

# SAFEGUARDING AND ENHANCING CREDIT-PRE & POST GST (TRANSITIONAL) AND EXPORT REFUND

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# CONCEPT OF CREDIT & GST EXPECTATIONS

- Tax only on value addition
- Tax paid at earlier stage of value chain- eligible as credit & adjustable against output liability
- Restrictions on eligibility of CG and Inputs for credit, interpretation of eligibility by the Dept,
- GST Act prescribes the eligibility and conditions for ITC rather than Rules under delegated legislation.
- GST expectations: One Nation and One tax and seamless flow of credit - Reality ?
- Central Indirect Taxation under present law: Substantially carried to GST

## CAPITAL GOODS CENVAT VS GST

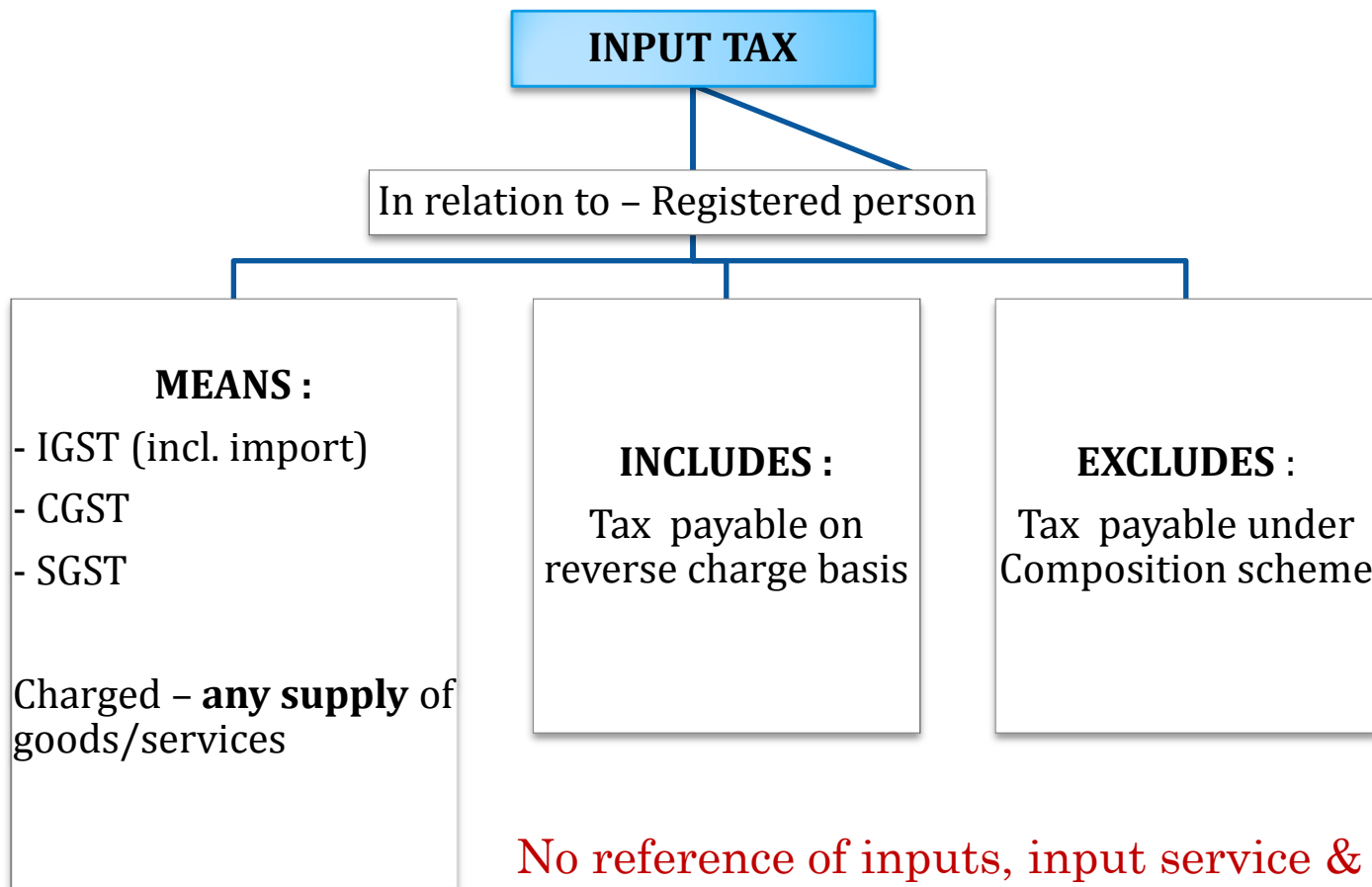
- 2(a) CCR - All goods falling under CH 82, 84, 85, 90, Pollution Control Eq, components, spares and accessories of above, moulds, jigs, tools, etc, refractories, tubes and pipes, storage tanks, motor vehicles (dumpers and tippers),
- Used in the factory for manufacture or outside the factory for generation of electricity or pumping water for captive use or providing output service – use in office excluded
- Motor vehicles designed for transportation of goods/courier service and passengers/renting
- Sec 2(19) - Capitalized in the books of accounts.
- used or intended to be used in the course or furtherance of business
- Explanation under Sec 17 – Plant & Machinery means apparatus, equipment and machinery fixed to earth by foundation or structural support, but excludes land, building, civil structures, telecom towers and pipelines laid outside the factory premises.

## CAPITAL GOODS - PRESENT LAW VS GST

- Rule 4(4) duty on Capital goods claimed as depreciation under IT not allowed.
- Rule 4 (2)(a) 50% in the same financial year and the balance in succeeding financial years.
- Rule 6 not applicable for capital goods used for taxable and exempt.
- Sec 16(3) - Credit not allowed if depreciation claimed.
- Rule 8(1)(b) ITC Rules 100% credited to the electronic credit register if used exclusively for taxable supply.
- Rule 8 ITC Rules prescribes procedure for reversal in case of capital goods used partly for business or partly for taxable supplies and amount to be added to output tax liability.

# DEFINITIONS

**INPUT TAX CREDIT** - credit of 'input tax' as defined in Section 2(62) of the Act



# DEFINITIONS

**“input”** means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;

**“input service”** means any service used or intended to be used by a supplier in the course or furtherance of business

- Eligibility and conditions for ITC - Section 16, 17 &18

## SECTION 16 CONDITIONS FOR ITC

- (1) registered person is entitled to take credit – credited in electronic credit register – Statutory entitlement .
- (2) (a) in possession of tax invoice, debit note or such other documents as prescribed in Rule 1 – ITC Rules.
  - (b) receipt of goods and/or services.
  - (c) supplier has paid tax to the Government in cash or by utilizing credit - Sec 41
  - (d) supplier has furnished return on or before date specified - Sec 39.
  - in case goods received in lots or installment – upon receipt of last lot or installment.

## SECTION 16 CONDITIONS FOR ITC. CONT.

- Failure to pay value and tax to the supplier within 180 days of the date of invoice – amount equal to ITC added to output tax liability. Credit available on making payment.
- Rule 2(1) ITC Rules – furnish details of non-payment of value and Tax under GSTR-2.
- (3) Tax component of Capital goods & Plant & machinery claimed as depreciation under Income tax Act, 1961 not allowed as ITC.
- (4) No ITC on invoices after due date/furnishing of annual return.



## SECTION 17 APPORTIONMENT OF ITC

- (1) goods and/or services used by registered person partly for business purpose and partly for other purpose – ITC restricted to those used for business purpose. Procedure in Rule 7 of ITC Rules.
- (2) used partly for taxable supplies (including zero rated supplies) and partly for exempt supplies – ITC restricted to those used for taxable supplies (including zero rated supplies). Procedure prescribed for inputs/input service under Rule 7 of ITC Rules - more puzzling than Rule 6 of CCR.
- Sec 2 (47) - exempt supply means supplies attracting Nil rate of tax or exempt under Section 11 or Section 6 of IGST and includes non-taxable supplies.

## SEC17 APPORTIONMENT OF ITC. CONT.

- (4) Banking Company/NBFC engaged in accepting deposits, providing loans and advances – option for 50% of eligible ITC - Procedure prescribed under Rule 3 of ITC Rules.
- (5)(a) ITC not eligible for motor vehicles/other conveyances except when used for making further supplies of such vehicles, transportation of passengers, imparting training on driving/flying/navigating such vehicles and transportation of goods.
- (b) ITC not eligible on food & beverages, outdoor catering, beauty treatment, health services, cosmetic & plastic surgery except for making outward supply of same category.
- ITC not eligible for club member ship, health & Fitness and travel benefits to employees on vacation.
- Rent a cab, life & health insurance – ITC allowed only if notified for services to be provided as obligatory to employees under any law.

## SEC17 APPORTIONMENT OF ITC. CONT.

- (c) ITC not eligible for works contract for construction of immovable property – except where it is input service for further supply of works contract service.
- (d) ITC not eligible for goods or services used for construction of immovable property (other than plant & Machinery) on own account even if used for furtherance of business.
- ITC not eligible – paid under composition rate Sec 10, used for personal consumption, goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples;

- Section 18 – eligibility of ITC for person becoming liable to pay tax, person ceasing to pay tax, exempt supplies becoming taxable supply, change in constitution, opting for composition rate, etc. Procedure for taking ITC prescribed under Rule 5, 6 & 9 of ITC Rules.
- Section 19 – ITC on inputs sent for job work, to be received back within 1 year or deemed to be supply on the date when sent out;
- Capital goods (other than moulds & dies, jigs and fixtures or tools) to be received back within 3 years or deemed to be supply on the date sent out to job worker. Procedure prescribed under Rule 10 of ITC Rules
- Section 20 – ISD to distribute credit of Central Tax as Central Tax and IGST & CGST as IGST & CGST by issuing invoice.
- Credit distributed not to exceed credit available, credit attributable to recipient shall be distributed only to the same recipient, common credit distributed pro-rata. Procedure prescribed under Rule 4 of ITC Rules.

# CREDIT UNDER PRESENT LAW VS GST - IMPLICATION

- Eligibility for credit based on suppliers paying tax and filing Returns and correcting mistakes - follow up with all your suppliers to ensure timely payment and submission of returns?
- Payment of value and tax to the suppliers for taking credit – compelling business to be prompt in payments to suppliers. The provisions existing in case of services extended to supply of goods.
- Retention money in case of Construction Service/Works Contract?

# CREDIT UNDER PRESENT LAW VS GST - IMPLICATION

- GST payable on advance receipt under Section 12 & 13 – Delay in adjustment in invoices results in delay in availability of ITC.
- Common use of Capital goods for taxable/exempted supplies – Additional compliance by way of reversal of proportionate credit attributable to exempt supplies.
- ITC available on fabrication, erection of plant and machinery even if they are fixed to earth by foundation or structural support and foundation and structural supports. Enhanced credit availability and avoidance of substantive litigation.
- 100% credit on receipt of capital goods – no Staggered availment.

# CREDIT UNDER PRESENT LAW VS GST - IMPLICATION

- Alignment with books of account/IT for taking ITC.
- Procedural Hurdles – invoice matching, URD, Capital Goods, used for personal use/other than for business purpose, non payment, fraud etc...

# Transition of Credits- Present Law to GST



# AMOUNT OF CENVAT CREDIT CARRIED FORWARD IN THE RETURN

Section- 140(1)

## Pre-condition:

- A registered person other than a person opting composition scheme in \_\_\_GST;
- CENVAT credit carried forward in return relating to period ending with day immediately preceding appointed day, furnished under existing law.

Credit furnished under existing law is not allowed in the following cases:

Credit not admissible under this act.

Returns are not filed for past 6 months immediately preceding the appointed day

Credit relates to goods manufactured and cleared under any notified exemption

## PREPARATION – ACTION POINTS [140(1)]

- Complete accounting – before 30<sup>th</sup> June
- Update ITC register
- Ask vendor to complete invoicing
- Check on cl. ITC balance – Ineligible credits
- Exempted products/services – ensure ITC not availed
- No outstanding of service vendors – 3 months
- Pay RCM before transition
- Match cl balance of Excise and ST return
- Keep information ready – TRAN 1
- Ensure proper filing of last return



## PREPARATION – ACTION POINTS

- Reco- IT report to books, to computations to returns;
- Opportunity to maximize credits, sanitize credits;
- Disputable; reversed Credits - under protest?
- Ratio analysis - credit leakage;
- Proper workings must be in place - Separate CENVAT /ITC file;
- Obtaining proper invoices, supplementary invoice;
- Pending forms under CST Act to be collected/submitted - Credit reduced!!!



# UN-AVAILED CC/INPUT TAX ON CAPITAL GOODS

Section -140(2)

- A registered taxable person other than the person opting for composition scheme
- Is entitled to take un-availed CENVAT credit on capital goods
- Not carried forward in return filed under the existing law

## **Note:**

Admissibility of credit in existing law & this act

Un-availed Credit = Aggregate credit - credit already  
availed



## PREPARATION – ACTION POINTS [140(2)]

- Complete accounting – before 30<sup>th</sup> June
- CG purchased in 16-17 – Avail credit before transition
- CG purchased in Apr-Jun'17 – Avail 50% credit before transition
- Maintain record of second installment – TRAN 1
- Separate disclosure
  - CG availed credit
  - CG credit to be availed



# UN-AVAILED CC/INPUT TAX ON CAPITAL GOODS

- Cross verifying from Fixed Assets Register;
- Whether current conditional requirements are complied - depreciation??
- Capital Goods presently exclusively used for exempted goods, taxable in the GST regime - 2 years condition;



# CREDIT OF INPUTS HELD AS STOCK IN CERTAIN CASES

Section -140(3)

## Registered Person (CGST)

|   |  |  |  |
|---|--|--|--|
| Not liable to register under existing law | Mfr / provider of exempted goods/service | Works contractor & availing benefit of Not. 26/2012-ST | 1 <sup>st</sup> stage, 2 <sup>nd</sup> stage dealer or a registered importer or a depot of a mfr |
|---|--|--|--|

- Entitled to take credit of “**Eligible duties**” of:
  - ✓ inputs held in stock,
  - ✓ inputs in semi-finished / finished goods.



# CREDIT OF INPUTS HELD AS STOCK - (CONTD.) SUBJECT TO

Section -140(3)

**Such inputs**

- Are used or intended for making taxable supplies under this act

**Taxable person**

- Eligible for input tax credit under this Act

**Taxable person**

- Is in possession of invoice or other prescribed docs

**Such invoice/  
document**

- Issued not earlier than 12 months preceding the appointed day

**No Abatement  
(CGST)**

- Supplier of **services** is not eligible for abatement under this Act.



# CREDIT OF INPUTS HELD AS STOCK - (CONTD.) SUBJECT TO

Section -140(3)

Credit on the basis to be prescribed:

- A registered person other than a manufacturer or supplier of services;
- Not in possession of invoice /document evidencing payment of duty;
- Benefit to be passed by way of reduced prices.



## PREPARATION – ACTION POINTS [140(3)]

- FSD registration
- Accumulate excise invoice of past 1 year
- Stock take on 30<sup>th</sup> June – Reconcile with books
- Old inventory – Return back and receive under new invoice
- Inventory details – TRAN 1
- Factory wise details – Clubbing for return
- Make less inventory movements
- No duty pass on when excise document available
- No excise paying document – claim 40% benefit
- Calculation for 40% credit



# CREDIT ON STOCKS

- ST / CST credit not available – postponement of procurements;
- Inputs contained in the immovable property??;
- Stocks verification – Reco as per books;
- Quantify the potential credit availability on stocks;
- WIP/ FG/ RM total worked backwards on FIFO?
- Credit availing document – Can be obtained now??;
- Reducing stock holding - if credit not available;
- Identify areas of increase in cost due to GST - Anti-Profiteering measure impact
- Percentage of inventory aged older than 1 year - impact on credit;
- Traders – Deemed credit based on presumption 40%;



# CREDIT IN RESPECT OF EXEMPT AND TAXABLE GOODS

Section -140(4)

## Registered Person

Manufacturing both Taxable  
and Exempted Goods

Providing both Taxable and  
Exempted Services

### Eligible credit:

- CENVAT Credit c/f in return as per sect140(1); &
- CENVAT Credit of '**Eligible duties**' on inputs in stock, semi-finished goods, finished goods relating to exempted goods/services as per sec 140(3).



# CREDIT WITH RESPECT TO INPUTS / INPUT SERVICES IN TRANSIT

Section -140(5)

Registered person to take credit of  
**‘Eligible Duties & Taxes’** in  
Electronic Credit Ledger of

Inputs or  
input services  
received on or  
after the  
appointed day

Duty/ Tax has  
been paid by  
Supplier under  
the Existing law

Invoice / document  
etc. recorded in the  
books within 30 days  
from the appointed  
day.

\* Extendable to more  
30 days by  
Commissioner.



## PREPARATION – ACTION POINTS [140(5)]

- Efforts to receive all consignment before transition
- Report within 30 days
- Declaration from transporter for goods custody
- Mark receipt date on GRN
- Mark date of physical receipt of invoice
- Ask vendors for invoices w.r.t. o/s advances
- Receive invoice copy before 30<sup>th</sup> June
- Bank statement – Before July end
- Invoices from unorganised vendor – Follow up
- RCM accounting payment before 30<sup>th</sup> June
- Clear all o/s advances
- Minimise inventory in last week
- No stock transfer in last week



# LAST OPPORTUNITY TO CLAIM MISSED OUT CREDITS

1. Review of Credit ledger
2. Review of all expenses to identify instances of missed out credits
3. Disputed credits – latest decisions favouring assessee – attempt to avail under intimation – not to utilise for certain time
4. Credit reversed under department influence – reavailment
5. Credit reversed under protest in past – availment and carry forward
6. Credit reversed under Rule 6 – directly attributable service
7. Provisional reversal of credit under Rule 6.. Final adjustment to be made in the last return

## LAST OPPORTUNITY TO CLAIM MISSED OUT CREDITS

9. Refund claim filed – possibility of rejection – withdraw claim and carry forward credits
10. Review of liability under RCM – pay & take credits
11. Charging of tax and availment of credits by service receiver- supplementary invoice
12. Reco of credits in return vs balance in books
13. Consideration not paid 3 months – pay all dues to avail credit... or issue debit/credit note
14. Avoid revision of last return



# STATE VAT LAWS

1. Correct closing balance of eligible credit in return (multiple states VAT, missed out credits, etc)
2. Recording and capturing of Entry tax paid by transporter, if any
3. Pending forms C/H/F to be collected within 90 days – to claim the credits
4. Similar exercise to be done by your vendor – give all forms
5. Beyond 90 days – go for refund
6. Amount for pending claims – manner of computation to be prescribed

# ISSUES IN REFUND RESOLVED IN GST

- Extension of time limit to file refund – from 1 to 2 years in GST
- Applicability of time limit for service exporters
  - 2 years from the date of receipt in FC
  - In case of Advance 2 years from the date of invoice  
(This aspect lacked clarity in present law for service exporters)



# ISSUES IN REFUND RESOLVED IN GST

- Deemed exporter facilitated to liquidate credits by charging GST, and exporter can go for refund. (Presently If EOU issues CT-3 to deemed exporter, results in accumulation of credit to such deemed exporter),



# ISSUES IN REFUND RESOLVED IN GST

- Hard copy filing of claims, changed to digital filing and digital acknowledgement.
- Auto clearance of refund by granting 90% refund on provisional basis, subject to conditions
  - No prosecution of more than 250 crores during past 5 years in IDT or GST
  - No appeal/ review/ revision on issue of refund
  - Compliance rating 5+



# ISSUES IN REFUND RESOLVED IN GST

- Clarified that no unjust enrichment concept for exports, presently claims getting rejected on this ground.
- Tax paid on export was not granted as refund under Service tax, now opened up in GST-  
**Rebate concept**
- CA certificate done away for exporter in GST.



THANK YOU

Questions