
ISSUES IN INWARD SUPPLIES IN GSTR 9 AND 9C

WIRC

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MEANING

Word	Black's law Dictionary	Law Lexicon	Webster's New Dictionary
Denial	1) A statement that something is not true, esp. after someone else has suggested that it is not or might be true; a disaffirmation. 2) A refusal or rejection; esp., a court's refusal to grant a request presented in a motion or petition <denial of the motion for summary judgement>	Act of denying or refusing; a term which implies a contradiction of an assertion. Also, a traverse in the pleading of one party of an allegation of fact of set up by the other.	Declare untrue or non-existent; contradict, reject; disown; refuse to give; refuse
Restriction	1) Confinement within bounds or limits; a limitation or qualification. 2) A limitation (esp.in a deed) placed on the use or enjoyment of property	Restriction includes and covers total prohibition A limitation placed on the use or enjoyment of real or other property; confinement within bounds	Limit, bound

BASICS

- Sec 2(59) – Input - means any goods other than capital goods used or intended to be used by a recipient in the course or furtherance of business
- Sec 2(60) - Input Service - means any service used or intended to be used by a recipient in the course or furtherance of business
- Sec 2(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.

BASICS

- Sec 2(62) – Input tax: in relation to a registered person, means the central tax, State tax, integrated tax, or Union territory 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
 - c) the tax payable under the provisions of sub-sections (3) and (4) of Section 5 of the IGST Act
 - d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
 - e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,

but does not include the tax paid under the composition levy

- Sec 2(63) – Input tax credit: means the credit of Input tax
- Sec 2(94) – Registered person: means a person who is registered but does not include a person having a Unique Identity Number

STATUTORY SECTIONS AND RELEVANT RULES FOR ITC

Chapter V – CGST Act Relevant Sections

Sec 16 – Eligibility and conditions for taking Input Tax credit

Sec 17- Apportionment of credit and blocked credits.

Sec 18 – Availability of credit in special circumstances

Sec 19 – Taking Input tax credit in respect of respect of inputs and capital goods sent for job work.

Sec 20 – Manner of distribution of credit by Input Service Distributor

Sec 21- Manner of recovery of credit distributed in excess.

STATUTORY SECTIONS AND RELEVANT RULES FOR ITC

Chapter V – CGST Rules Relevant Rules

Rule 36 – Documents and conditions for claiming ITC

Rule 37 – Reversal of ITC in case of non-payment

Rule 38 – Credit claim by Banking and Financial Institutions

Rule 39 – Procedure for distribution of ITC by ISD

Rule 40 – Manner of claiming credit in special circumstances

Rule 41 – Transfer of credit on sale, merger, amalgamation,...

Rule 42 - Manner of determination of ITC in respect of inputs or input services and reversal thereof

Rule 43 – Manner of determination of ITC in respect of capital goods and reversal thereof

Rule 44 – Manner of reversal of credit under special circumstances



GSTR 9

INWARD SUPPLIES

SCENARIO				Impact in GST audit of 2018-19
Scenario head	Treatment in 2017-18 (July 2017 to March 2018)	Treatment in FY 2018-19	Treatment in FY 2019-20	
<p><u>ITC Availment (other than RCM and imports)</u></p> <p>ITC availed pertaining to July 2017 to March 2018 (2017-18) claimed during the tax period April 2018 to March 2019 (2018-19)</p>	<p>DISCLOSED/NOT DISCLOSED IN TABLE NO.13 of Form GSTR-9 of 2017-18</p>	<p>Availed in Form GSTR-3B</p>	<p>NA</p>	<p>Ensure that such ITC forms part of:</p> <ul style="list-style-type: none"> Table no.6A of Form GSTR-9 of 2018-19 i.e., 'Input tax credit availed in Form GSTR-3B' (auto populated) and then forming part of subsequent disclosure on classification of ITC i.e., Table no.6B/6C/6D/6G (as the case may be) of the said Form GSTR-9. Table no.8B of Form GSTR-9 of 2018-19 (if it is part of Table no. 6B of the said form)) Table no.12A of Form GSTR-9C of 2018-19 if claimed in books in 2018-19. If already claimed in books in 2017-18 but claimed in GSTR 3B in 2018-19 it will not form part of Table 12 A of Form GSTR 9C Note to be given in Annexure I stating that 8A may contain credit of 2017-18 and there is no column in Table 8 to disclose 2017-18 ITC claimed in 2018-19 <p>Note: Assuming the credits pass eligibility test</p>

INWARD SUPPLIES

SCENARIO				Impact in GST audit of 2018-19
Scenario head	Treatment in 2017-18 (July 2017 to March 2018)	Treatment in FY 2018-19	Treatment in FY 2019-20	
<p><u>ITC Availment (other than RCM and imports)</u></p> <p>ITC availed pertaining to July 2017 to March 2018 (2017-18) claimed during the tax period April 2019 to March 2020 (2019-20)- Beyond the time limit</p>	NA	NA	<p>Availed in Form GSTR-3B</p> <p>AND</p> <p>Reversed in Form GSTR-3B</p> <p><u>OR</u></p> <p>Not reversed in Form GSTR-3B</p>	<p><u>The ITC for 2017-18 has been availed beyond the time limit of March 2019 thus being ineligible</u></p> <p>Two scenarios can be possible:</p> <ul style="list-style-type: none"> ➤ <u>If the same has been reversed in Form GSTR-3B of 2019-20 (on subsequent identification by client):</u> No impact needs to be given in GSTR-9C of 2018-19 ➤ <u>If the same has not been reversed in Form GSTR-3B of 2019-20:</u> No impact needs to be given in GSTR-9C of 2018-19

INWARD SUPPLIES

SCENARIO				Impact in GST audit of 2018-19
Scenario head	Treatment in 2017-18 (July 2017 to March 2018)	Treatment in FY 2018-19	Treatment in FY 2019-20	
ITC Reversal (Scenario A) <i>ITC pertaining to July 2017 to March 2018 (2017-18) availed during the tax period April 2018 to March 2019 (2018-19) reversed later.</i>	DISCLOSED/NOT DISCLOSED IN TABLE NO.13 of Form GSTR-9 of 2017-18 <i>(for availment of credits in subsequent tax periods from April 2018 to March 2019)</i>	Availed in Form GSTR-3B	Reversed in Form GSTR-3B	<p><u>Availment</u></p> <p>Ensure that such ITC availment forms part of:</p> <ul style="list-style-type: none"> • Table no.6A of Form GSTR-9 of 2018-19 <i>i.e., 'Input tax credit availed in Form GSTR-3B'</i> (auto populated) and which is forming part of subsequent disclosure on classification of ITC <i>i.e., Table no.6B/6C/6D/6G</i> (as the case may be) of the said Form GSTR-9 • Table no.8B of Form GSTR-9 of 2018-19 <i>if it is part of Table no. 6B of the said form, otherwise in the relevant classification of table no.8 which is self-explanatory)</i> • Table no.12A of Form GSTR-9C of 2018-19 <p><u>Reversal in 2019-20</u></p> <p><u>Table no.14 – To be shown as unreconciled difference with a note that the credits have been reversed in 2019-20</u></p> <p>(To be mentioned in observation in GSTR 9C)</p>

INWARD SUPPLIES

SCENARIO				Impact in GST audit of 2018-19
Scenario head	Treatment in 2017-18 (July 2017 to March 2018)	Treatment in FY 2018-19	Treatment in FY 2019-20	
ITC Reversal (Scenario B) <i>ITC availed pertaining to July 2017 to March 2018 (2017-18) reversed during the tax period April 2018 to March 2019 (2018-19)</i>	<p>DISCLOSED in Table no.6A of GSTR-9 of 2017-18 i.e. 'Input tax credit availed in Form GSTR-3B'</p> <p>DISCLOSED/NOT DISCLOSED IN TABLE NO.12 of Form GSTR-9 of 2017-18 <i>(for reversal of credits in subsequent tax periods from April 2018 to March 2019)</i></p>	Reversed in Form GSTR-3B	NA	<p>➤ <u>In case of reversal, if the amount stated in Table 4D of FORM GSTR-3B (ineligible ITC) of 2018-19</u></p> <ul style="list-style-type: none"> Eligible ITC (Net of Ineligible Credits) disclosed in Table No.4A of GSTR-3B will be disclosed as part of Table No.6A of GSTR-9 of 2018-19 i.e., 'Input tax credit availed in Form GSTR-3B' (auto populated) and then forming part of subsequent disclosure on classification of ITC i.e., Table no.6B/6C/6D/6G (as the case may be) of the said Form GSTR-9 Ineligible Credits need not be disclosed as Part Of GSTR-9 <p>➤ <u>In case of reversal, if amount mentioned in Table no. 4D of FORM GSTR-3B was also reversed in Table 4B of FORM GSTR-3B of 2018-19</u></p> <p>If the same is reversed in GSTR-3B, then the reversal will be shown as part of Table no.7 H (others) of GSTR-9 of 2018-19</p>

INWARD SUPPLIES

Teething issues

- In part V, table 12 and 13 Form GSTR 9 provides adjustments of ITC of subsequent year. Similar table be provided for adjustments of ITC of the year 2017-18 shown in 3B of the year 2018-19 which is currently not there.
- In table 8 for 2A reconciliation, a separate table may be provided to show adjustment of ITC claimed for 2017-18 shown in 3B of 2018-19, to arrive the total amount of ITC for the year 2018-19 claimed in 3B of 2018-19



GSTR 9 C

ITC VERIFICATION

- Detailed examination of purchase register and Input GST ledgers must be carried out GSTIN wise
- Cases where consideration is not paid within 180 days from the date of invoice have to be verified. What happens when goods are received late due to floods etc. date should from receipt of goods or date of invoice?
- For goods check GRN, delivery challan for receipt of goods . Cut off procedure for March 31 transactions to be done
- Goods received on lots / instalments – ITC to be claimed on last receipt of last lot

ITC VERIFICATION

- Obtain reconciliation of ITC claimed in GSTR 3B with GSTR 2A report. – check the credit pertains to the registered persons - say If a supplier in GSTR I wrongly uploads goods supplied to another RP but uploads GSTN of some the person under audit
- ITC of capital goods – to check depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961 has not been claimed

ITC VERIFICATION

- Verify vendor wise invoices to check the contents of tax invoice
- ISD invoices where credit is distributed
- Check eligibility of ITC credits claimed viz. any blocked credits have been availed.
- Verify credits are claimed correctly i.e.. CGST / SGST is not claimed as IGST or vice versa
- Check application of Rule 42 / 43 for reversal of credits
- Check reversal of ITC – inward supply returns
- Check reversal of ITC – credit notes received for discounts given by the supplier

OTHERS

- Analytical review procedures
 - Ratio analysis
 - Comparison with previous period F/S, reports, 9 , 9C
- Sampling
- Documentation
- Opinion of experts, if any, obtained by the entity
- Management representation
- Erroneous refund repayment if any – check refund received provisionally and final refund order
- Obtain copies of notices issued by tax office, reply filed and order
- Check if any appeal has been filed and status of the same



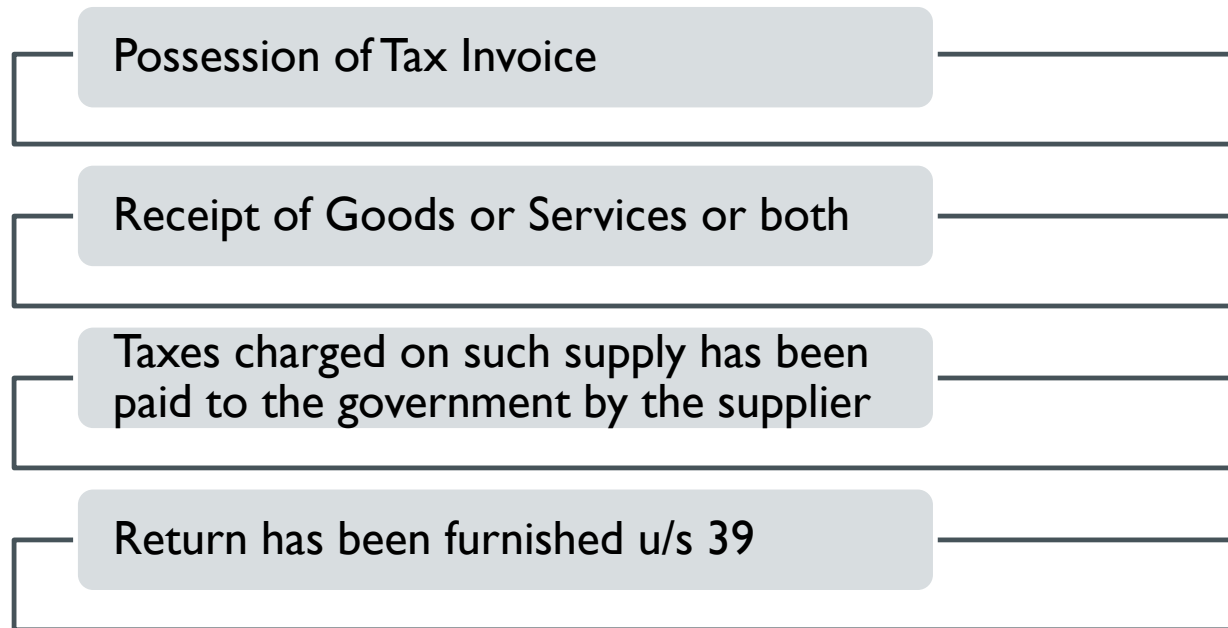
General ITC

SECTION 16 (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

SECTION 16 – ELIGIBILITY AND CONDITIONS FOR ITC

- Every registered person shall take credit on input tax charged on any supply of goods or services or both which are used or intended to be used in the course of furtherance of business
- The registered person shall take credit of Input tax on satisfying the conditions mentioned below:



SECTION 16 – ELIGIBILITY AND CONDITIONS FOR ITC

- If goods against one invoice are received in lots or instalments, input tax credit can be taken on receipt of last instalment or last lot;

Illustration

A consignment of coal is to be dispatched from Kolkata to Mumbai using five trucks. An invoice was issued to the recipient on March 30, 2018. Four trucks reached the claimant by March 30, 2018 but the truck carrying the final lot of the consignment reached the recipient only on April 02, 2018. In this case, input tax credit on the entire consignment can be availed only in the month of April 2018.

SECTION 16 – ELIGIBILITY AND CONDITIONS FOR ITC

(3) The registered person cannot take GST paid on the capital goods as input, if he claims depreciation on GST component of capital goods and Plant and Machinery under the Income Tax Act, 1961.

Illustration

GB Ltd purchases a machinery costing 1,18,00,000 including GST of 18,00,000. If GB Ltd claims depreciation on the entire value, i.e., 1,18,00,000 under Income Tax Act, 1961. GB cannot take 18,00,000 as Input tax credit

(4) Input credit cannot be taken on invoices and debit notes pertaining to a FY after the due date of furnishing return (Section 39) for the month of September following that FY or filing annual return, *whichever is earlier*

RULE 36 – DOCUMENTARY REQUIREMENTS AND CONDITIONS FOR ITC

Following are the requirements for claiming Input:

1) The Input credit is available by a registered person, including ISD if the following are available:

- a • Supplier's invoice for goods or services or both
- b • Invoices raised by recipient for payment of tax under "Reverse Charge Mechanism"
- c • A debit note issued by a supplier
- d • A bill of entry or any other similar document
- e • An ISD invoice or ISD credit note or any document issued by an ISD

2) Invoice contains all details as specified*; and

Details are furnished in **GSTR-2**

*name, address, GSTIN, serial number, date of issue, HSN Code, description, place of delivery, price, tax

3) If tax has been paid by the supplier **after order** has been passed **for demand** of the same due to fraud, wilful misrepresentation, suppression of facts, then **ITC on such tax paid cannot be availed by the recipient.**

SECTION 17 – APPORTIONMENT AND BLOCKED CREDITS

1) ITC for Business and Other purposes:

The Input tax credit of only those **attributable to the business** shall be taken as Eligible Input tax credit; In other words ITC attributable to other purpose is not eligible to claim

2) ITC for Taxable including zero rated supplies and exempt supply:

The Input tax credit of only those **attributable to the taxable supplies** (which includes zero-rated supplies) shall be taken as Eligible Input credit; In other words ITC attributable to exempt supply is not eligible to claim

SECTION 17 – APPORTIONMENT AND BLOCKED CREDITS

- Exempt supply means supply of any goods or services or both which attracts **nil rate** of tax or which may be **wholly exempt** from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes **non-taxable supply** – Section 2(47)
- No-taxable supply means a supply of goods or services or both which is not leviable to tax under CGST Act or under the IGST Act – Section 2 (78)
- Exempt Supplies shall include additionally - supplies on which recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and sale of building subject to para 5 (b) of Schedule II – Section 17(3)

Illustration - Rule 42 (1)

Sl. No	Particulars	Reference	CGST	SGST/ UTGST	IGST
1	Total input tax on inputs and input services for the tax period May 2018	T	1,00,000	1,00,000	50,000
	Out of the total input tax (T):				
2	Input tax used exclusively for non-business purposes (Note 1)	T1	10,000	10,000	5,000
3	Input tax used exclusively for effecting exempt supplies (Note 1)	T2	10,000	10,000	5,000
4	Input tax ineligible under Section 17(5) (Note 1)	T3	5,000	5,000	2,500
	Total		25,000	25,000	12,500
	ITC credited to Electronic Credit Ledger (Note 1)	$CI = T - (T1 + T2 + T3)$	75,000	75,000	37,500
	Input tax credit used exclusively for taxable supplies (including zero-rated supplies)	T4	50,000	50,000	25,000
	Note 1: T1, T2, T3 and T4 shall be determined as above and declared in Form GSTR-2				

Illustration - Rule 42 (I)

Sl. No	Particulars	Reference	CGST	SGST/ UTGST	IGST
	Common credit	$C2 = C1 - T4$	25,000	25,000	12,500
	Aggregate value of exempt supplies for the tax period May 2018 (Note 2 & 3)	E	25,00,000	25,00,000	25,00,000
	Total Turnover of the registered person for the tax period May 2018 (Note 2)	F	1,00,00,000	1,00,00,000	1,00,00,000
	Credit attributable to exempt supplies	$D1 = (E/F) * C2$	6,250	6,250	3,125
	Credit attributable to non-business purposes	$D2 = C2 * 5\%$	1,250	1,250	625
	Net eligible common credit	$C3 = C2 - (D1 + D2)$	17,500	17,500	8,750
	Total credit eligible (Exclusive + Common)	$G = T4 + C3$	67,500	67,500	33,750

Illustration - Rule 42 (1)

- Note 1: T1, T2, T3 and T4 shall be DETERMINED AS ABOVE and declared in Form GSTR-2
- Note 2: If the registered person does not have any turnover for May 2018, then the value of E and F shall be considered for the last tax period for which such details are available
- Note 3: Aggregate value excludes taxes
- Note 4: The registered person is expected to make such computation for each tax period and for the whole year as well. In case the resultant computation results in short credit availed, then such credit can be claimed in the electronic credit ledger. Further, if on computation for the whole year, the registered person has claimed excess credit on a month on month basis, then such excess credit claimed for the year shall be added back to the output liability and will be liable for payment with interest.

SECTION 17 – APPORTIONMENT AND BLOCKED CREDITS

Banking Company or a Financial Institution including a non-banking financial company

A banking company or a financial institution have an option to comply with either proportionate method reversal or avail every month **50% of the eligible input tax credit** of that month on inputs, capital goods and input services and the balance shall lapse.

SECTION 17 – RESTRICTIONS

Motor vehicle

- **July 2017 to January 2019** - The restriction was applicable on usage of motor vehicles for all purposes excluding for transportation of goods and taxable supply of transportation of passengers, imparting training and further supply of such vehicles. Further, ITC was restricted on motor vehicles used for transportation of persons irrespective of seating capacity.
- **Effective February 2019** - Input tax credit (ITC) restriction on motor vehicles is now limited to usage of the same for transportation of persons only (with certain exclusions)

SECTION 17 – RESTRICTIONS

Motor vehicle

Purpose	Specification	Conditions
Transportation of persons	Approved seating capacity upto 13` persons (including drivers)	Capacity upto 13 Credit eligible only if the used for making following taxable supplies: <ul style="list-style-type: none">▪ Further supply of such motor vehicles▪ Transportation of passengers▪ Imparting training for motor driving
Transportation of persons	Approved seating capacity more than 13 persons (including drivers)	Credit is admissible without any restriction

- ITC on motor vehicles like dumpers, tippers, fork lift trucks etc., is now allowed

SECTION 17 – RESTRICTIONS

Vessel / Aircraft: ITC on vessels and aircrafts shall be allowed only when they are used for

- Further taxable supply of vessel / aircraft
- Transportation of passengers
- Imparting of training on navigation of vessel / flying of aircraft

ITC of motor vehicle, vessel / aircraft used for transportation of goods is allowed

SECTION 17 – RESTRICTIONS

General Insurance, repair and maintenance services of motor vehicle / vessel / aircraft - ITC on payment of general insurance, repair and maintenance services in relation to the motor vehicles, vessels or aircraft will be allowed effective February 2019 as follows:

- ITC on such motor vehicles, vessels and aircrafts is eligible when availed as discussed in slides 40, 41 and 42.
- To a manufacturer of motor vehicles, vessels and aircrafts.
- To the person engaged in supply of general insurance services in respect of the motor vehicles, vessels and aircrafts insured by him.
- For the period July 2017 to January 2019, some experts are of the view that the input tax credit in respect of the above was available without any restrictions.

SECTION 17 – RESTRICTIONS

Leasing, renting or hiring of motor vehicles / vessels / aircraft –

- **July 2017 to January 2019** – Restriction was only on rent a cab 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. ITC credit of air tickets purchased for travel of personnel was allowed; however, there is a school of thought that ITC credit of air tickets purchased for travel of personnel is not eligible even during this period.

Effective February 2019 – Credit would be admissible only in the following circumstances:

- ITC on such motor vehicles, vessels and aircrafts is eligible when availed as discussed in slides 40, 41 and 42.
- Where inward supply of such service is used by the registered person for making an outward taxable supply of same categories of goods or services.
- When inward supply of such service is used by the registered person for making **as an element** of a taxable composite or mixed supply.
- Where it is obligatory for an employer to provide the same to its employees under any law for the time being in force

SECTION 17 – RESTRICTIONS

Food and beverages; outdoor catering; beauty treatment; health services; cosmetic and plastic surgery; life insurance and health insurance - Credit would be admissible only in the following circumstances:

- Where inward supply of such service is used by the registered person for making an outward taxable supply of same categories of goods or services.
- When inward supply of such service is used by the registered person for making as an element of a taxable composite or mixed supply.
- 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 a club, health and fitness centre Travel benefits extended to employees on vacation such as leave or home travel concession - Credit would be admissible only when it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

SECTION 17 – APPORTIONMENT AND BLOCKED CREDITS

If any works contract services has been received towards “**construction**” of an immovable property (other than plant and machinery)

Except in cases where the works contract services are received for further supply of works contract.

If goods and services are received by a taxable person for “**construction**” of a immovable property on *his own account* **Including** in cases where such goods or services are used in course of furtherance of business – **No ITC**

Example: Malls, Commercial complexes

Example: -

Two companies receiving Works contract services

1. Banking Company– NO ITC
2. Developer in case real estate – whether ITC is available?

Safari Retreats Private Limited (W.P.(C) No.20463 OF 2018) - allowed input tax credit on inputs and input services used for construction of commercial projects i.e. shopping malls and utilization of the same against GST payable on the rental income of the assessee from tenants of the shopping mall. Presently, the matter is pending before the Honourable Supreme Court of India vide Special Leave Petition (Civil) Diary No(s). 37367/2019

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- Chillers, AHUs, elevators, escalators, conveyor belts, Water Treatment Plant, Sewage Treatment Plant can be contended as falling within the meaning of Plant and Machinery (for brevity, P&M) - Can input tax credit of P&M may be claimed.
- Section 17(5) (c) of the CGST Act, 2017 excludes P&M, which means that works contract service for P&M is eligible as input tax credit.
- Held in the AAAR as follows
 - Chiller, Air Handling Unit, Indoor/Outdoor Surveillance System (CCTV), electrical wiring and fixtures, Public Health Engineering (PHE), Fire-fighting and water management pump system do not qualify as plant or machinery but are items which are procured for the purpose of construction of the immovable property. Hence, the appellant is not eligible for the input tax credit
 - Water treatment Plant and Sewage Treatment Plant form part of the civil structure of the immovable property. Civil structures are specifically excluded from the definition of “Plant and machinery”. So also, the DG Set and Transformer - they are procured as independent items and their installation becomes part of the civil structure of the immovable property - the appellant is not eligible to input tax credit

SECTION 17 – APPORTIONMENT AND BLOCKED CREDITS

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

- If the inward supply of goods or services or both are received from a **composition dealer** (Sec 10);
- If a “***non-resident taxable person***” receives any goods or services or both **except** on goods imported by him;
- If goods or services or both are used for **personal consumption**;
- If goods are lost, stolen, destroyed, written off or disposed of by way of gift samples;
- If goods have been –
 - a. Determined as short paid or erroneously refunded or ITC wrongfully availed or utilised for a reason of fraud or misrepresentation of facts or suppression of facts (Sec 74)
 - b. Detention or seizure of goods while in transit in contravention to provisions of this Act (Sec 129)
 - c. Supplies or receives goods in contravention to this Act, evades payment of tax, not getting registered under this Act, etc (Sec 130)

CIRCULAR NO. 92/11/2019-GST – 07.03.2019– SALES PROMOTION SCHEME

- **Free samples and gifts:** Samples supplied free of cost or gift given do not qualify as 'supply' as there is no consideration for the same. However, the ITC on inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration is not eligible and the same is restricted under Section 17(5) (h) of the CGST Act, 2017. However, it is relevant to note that where such activity of distribution of gift or free samples falls under the ambit of Schedule I of the CGST/SGST Act 2017 (supply without consideration) i.e. to related persons, the same shall be treated as supply and the corresponding ITC would be eligible to be claimed.
- **Buy-one-Get-one offers:** Supplies made under 'Buy-one-Get-one' offer shall be treated as two or more individual supply for a single price and not individual supply of free goods. The taxability of such transaction shall be dependent upon as to whether same is composite supply or mixed supply and the corresponding ITC would be eligible to be claimed.
- **Discounts including 'Buy more, save more' offer:** In certain cases, the supplier offers staggered discounts or periodic/year-end discounts. These discounts, known as volume discounts, are generally determined after the supply has been effected and at the year end. It has been clarified that such discounts are to be excluded while determining the value of supply if they are established in terms of the agreement entered prior to supply and ITC attributable to discount is reversed by the recipient of supply. The corresponding ITC would be eligible to be claimed.

CIRCULAR NO. 92/11/2019-GST – 07.03.2019– SALES PROMOTION SCHEME

- **Secondary discounts:** Secondary discounts are not known to at the time of supply and are offered after the supply is complete. It has been clarified that such discounts, which are covered by financial / commercial credit note, are not to be excluded while determining value of supply as they are not known at the time of supply and the conditions laid down for post-supply discount are not satisfied. There is no impact on availability of input tax credit in the hands of supplier. **Buy-one-Get-one offers:** Supplies made under 'Buy-one-Get-one' offer shall be treated as two or more individual supply for a single price and not individual supply of free goods. The taxability of such transaction shall be dependent upon as to whether same is composite supply or mixed supply and the corresponding ITC would be eligible to be claimed.

CIRCULAR NO. 105/24/2019-GST – 28.06.2019 - CLARIFICATION ON VARIOUS
DOUBTS RELATED TO TREATMENT OF SECONDARY OR POST-SALES
DISCOUNTS

Circular withdrawn vide Circular No. 112/31/2019 – GST dated 03.10.2019

FREE SAMPLE / FREE SUPPLY

- Free Sample – Section 17(5) (h) specifically provides for restriction of ITC on free sample – Physician sample not for sale in Pharma industry
- Free Supply – Buy 2 get 1 free
 - Is this free sample – No
 - Is ITC required to be reversed?
 - Exempt supply means supply of any goods or services or both which attracts **nil rate** of tax or which may be **wholly exempt** from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes **non-taxable supply** – Section 2(47)
 - No-taxable supply means a supply of goods or services or both which is not leviable to tax under CGST Act or under the IGST Act – Section 2 (78)
 - Can free supply be construed as non-taxable supply and therefore get covered under exempt supply and required ITC reversal of ITC

SECTION 18 – AVAILABILITY OF CREDIT IN SPECIAL CIRCUMSTANCES

The Input tax credit on inputs is **available** in the following special circumstances:

Applied and Granted
Registration

Voluntary registration
under GST

Ceases to pay tax
under Composition
Levy

Exempt goods or
services or both
become taxable

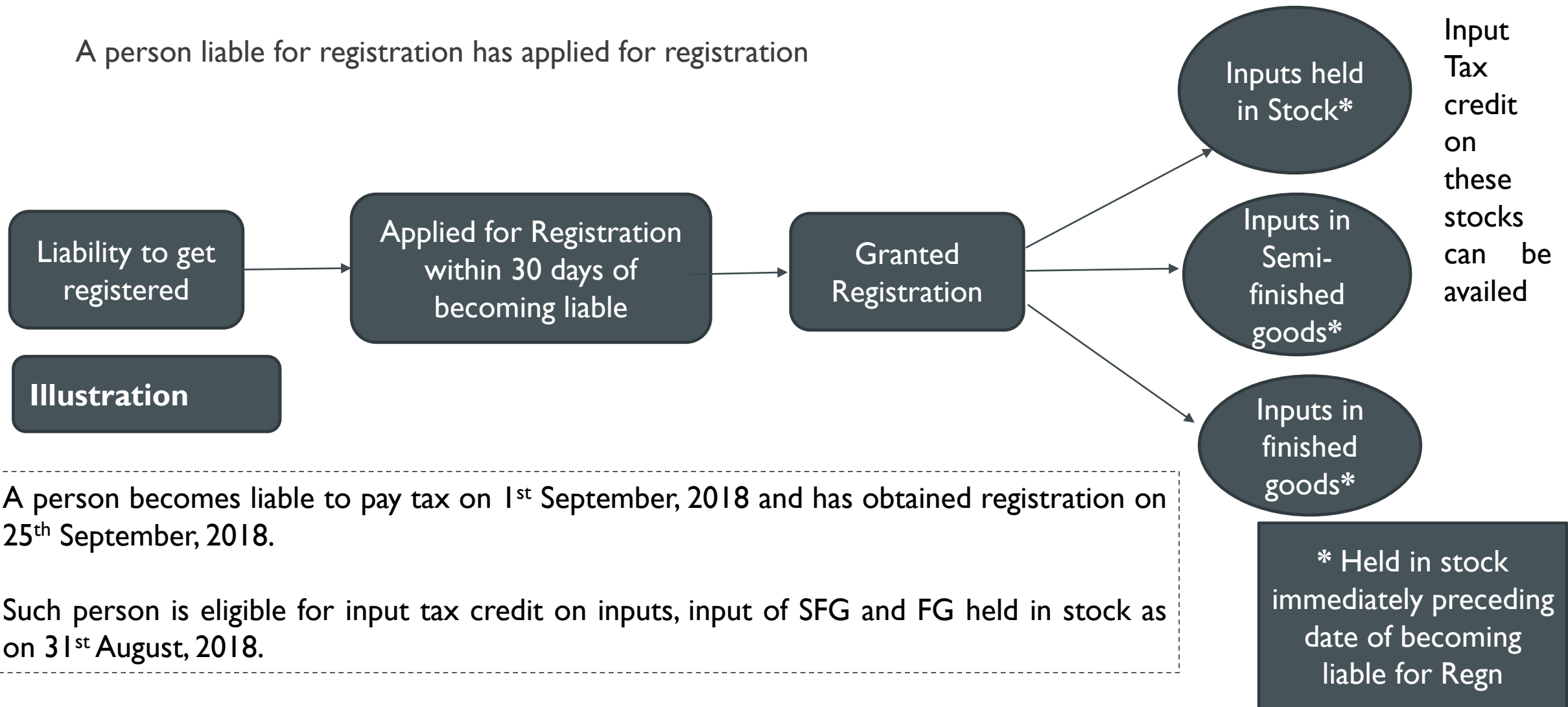
The Input tax credit of inputs which was **previously availed** and is not available when:

Business is transferred to another person due to
merger, demerger, amalgamation, lease or
transfer

Person who opts to pay tax under Composition
Levy or goods or services or both become
exempt

SECTION 18 – LIABLE FOR REGISTRATION

A person liable for registration has applied for registration



SECTION 18 – VOLUNTARY REGISTRATION

A person taking voluntary registration under Sec 25(*Registration Procedure*) is entitled to take inputs held in



on the **day immediately preceding the *date of grant of registration***

Illustration

Mr Anand applies for voluntary registration on 5th June, 2018 and obtained registration on 22th June, 2018.

Mr Anand is eligible for input tax credit on inputs in stock as on 21st June, 2018.

SECTION 18 – CEASES TO BE COMPOSITE DEALER

If a person ceases to pay tax under Sec 10(**Composition Levy**) he is entitled to take inputs held in



held in the stocks on the **day immediately preceding** the date on which he becomes liable to pay tax.

- The credit on capital goods shall be reduced on a 5% points per quarter of a year from the date of invoice till the date of cessation of composition
- Registered person is eligible to take input tax credit of invoices within **one year** from the date of invoice subject to conditions that the same are in stock on the date on becoming taxable

Illustration

Mr. Bharat, registered person was paying tax under composition rate upto 30th July, 2018. However, w.e.f 31st July, 2018. Mr. Bharat becomes liable to pay tax under regular scheme.

Mr. B is eligible for input tax credit on inputs held in stock as on closure of business hours as on 30th July, 2018.

EXEMPT SUPPLY TO TAXABLE SUPPLY

If an **exempt supply** of goods or services or both by a registered person **becomes a taxable supply**, he is entitled to take input tax in respect of inputs held in



The stocks and capital goods should be relatable to exempt supplies only

on the **day immediately preceding** the date from which such supply becomes taxable. Input services credit is not eligible

Note:

- In all the above case, the registered person is eligible to take input tax credit of invoices within **one year** from the date of invoice subject to conditions that the same are in stock on the date on becoming taxable.
- Capital Goods credit to be reduced on a 5% points per quarter of a year from the date of invoice till the date of becoming taxable

ITC – CHANGE IN THE CONSTITUTION

- Sale
- Merger
- Demerger[#]
- Amalgamation
- Lease
- Transfer/ change in ownership of business

ITC remaining unutilized in books of such registered persons can be transferred

Transferee

CONDITIONS

1. Transferor to file request to transfer unutilised ITC in **Form GST ITC-02**;
2. Certificate by CA/ cost accountant that change in constitution has taken place with a **specific provision for transfer of liabilities**.
3. **Transferee to accept** details furnished;
4. Transferee to **account for the inputs & capital goods** transferred;

In case of demerger ITC to be apportioned in the ratio of value of assets in the new unit

SECTION 18 – SHIFTS TO COMPOSITION / GOODS EXEMPT

If a registered person availed ITC under regular scheme & subsequently

- opts for paying tax under **Composition Scheme** or
- the goods or services have become **exempt** :

He shall pay credit of Input tax by way debit in Electronic Credit Ledger or Electronic Cash Ledger, equivalent ITC involved in Input held in -

Stock

Semi-
finished
goods

Finished
goods

Capital
goods

On the date immediately preceding the date of exercising Composition Levy or goods becoming exempt.

After utilizing the Electronic Credit Ledger, balance, if any, shall lapse

CGST RULE 44 – MANNER OF REVERSAL OF ITC

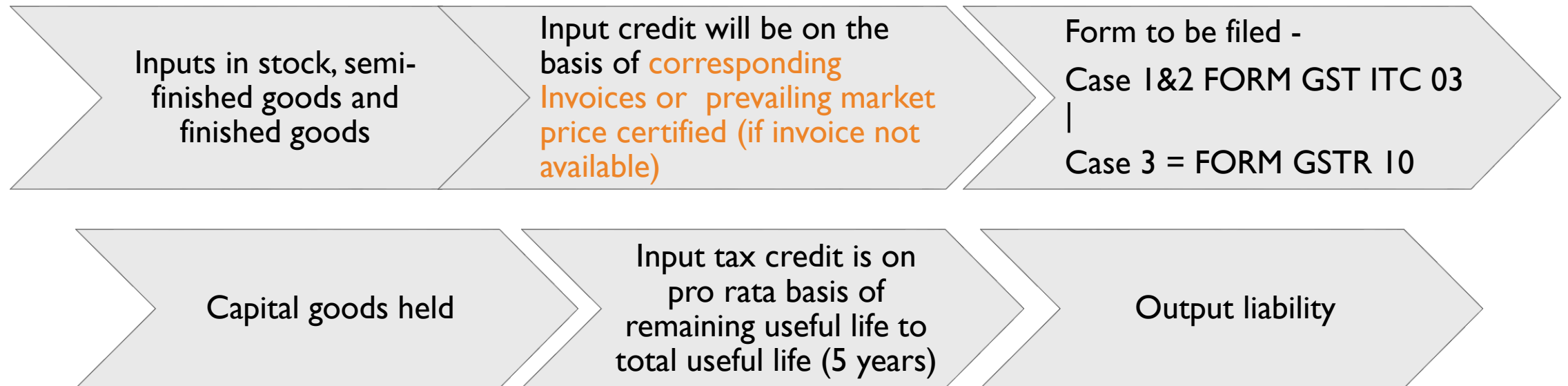
If a registered person who previously availed Input credit of stock and :

Case 1: Opt to pay tax under Composition Levy;

Case 2: “Taxable” supplies have become “Exempt”; or

Case 3: If Registration has been cancelled,

the amount of input credit to be debited in electronic credit ledger or electronic cash ledger is determined as follows:



The above calculation is calculated separately for central tax, State tax and Integrated tax

Illustration Rule 44: Where input tax credit lapses

Sl. No	Particulars	Reference	Amount
1	Value of capital goods		1,00,000
	IGST @ 12%	A	12,000
	Invoice Value		1,12,000
2	Date of shift to composition scheme		22 January 2019
3	Date of inward supply and use of capital goods		01 September 2017
4	Period of use (days)		508
	Period of use (months)		42
	Period of use (years)		3 years 6 months
5	Residual life in months (Considering full life as 5 years)	B	18
6	ITC attributable to residual life (To be added to the output tax liability of the registered person)	$C = (A*B/60)$	3,600
5	ITC on inputs other than capital goods (<i>Assumed value</i>)		5,000
6	ITC utilized for capital goods for residual life		3,600
7	Balance ITC - will lapse		1,400

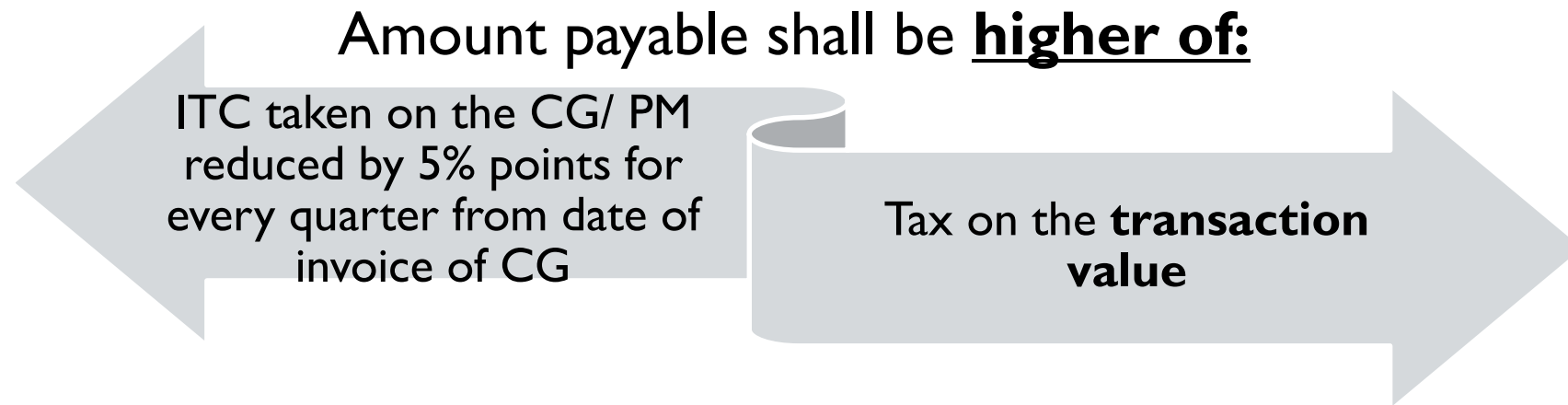
Illustration Rule 44: Where input tax credit becomes payable

Sl. No	Particulars	Reference	Amount
1	Value of capital goods		1,00,000
	IGST @ 12%	A	12,000
	Invoice Value		1,12,000
2	Date of shift to composition scheme		22 January 2019
3	Date of inward supply and use of capital goods		01 September 2017
4	Period of use (days)		508
	Period of use (months)		42
	Period of use (years)		3 years 6 months
5	Residual life in months	B	18
	(Considering full life as 5 years)		
6	ITC attributable to residual life	$C = (A*B/60)$	3,600
	(To be added to the output tax liability of the registered person)		
5	ITC on inputs other than capital goods (<i>Assumed value</i>)		1,500
6	ITC utilized for capital goods for residual life		1,500
7	Balance tax payable		2,100

Illustration Rule 44 - Where no payment is required

Sl. No	Particulars	Reference	Amount
1	Value of capital goods		1,00,000
	IGST @ 12%	A	12,000
	Invoice Value		1,12,000
2	Date of shift to composition scheme		22 January 2021
3	Date of inward supply and use of capital goods		01 September 2017
4	Period of use (days)		1239
	Period of use (months)		103
	Period of use (years)		8 years 6 months
5	Residual life in months (Considering full life as 5 years)	B	-
6	ITC attributable to residual life (No payment required)	$C = (A*B/60)$	0

AMOUNT PAYABLE IN CASE OF SUPPLY OF CG & PM^{\$}



However, in case of scrapping of refractory bricks, moulds and dies, jigs and fixtures, tax may be paid on the transaction value.

^{\$}**Plant and machinery:** Means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both; and

- Includes such foundation and structural supports; but
- Excludes land, building or any other civil structures, telecommunication towers and pipelines laid outside the factory premises.

SECTION 19 – INPUT TAX CREDIT FOR JOB WORK

Inputs

- The principal, subject to conditions, is allowed to take input credit on “**inputs**” sent for a job work;
- The principal is allowed to take “**input credit**” on “**inputs**” even if these inputs are **directly sent** to the job worker without being brought to principal’s place of business;
- The inputs sent to the job worker shall be:
 - received by the principal after completion of job work within one year of being sent out; or
 - supplied from the job worker’s place of business within one year of being sent out [143(1)(a)];

If not received or supplied within one year, it is considered as a supply by principal to job worker **on the day when inputs were sent or**

if directly received by job worker, **date of receipt of inputs by job worker**

SECTION 19 – INPUT TAX CREDIT FOR JOBWORK

Capital Goods

- The principal, subject to conditions, is allowed to take input credit on **“capital goods”** sent to a job worker for a job work;
- The principal is allowed to **“input credit on capital goods”** even if these inputs are **directly sent** to the job worker without being brought to principal’s place of business;
- The capital goods sent to the job worker shall be received by the principal **within 3 years** of being sent out, **else** it shall be treated as supply of capital goods from principal to job worker.
 - If capital goods are directly received by job worker, 3 years shall be counted from **date of receipt of capital goods by job worker**
- Condition of return It shall not apply to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work.

RESIDENT WELFARE ASSOCIATION (RWA)

- Share of contribution paid by member of RWA for monthly maintenance
 - Exemption upto Rs. 7,500/- per month per member (upto 24.01.2018 Rs. 5,000/- per month) – Sl. No 77 of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017
- Whether RWA is entitled to input tax credit of **all services / goods** received?
- Is Input tax credit required to be reversed by the RWA where certain members contribution is < Rs. 7,500 per month

ISSUES

- Whether interest on deposits, loans (other than banking company or financial institution) by a Company will form part exempted value for reversal of ITC?
 - Explanation to Rule 43 not required to reverse
- Whether ITC is required to be reversed in case of transaction of securities?
 - Yes. Explanation to Rule 45 - value of security shall be taken as 1% of the sale value of such security
- Is ITC required to be reverse in case of normal wastage arising during manufacture
- Whether a developer of building is required to reverse ITC in respect UDI in land?
- In respect of residential flats supplied to customers by a developer after obtaining occupancy certificate, is ITC of GST required to be reversed?
- In respect of inputs / input services claimed by developer in erstwhile law and residential flats supplied in GST period after obtaining occupancy certificate, is ITC of inputs / input services required to be reversed?
- What is the time limit to claim input tax credit for a financial year?

ISSUES

- Whether input tax credit not claimed within the time prescribed for a financial year be claimed in annual return?
- When should input tax credit claim be made in case of annual maintenance service?
- A registered person has availed certain input tax credit which are disputable (for instance ITC on civil works on renovation of building meant for renting) but has not utilized for payment of output tax. **Is interest payable for availment but non-utilization of input tax credit?**
- A registered person issues tax invoice and does not affix signature on the invoice. The tax invoice mentions 'this is a computer-generated invoice and does not require signature'. The tax invoice has all the other particulars prescribed under Rule 46 of CGST Rules, 2017 excluding signature. **Can input tax credit be claimed by the recipient even if signature is not there on the tax invoice?**
- ABC Private Limited a service provider has Head Office at Bangalore and branches at Hyderabad and Cochin. The head office receives invoices towards audit fee, software licence for use of software by HO and branches and insurance for employee. **Whether the Head Office needs to distribute the input tax credit by Input Service Distributor mechanism or can it issue an invoice to the branches on services received by it by way of cross charge?**

ISSUES

- What is the position of input tax credit availment on non-receipt of goods and / or service?
- What is the ITC implication on shelf life of expired goods?
- What is the position of ITC in respect of Hotel industry on the following
 - Wastage of food
 - Complimentary food to staff / guests
 - Complimentary airport drop
 - Free rooms to staff / others
- What if ITC availed does not match with books of accounts / portal?
- How does one avail ITC if tax invoice is inclusive of tax?



THANK YOU

CA S.Venkataramani