' and 'F' of the last tax period for which 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, the aggregate value of exempt supplies and total turnover shall exclude the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

(h) the amount T_e along with applicable interest shall, during every tax period of the residual life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit.

(2) The amount T_e shall be computed separately for central tax, State tax, Union territory tax and integrated tax.

✧ As per clause (2) of explanation below the chapter, value of exempt supply shall include

(2) for determining the value of an exempt supply as referred to in sub-section (3) of section 17:-

(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.

4) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to fifty per cent of the eligible input tax credit on inputs, capital goods and input services in that month.

The first proviso provides that the option once exercised shall not be withdrawn during the remaining part of the financial year.

The second proviso provided that the restriction of fifty percent shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

❖ As per rules Rule 3 of input credit provides following manner for availing credit

(a) the said company or institution shall not avail the credit of tax paid on inputs and input services that are used for non-business purposes and the credit attributable to supplies specified in sub-section (5) of section 17, in FORM GSTR-2;

(b) the said company or institution shall avail the credit of tax paid on inputs and input services referred to in the second proviso to sub-section (4) of section 16 and not covered under clause (a);

(c) fifty per cent. of the remaining input tax shall be the input tax credit admissible to the company or the institution and shall be furnished in FORM GSTR-2;

(d) the amount referred to in clauses (b) and (c) shall, subject to the provisions of sections 41, 42 and 43, be credited to the electronic credit ledger of the said company or the institution. The provision relating to matching are provided in section 41,42 and 43.

6) The Central or a State Government may, by notification issued in this behalf, prescribe the manner in which the credit referred to in sub-sections (1) and (2) above may be attributed.

B.6) Credit in Special Circumstance

B.6) i) Person applying for registration in Thirty Days:

A person who has applied for registration under the Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall, subject to such conditions and restrictions as may be prescribed, be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act.

B.6) ii) Voluntary Registration:

A person, who takes registration under sub-section (3) of section 23 shall, subject to such conditions and restrictions as may be prescribed, be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration.

B.6) iii) Person opted for composition switches to normal

Where any registered taxable person ceases to pay tax under section 9, he shall, subject to such conditions and restrictions as may be prescribed, be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 8:

PROVIDED that the credit on capital goods shall be reduced by such percentage points as may be prescribed in this behalf.

B.6) iv) Exempt supply become taxable

Where an exempt supply of goods or services by a registered taxable person becomes a taxable supply, such person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable.

PROVIDED that the credit on capital goods shall be reduced by such percentage points as may be prescribed in this behalf.

The manner of availing credit on capital goods for B.6)(iii) and B.6) (iv) are given in rule 5 is as follows:

(a) The input tax credit on capital goods, in terms of clauses (c) and (d) of sub-section (1) of section 18, shall be claimed after reducing the tax paid on such capital goods by five percentage points per quarter of a year or part thereof from the date of invoice or such other documents on which the capital goods were received by the taxable person.

(b) The registered person shall within thirty days from the date of his becoming eligible to avail of input tax credit under sub-section (1) of section 18 shall make a declaration, electronically, on the Common Portal in **FORM GST ITC-01** to the effect that he is eligible to avail of input tax credit as aforesaid;

(c) The declaration under clause (b) shall clearly specify the details relating to the inputs lying in stock or inputs contained in semi-finished or finished goods lying in stock, or as the case may be, capital goods—

- i. on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act, in the case of a claim under clause (a) of subsection (1) of Section 18,

- i. on the day immediately preceding the date of grant of registration, in the case of a claim under clause (b) of sub-section (1) of Section 18,
- ii. on the day immediately preceding the date from which he becomes liable to pay tax under section 9, in the case of a claim under clause (c) of sub-section (1) of Section 18;
- iii. on the day immediately preceding the date from which supplies made by the registered person becomes taxable, in the case of a claim under clause (d) of subsection (1) of Section 18.

(d) The details furnished in the declaration under clause (c) shall be duly certified by a practicing chartered account or cost accountant if the aggregate value of claim on account of central tax, State tax and integrated tax exceeds two lakh rupees.

(e) The input tax credit claimed in accordance with clauses (c) and (d) of sub-section (1) of section 18 shall be verified with the corresponding details furnished by the corresponding supplier in **FORM GSTR-1** or as the case may be, in **FORM GSTR- 4**, on the Common Port

B.6) v) Transfer of Credit

Where there is a change in the constitution of a registered taxable person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provision for transfer of liabilities, the said registered taxable person shall be allowed to transfer the input tax credit that remains unutilized in its books of accounts to such sold, merged, demerged, amalgamated, leased or transferred business in the manner prescribed.

❖ The Manner of availing credit is as follows as per rule 6.

(1) A registered person shall on sale, merger, de-merger, amalgamation, lease or transfer or change in ownership of business for any reason, furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in FORM GST ITC-02 electronically on the Common Portal along with a request to transfer the unutilized input tax credit lying in his electronic credit ledger to the transferee:

Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.

(2) The transferor shall also submit a copy of a certificate issued by a practicing chartered account or cost accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for transfer of liabilities.

(3) The transferee shall, on the Common Portal, accept the details so furnished by the transferor and, upon such acceptance, the un-utilized credit specified in FORM GST ITC-02 shall be credited to his electronic credit ledger.

(4) The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.

B.6) vi) Person switching to composition Scheme etc.

Where any registered taxable person who has availed of input tax credit switches over as a taxable person for paying tax under section 9 or, where the goods and/or services supplied by him become exempt absolutely under section 11, he shall pay an amount, by way of debit in the electronic credit or cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of such switch over or, as the case may be, the date of such exemption:

PROVIDED that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

❖ Rule 9 prescribe following method of computing reversal of credit

- (a) For inputs lying in stock, and inputs contained in semi-finished and finished goods lying in stock, the input tax credit shall be calculated proportionately on the basis of corresponding invoices on which credit had been availed by the registered taxable person on such input.
- (b) For capital goods lying in stock the input tax credit involved in the remaining residual life in months shall be computed on pro-rata basis, taking the residual life as five years;

Illustration

*Capital goods have been in use for 4 years, 6 month and 15 days. The residual remaining life in months = 5 months ignoring a part of the month
Input tax credit taken on such capital goods = C
Input tax credit attributable to remaining residual life = C multiplied by 5/60*

(2) The amount, as prescribed in sub-rule (1) shall be determined separately for input tax credit of IGST and CGST.

(3) Where the tax invoices related to the inputs lying in stock are not available, the registered person shall estimate the amount under sub-rule (1) based on the prevailing market price of goods on the effective date of occurrence of any of the events specified in sub-section (4) of section 18 or, as the case may be, sub-section (5) of section 29.

(4) The amount determined under sub-rule (1) shall form part of the output tax liability of the registered person and the details of the amount shall be furnished in FORM GST ITC-03, where such amount relates to any event specified in sub-section (4) of section 18 and in FORM GSTR-10, where such amount relates to cancellation of registration.

B.6) vii) Removal of Capital Goods

In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by the percentage points as may be specified in this behalf or the tax on the transaction value of such capital goods or plant and machinery under sub-section (1) of section 15, whichever is higher:

PROVIDED FURTHER that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods under sub-section (1) of section 15.

B.6) viii) Tax invoice shall not be for period prior to one year and computed in manner prescribed.

- 1) The availability of credit in respect of person applying for registration within thirty days, voluntary registration, person opted for composition switches to normal and exempt supply become taxable will be entitled to take the credit in respect of any supply, only if the tax invoice is for the period before expiry of one year from the date of tax invoice. Thus assuming that effective date of registration is 18.04.2018. The invoice should not be for a period prior to 19.04.2017.
- 2) Sub-section (8) and (9) provides that the amount of credit shall be computed in manner as may be prescribed.

Recovery of Credit

It will made as per provision contained in section 73 and section 74.

C. Job Worker

C. i) Goods including capital goods can be sent to job worker directly.

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

C. ii) Input shall be received back with in one year.

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

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

❖ Thus tax with interest will be payable.

C. iii) Capital goods not received back.

Where the capital goods sent for job work are not received back by the principal within a period of three years of being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out:

Provided that where the capital goods are sent directly to a job worker, the period of three years shall be counted from the date of receipt of capital goods by the job worker.

❖ Thus tax with interest shall be payable

C. iv) Time period of one year or three year does not apply to moulds and dies, jigs and fixture or tools.

✦ Procedure for transfer of input or capital goods provided in rule 10, as follows

- (1) The inputs or capital goods shall be sent to the job worker under the cover of a challan issued by the principal, including where the inputs or capital goods are sent directly to jobworker.
- (2) The challan issued by the principal to the job worker shall contain the details specified in rule Invoice.8:
- (3) The details of challans in respect of goods dispatched to a job worker or received from a job worker during a tax period shall be included in FORM GSTR-1 furnished for that period.
- (4) If the inputs or capital goods are not returned to the principal within the time stipulated in section 143, the challan issued under sub-rule (1) shall be deemed to be an invoice for the purposes of this Act.

D. Input Service Distributor

D.1) "Input Service Distributor" is defined in section 2(61) as follows:

(61) "Input Service Distributor" means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office;

D. 2) Manner of Distribution

The Input Service Distributor may distribute the credit subject to the following conditions, namely:

- (a) the credit can be distributed against a prescribed document issued to each of the recipients of the credit so distributed, and such document shall contain details as may be prescribed;
- (b) the amount of the credit distributed shall not exceed the amount of credit available for distribution;
- (c) the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;
- (d) the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed only amongst such recipient(s) to whom the input service is attributable and such distribution shall be *pro rata* on the basis of the turnover in a State of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;

(e) the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.

Explanation –For the purposes of this section,

(a) the “relevant period” shall be

- (i) if the recipients of the credit have turnover in their States in the financial year preceding the year during which credit is to be distributed, the said financial year; or
- (ii) if some or all recipients of the credit do not have any turnover in their States in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed.

(b) the expression “recipient of credit” means the supplier of goods or services or both having the same Permanent Account Number as that of the Input Service Distributor;

(c) the term ‘turnover’, in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule.

❖ Rule 4 prescribes following manner of distribution

(a) the input tax credit available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in **FORM GSTR-6** in accordance with the provisions of Chapter ---- (*Return Rules*);

(b) the Input Service Distributor shall, in accordance with the provisions of clause (d), separately distribute the amount in-eligible as input tax credit under the provisions of sub-section (5) of section 17 and the amount eligible as input tax credit;

(c) the input tax credit on account of central tax, State tax, Union territory tax and integrated tax shall be distributed separately in accordance with the provisions of clause (d);

(d) the input tax credit that is required to be distributed in accordance with the provisions of clause (d) and (e) of sub-section (2) of section 20 to one of the recipients 'R1', whether registered or not, from amongst the total of all the recipients to whom input tax credit is attributable, including the recipient(s) who are engaged in making exempt supply, or are otherwise not registered for any reason, shall be the amount, "C1", to be calculated by applying the following formula:-

$$C1 = (t1 \div T) \times C$$

where,

"C" is the amount of credit to be distributed,

"t1" is the turnover, as referred to in section 20, of person R1 during the relevant period, and

"T" is the aggregate of the turnover of all recipients during the relevant period;

(e) the input tax credit on account of integrated tax shall be distributed as input tax credit of integrated tax to every recipient;

(f) the input tax credit on account of central tax and State tax shall,

(i) in respect of a recipient located in the same State in which the Input Service Distributor is located, be distributed as input tax credit of central tax and State tax respectively;

(ii) in respect of a recipient located in a State other than that of the Input Service Distributor, be distributed as integrated tax and the amount to be so distributed shall be equal to the aggregate of the amount of input tax credit of central tax and State tax that qualifies for distribution to such recipient in accordance with clause (d);

(g) The Input Service Distributor shall issue an ISD invoice, as prescribed in sub-rule (1) of rule invoice-7, clearly indicating in such invoice that it is issued only for distribution of input tax credit.

(g) The Input Service Distributor shall issue an ISD invoice, as prescribed in sub-rule (1) of rule invoice-7, clearly indicating in such invoice that it is issued only for distribution of input tax credit.

(h) The Input Service Distributor shall issue an ISD credit note, as prescribed in sub-rule (1) of rule Invoice-7, for reduction of credit in case the input tax credit already distributed gets reduced for any reason.

(i) Any additional amount of input tax credit on account of issuance of a debit note to an Input Service Distributor by the supplier shall be distributed in the manner and subject to the conditions specified in clauses (a) to (g) and the amount attributable to any recipient shall be calculated in the manner provided in clause (d) above and such credit shall be distributed in the month in which the debit note has been included in the return in FORM GSTR-6.

(j) Any input tax credit required to be reduced on account of issuance of a credit note to the Input Service Distributor by the supplier shall be apportioned to each recipient in the same ratio in which input tax credit contained in the original invoice was distributed in terms of clause (d) above, and the amount so apportioned shall be,-

- (i) reduced from the amount to be distributed in the month in which the credit note is included in the return in **FORM GSTR-6**; and
- (ii) added to the output tax liability of the recipient and where the amount so apportioned is in the negative by virtue of the amount of credit to be distributed is less than the amount to be adjusted.

(2) If the amount of input tax credit distributed by an Input Service Distributor is reduced later on for any other reason for any of the recipients, including that it was distributed to a wrong recipient by the Input Service Distributor, the process prescribed in clause (j) of sub-rule (1) shall, *mutatis mutandis* apply for reduction of credit.

(3) Subject to sub-rule (2), the Input Service Distributor shall, on the basis of the ISD credit note specified in clause (h) of sub-rule (1), issue an ISD Invoice to the recipient entitled to such credit and include the ISD credit note and the ISD Invoice in the return in **FORM GSTR-6** for the month in which such credit note and invoice was issued.

D. 3) Manner of Recovery

Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 73 or section 74, as the case may be, shall, *mutatis mutandis*, apply for determination of amount to be recovered.

E. Matching, Reversal and Reclaim of Input Credit

✦ Section 42 makes provision with regard to verification of credit.

This section reads as follows:

42 (1) The details of every inward supply furnished by a registered taxable person (hereinafter referred to in this section as the 'recipient') for a tax period shall, in the manner and within the time prescribed, be matched-

- (a) with the corresponding details of outward supply furnished by the corresponding taxable person (hereinafter referred to in this section as the 'supplier') in his valid return for the same tax period or any preceding tax period,
- (b) with the additional duty of customs paid under section 3 of the Customs Tariff Act, 1975 (51 of 1975) in respect of goods imported by him, and
- (c) for duplication of claims of input tax credit.

(2) The claim of input tax credit in respect of invoices or debit notes relating to inward supply that match with the details of corresponding outward supply or with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him shall be finally accepted and such acceptance shall be communicated, in such manner as may be prescribed, to the recipient.

(3) Where the input tax credit claimed by a recipient in respect of an inward supply is in excess of the tax declared by the supplier for the same supply or the outward supply is not declared by the supplier in his valid returns, the discrepancy shall be communicated to both such persons in such manner as may be prescribed.

(4) The duplication of claims of input tax credit shall be communicated to the recipient in the manner as may be prescribed.

(5) The amount in respect of which any discrepancy is communicated under subsection (3) and which is not rectified by the supplier in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the recipient, in the manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.

(6) The amount claimed as input tax credit that is found to be in excess on account of duplication of claims shall be added to the output tax liability of the recipient in his return for the month in which the duplication is communicated.

(7) The recipient shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5) if the supplier declares the details of the invoice and/or debit note in his valid return within the time specified in sub-section (9) of section 39.

(8) A recipient in whose output tax liability any amount has been added under sub-section (5) or sub-section (6), shall be liable to pay interest at the rate specified under sub-section (1) of section 50 on the amount so added from the date of availing of credit till the corresponding additions are made under the said sub-sections.

(9) Where any reduction in output tax liability is accepted under sub-section (7), the interest paid under sub-section (8) shall be refunded to the recipient by crediting the amount in the corresponding head of his electronic cash ledger in the manner as may be prescribed:

PROVIDED that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the supplier.

(10) The amount reduced from the output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50.

F. GST Black-Listing of Taxable Person to Block Credit

Section 149 of Model GST Law provides that every taxable person shall be assigned a GST compliance rating score based on his records of compliance with the provisions of this Act. The rating score will be determined on the basis of parameters which will be prescribed.

CBEC has published business process note for returns. Annexure X of the business process note gives details of black-listing of dealers for blocking tax credits. Trigger for blacklisting, default, rating and compliance profile and blacklist are given below:

IX.A. Trigger for Blacklisting

- i. Continuous default for 3 months in paying ITC that has been reversed.*
- ii. Continuous default of 3 months or any 3 month-period over duration of 12 months in uploading sales details leading to reversal of ITC for others. Defaulters of even a single event should also be flagged and put in public domain as being a potential black listed dealer so as to alert the buyers.*
- iii. Continuous short reporting of sales beyond a prescribed limit of 5% (of total sales) for a period of 6 months.*

IX.B. Default

✦ Not doing the activity within the prescribed cut off dates. A system of rating the dealers based on their compliance should also be done and put in public domain to inform prospective buyers.

IX.C. Rating and Compliance Profile

There should also be a continuous rating system, provided under model law, for dealers based on parameters such as promptness in e-return filing, discrepancies detected where the dealer has had to make corrections, making prompt payment in lieu of reversed ITC, etc. The profiles for all dealers would be posted in public domain so that the dealer community is kept aware of the compliance profile of all registered dealers with whom they may have to deal with during the course of their business. While the system of blacklisting may only highlight deviant behaviour after it crosses a certain threshold, a system-updated dealer profile will serve as a continuing rating mechanism for the entire community and leaders within a certain industry can set a benchmark for others to emulate.

IX.D. Blacklisting

- i. Only for regulating ITC by others.*
- ii. Will be based on dealer rating. A dealer will be blacklisted if dealer rating falls below the prescribed limit.*
- iii. To be put in public domain.*
- iv. To be notified (auto-SMS) to all dealers who have pre-registered this dealer (black listed now) as their supplier.*
- v. To be prospective only (from month next to blacklisting)*
- vi. Blacklisted GSTINs cannot be uploaded in purchase details. Corresponding denial of ITC to be supported by suitable provision in the law.*
- vii. ITC reversal in hands of the buyer should take place for disowning of any tax invoice with date prior to effect of blacklisting of the seller.*
- viii. Once blacklisting is lifted, buyers can avail unclaimed ITC subject to this dealer uploading sales details along with tax and interest.*

G. Refund

The provisions relating to refund are contained in Section 54 to Section 58 of GST Act. The various situations in which refund is available to the taxable person are:

- (a) Refund of pre deposit for filing appeal including refund arising in pursuance of an appellate authority's order (when the appeal is decided in favor of the appellant). Payment of duty/tax during investigation but no or less liability arises at the time of finalization of investigation/adjudication
- (b) Export of goods under claim of rebate or refund of accumulated input credit of duty/tax when goods/services are exported
- (c) Taxes paid on supply of goods to SEZ units/developer
- (d) Taxes paid on supply considered as deemed exports
- (e) Taxes paid on export of service
- (f) Taxes paid on supply of services to SEZ unit/developer
- (g) Credit accumulation due to inverted duty structure i.e. due to tax rate differential between output and inputs.
- (h) Finalization of provisional assessment
- (i) Refund of tax paid on purchases made by a specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55.
- (j) Refund on purchases made by international tourist
- (k) Other refunds like excess payment of tax due to mistake or inadvertence, refund of balance in electronic cash ledger.

G. 1) Relevant dates –

Relevant dates are provided in Explanation 2 of sub-section 54 (14). The various provisions are tabulating below:

Sr. No.	Purpose of refund	Clause of the explanation	Relevant date is the date on which	Remarks
1	Goods exported out of India - via sea or air	(a)(i)	Ship or Aircraft leaves India	
2	Goods exported out of India - via land route	(a)(ii)	Goods pass the custom frontier	
3	Goods exported out of India - via post	(a)(iii)	Goods are dispatched by Post Office	
4	Deemed Export u/s 2(37)	(b)	Return (GSTR-1) relating to deemed export is filed	
5	Export of services	(c)(i)	Payment is received in convertible Foreign Exchange	Supply of service is completed prior to receipt of payment
6	Export of services	(c)(ii)	Invoice is issued	Payment is received in advance prior to issue of invoice
7	Refund as a consequence of Order/Judgment	(d)	Order, Judgment/decree, etc. is received	
8	Unutilized input tax credit u/s 54(3)	(e)	Financial year ends	No refund if export is subject to export duty
9	Provisional payment of tax	(f)	Tax is adjusted after the final assessment	
10	Person other than supplier	(g)	Goods or services received by such person	
11	Any other case	(h)	Tax is paid	

G.2) Time Limit

a) As per section 54(1) the time limit for claiming refund is six month from the relevant date. The proviso provides an exception which reads as follows: -

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section- 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.

c) In case of refund to person specified in clause (i) above, the period is six months from the last date of the quarter in which supply was received.

G.3) Refund for Unutilised Credit

As per section 54(3) refund of any un-utilised tax credit at the end of the tax period shall be allowed. The Second proviso to Section 54(3) of the GST Act reads as follows: -

Provided that no refund of unutilised input tax credit shall be allowed in cases other than—

- (i) zero rated supplies made without payment of tax;
- (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified on the recommendations of the Council:

Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

G.4) Documents to be attached

As per rule 1(2) of the Refund Rules the application shall be accompanied by following documents:

- (a) the reference number of the order and a copy of the order passed by the proper officer or an appellate authority or Appellate Tribunal or court resulting in such refund or reference number of the payment of the amount specified in sub-section (6) of section 107 and sub-section (8) of section 112 claimed as refund;
- (b) a statement containing the number and date of shipping bills or bills of export and the number and date of relevant export invoices, in a case where the refund is on account of export of goods;
- (c) a statement containing the number and date of invoices and the relevant Bank Realization Certificates or Foreign Inward Remittance Certificates, as the case may be, in a case where the refund is on account of export of services;
- (d) a statement containing the number and date of invoices as prescribed in rule Invoice.1 along with the evidence regarding endorsement specified in the third proviso to sub-rule (1) in case of supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer;
- (e) a statement containing the number and date of invoices, the evidence regarding endorsement specified in the fourth proviso to sub-rule (1) and the details of payment, along with proof thereof, made by the recipient to the supplier for authorized operations as defined under the Special Economic Zone Act, 2005, in a case where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone developer;
- (f) a statement containing the number and date of invoices along with such other evidence as may be notified in this behalf, in a case where the refund is on account of deemed exports;

- (c) a statement in Annex 1 of FORM GST RFD-01 containing the number and date of invoices received and issued during a tax period in a case where the claim pertains to refund of any unutilized input tax credit under sub-section (3) of section 54 where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies, other than nil-rated or fully exempt supplies;
- (d) the reference number of the final assessment order and a copy of the said order in a case where the refund arises on account of finalisation of provisional assessment;
- (e) a declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed does not exceed two lakh rupees:

Provided that a declaration is not required to be furnished in respect of cases covered under clause (a) or clause (b) or clause (c) or clause (d) of sub-section (8) of section 54;

- (f) a Certificate in Annex 2 of FORM GST RFD-01 issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed exceeds two lakh rupees:

Provided that a certificate is not required to be furnished in respect of cases covered under clause (a) or clause (b) or clause (c) or clause (d) of sub-section (8) of section 54;

Explanation.— For the purposes of this rule,

- (i) in case of refunds referred to in clause (c) of sub-section (8) of section 54, “Invoice” means invoice conforming to the provisions contained in section 31 ;
- (ii) where the amount of tax has been recovered from the recipient, it shall be deemed that the incidence of tax has been passed on to the ultimate consumer.

G.5) Quantum of refund

In case of zero-rated supply exported under bond or letter of under taking. Sub rule 2(4) of Refund Rules provides following formula:

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of

G.6) Authority shall specify that the applicant is entitled for refund and he has borne the incidence of tax; if incidence of tax is not borne by him the refund will be credited to Consumer Welfare Fund.

G.7) The following rules provides for the procedure to be followed:

Rule No.	Description
2	Acknowledgement
3	Grant of provisional refund
4	Order sanctioning refund
5	Credit of the amount of rejected refund claim
6	Order sanctioning interest on delayed refunds

- G.**
- (1) The provisional refund under sub-section (6) of section 54 shall be granted subject to the following conditions –
 - (a) the person claiming refund has, during any period of five years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law where the amount of tax evaded exceeds two hundred and fifty lakh rupees;
 - (b) the GST compliance rating, where available, of the applicant is not less than five on a scale of ten;

no proceedings of any appeal, review or revision is pending on any of the issue which form the basis of the refund and if pending, the same has not been stayed by the appropriate authority or court.

- (2) The proper officer, after scrutiny of the claim and the evidence submitted in support thereof and on being prima facie satisfied that the amount claimed as refund under sub-rule (1) is due to the applicant in accordance with the provisions of sub-section (6) of section 54, shall make an order in **FORM GST RFD-04**, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding seven days from the date of acknowledgement under sub-rule (1) or sub-rule (2) of rule 2.
- (3) The proper officer shall issue a payment advice in **FORM GST RFD-05** for the amount sanctioned under sub-rule (2) and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

 ❖ ① The provisions contained in Section 54(6) and 54(7) regarding provisional refunds are:

(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government, on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

(7) The proper officer shall issue the order under sub-section (5) within sixty days from the date of receipt of application complete in all respects.

THANK YOU

BALANCED VIEW

PRESENTED BY

S.S.GUPTA
Chartered Accountant