

## **Gearing Up for GST –Input Tax Credit under GST - Part 4**

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*This article is based on the GST Bill 2017 which was released in public domain in last week of March 2017.*

### **Background**

The promise by all the FMs on the various forums and business expectation was that seamless credit would be permitted under GST. The reality is that restrictions on credit availment have been continued under GST regime except for traders getting service tax and service provider getting VAT credit. On going through Central GST Bill 2017, it can be seen that instead of permitting all input tax credit (ITC) related to business, artificial restrictions such as on barring ITC on construction [permitted to persons making outward taxable supply of construction], supply of food/ drink, catering, rent a cab which are used in the course and furtherance of business etc are placed. This leads to break in the credit chain, sticking of taxes and consequent increase in costs of products /services to the customers. Also this would continue the disputes which are bound to continue in the GST regime.

In this backdrop, the paper writers have examined the concept of input tax credit and ineligible input tax credit under the GST regime.

### **Concept of input tax credit:**

- Registered taxable person can avail eligible credit of input tax charged on supply of goods and or services to him used/proposed to be used in course of his business.
- Input tax credit is defined simplistically to mean the credit of input tax.
- Input tax in relation to a registered person, means the central tax, State tax, IGST or Union territory tax(UT) charged on any supply of goods or services or both made to him.
- Credit of the tax paid under the composition levy cannot be availed.
- Credit can be availed in respect of the goods/services received based on tax invoice/other tax paying documents.
- ITC shall be credited to electronic credit ledger + furnished the return.
- The tax charged by vendor should be paid to Govt.
- When payment towards invoice is not done within 180 days from invoice date, then the credit availed to be paid back + interest by the recipient. Such credit can be availed after payment of the invoice. However interest is not refunded.
- Credit can be availed of tax paid under reverse charge by recipient of goods/services
- Credit on capital goods + plant and machinery cannot be availed to extent of its tax portion on which depreciation availed under IT Act 1961 which is reasonable.
- **Capital goods:** The capital goods definition under Cenvat credit rules which had covered goods of specified tariff headings such as 82, 84, 85, 90 such as machines, electronic equipment /appliances has been done away with. Now it covers all goods capitalized in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business; Commonly goods are capitalized when there is enduring benefit is expected from such goods.
- **Input** means any goods **other than capital goods** used or intended to be used by a supplier in the course or furtherance of business
- Similarly **input service** defined to mean any service used or intended to be used by a supplier in the course or furtherance of business;

#### **Other aspects:**

- Credit available to extent attributed to the taxable supplies
- Credit related to supplies made to SEZ unit/developer or exported goods/services available

- Credit restricted to extent used for purposes other than for business. Similar provision is there in VAT laws in states such as Karnataka.
- Credit related to exempted supplies not available.
- Exempt supplies include supplies on which recipient is liable to pay tax under RCM.
- Exempt supplies include immovable property of land+ sale of completed building.

### **Blocked/ Ineligible credit:**

Input tax credit shall not be available on following:

(a) motor vehicles and other conveyances.

Credit is available on motor vehicles when they are used—

(i) for making the specified taxable supplies, namely:—

(A) onwards 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

**The restriction placed in Cenvat credit rules on motor vehicle credit is c/f into GST. We fail to understand why credit on vehicles which are essential for carrying people, goods in course of business is being consistently denied.**

Following supplies of goods/services or both:

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

**Food and beverages, outdoor catering are examples of supplies which are essential for the smooth running of business. Such facilities are given in order to enable the employees to work with a free mind, be productive without eating unhealthy food. It is not clear why the credit is being denied to all taxable persons except those who make outward supplies of such categories of goods/services or as part of a taxable composite/mixed supply.**

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

**It is essential to network + for business promotion, should have been permitted.**

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

*(A)* the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or

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

**In a small gesture of concession, rent a cab and health insurance is being permitted when Govt notifies it as an obligatory for employer to provide employee such services under law for time being in force. Also permitted when such services are used to make taxable supplies of same category of goods/services or such service forms a part of any composite or mixed supply. Example logistics management service where a part of it is rent a cab service as well.**

**This type of narrow thinking is not in line with the objective of seamless credit.**

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

**Same restriction there in Cenvat credit rules**

(c) works contract services when supplied for construction of an immovable property (**other than plant and machinery**) except where it is an input service for further supply of works contract service; "Construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

**Similar restriction is there in Cenvat credit rules. Harsh provision as credit is restricted even when re-construction, renovation, additions or alterations or repairs of immovable property done+ it is capitalized. ITC permitted when works contract service[composite taxable supply involving material plus labour] for construction done by sub-contractor to main contractor also executing works contract service.**

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

For (c) and (d) above, "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—

(i) land, building or any other civil structures;

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises.

**To give an example: credit on goods services used for construction of own factory building denied to taxable person who is a manufacturer of taxable goods, even though place is used to make taxable supplies of manufactured goods.**

**Credit on works contract service/ goods/ service for constructing plant and machinery its foundation and supports is permitted.**

**Credit denied on construction of immovable property of land building for self use, telecom towers pipelines outside factory.**

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

**Credit of composition tax denied**

(f) goods or services or both received by a non-resident taxable person except on goods imported by him; **This is adding pain to the already laborious provision which levies GST on non resident taxable person's taxable supplies. He is permitted ITC of IGST alone on imported goods**

(g) goods or services used for personal consumption;

**A restriction which is justifiable**

(h) Credit on goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples;

**Credit cannot be denied on goods which are used as inputs and gets destroyed while making taxable supplies. When output tax paid on gifts made exceeding Rs. 50000 pa to employee corresponding credit to be available.**

and

(i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

**Credit of tax paid under recovery offence penal provisions denied.**

**Conclusion:**

In this article the paper writers have examine the provisions of input tax credit under GST regime briefly. The concepts of matching job work credit and procedural aspects have not been examined in this article. The CGST Bill and draft input tax rules could be referred for further details.

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