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GST credit on capital goods

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It's been two months since the implementation of GST replacing all major indirect taxes in India. For many, it was a roller coaster ride. There are lot of system related challenges which assesses have to face in the month of August and September in filing their returns including legal confusions such as utilization of carried forward credits for payment of GST. The government has been trying to clarify many of the aspects through tweets on twitter account (which can't be relied legally), press releases, circulars etc. However, there are still many issues which need to be addressed. In this article, we have analyzed provisions related to GST input tax credit on capital goods and issues associated with it.

Credit on capital goods under erstwhile provisions

Manufacturer or service provider who was engaged in taxable activities under Central excise or service tax law was eligible to claim full Cenvat credit of excise duty / import duties paid. Such credit was eligible fully even if capital goods were put to use substantially towards non-taxable activities. However, in case of VAT paid on capital goods which are put to use commonly for taxable and non-taxable activities, credit was eligible on proportionate basis considering the sales turnover as base. For the purpose of credit availment, there was a separate definition of capital goods which majorly covered goods falling under tariff heading 82,84, 85, 90, parts of machines, storage tanks etc.

Other major requirement in erstwhile provisions was availment of credit on installment basis. Cenvat credit provisions required availment of 50% credit of duties paid in first financial year and balance 50% in subsequent financial years. Few state VAT provisions also had the scheme of VAT credit on installment basis.

Credit on capital goods in GST

For GST, capital goods are those whose value has been capitalized in books of accounts of the person claiming the input tax credit. Such goods should be intended to be used in the course or furtherance of business. Due to simplified definition, it would be very easy for tax payers to classify the goods as inputs or capital goods for taking credit of GST paid on goods.

No scheme of installment

GST law provides for full input tax credit on purchase of goods in the month of receipt of goods itself. This would have positive impact on cash flow of those who were procuring capital goods paying higher taxes as there is no installment scheme of credit.

Proportionate credit on capital goods

One of the drawbacks in GST law is non-availability of full credit on capital goods even when goods are put only partially for taxable activities. Earlier, full credit was available for a manufacturer / service provider even though capital goods were partially put for non-taxable activities. However, the new law is similar to VAT provisions of few States.

Though provision for payment of credit on common capital goods is similar to inputs, there is a interest liability which arises on capital goods in GST. Rule 43 provides for availing full credit on common capital goods. Later on, the proportionate credit based on ratio of exempted supplies over total turnover be added to the output liability of every tax period. This addition is to be done for a period of 60 months. Though this requirement looks reasonable, the issue is payment of interest. Rule 43 (h) requires the tax payer to add even interest amount along with proportionate credit every month. There is no clarity on methodology of computing the interest.

GST on as such removal of capital goods

In Cenvat credit provisions there was a provision for claiming 2.5% depreciation every quarter for reversal of Cenvat credit on capital goods (other than computers) removed as such. After claiming deduction of 2.5% every quarter, the balance amount left was to be paid back on as such removals. Of course, if duty liability on transaction value was more than the depreciated credit, then duty was to be paid on transaction value.

Similar provisions exist in GST law as well. According to Section 43 (6), in case of supply of capital goods or plant and machinery on which input tax credit has been taken, the registered person needs to pay an amount equal to input tax credit taken reduced by such percentage points as may be prescribed or the tax on the transaction value whichever is higher. However, there is no provision in ITC related rules prescribing percentage points to be reduced on as such removal of capital goods which looks to be inadvertent omission. Even if prescribed, this percentage could be 5% per quarter which is prescribed for other purposes. Therefore, if there are any as such removal of goods, 5% could be considered for removal of capital goods.

Transitional credit on capital goods

Section 140(2) of GST Act allows for availing the un-availed credit of Cenvat duties or VAT. For this purpose, the un-availed credit is amount which remains after subtracting the amount of credit already availed. Let us say, total excise duty on capital goods purchases in April 2017 is Rs.1,00,000/-. Then 50% of this amount would have been claimed as credit in April 2017. Balance amount of Rs.50,000/- can be claimed as credit in GST transition period.

There are dealers who are liable to register in GST law but exempted earlier may be because goods were exempted earlier. These dealers have the option of taking ad-hoc credit of 40% / 60% of CGST payable on inputs in stock when there is no duty paid documents. Wherever invoices are available, then full credit can be taken subject to condition that inputs are less than year old. Such dealers may have stock of capital goods purchases as well. However, the facility of ad-hoc credit or actual credit on such capital goods not allowed in transition provisions. Government could have considered allowing credit on capital goods as well.

Conclusion: It is no wonder that the new law would take its own time to get settled. Tax payers need to take lot of precaution before undertaking any new type of transactions. Professionals need to caution the clients about the new law and requirements so as to avoid clients spending their valuable time unnecessary litigation instead of business.

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