

GST Knowledge Empowerment Live Webinar - Series 1I

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Detailed analysis of input tax credit blocked u/s 17(5)

Coverage Today

Meaning of input, input service and Capital goods.

(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;

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

(19) “capital goods” means goods, the value of which is capitalised 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;

Coverage Today

Comparison with the Cenvat Credit Rules:

Input means - all goods... used in or in relation to manufacture of the final product...

all goods used in providing any output service

Input service means any service:

- *used by a provider of taxable service for providing an output service*
- *used by the manufacturer,in or in relation to the manufacture of final products..*

Earlier input, input services were linked to “taxable event”

In GST input, input services are linked to “business”

Section 17(5)

*Sec 17(5) - **Notwithstanding** anything contained in sub-section (1) of section 16 and subsection (1) of section 18, **input tax credit** shall not be available **in respect of** the following, namely:-*

***Input tax credit**- Credit of input tax.*

***Input tax**- Means CGST/SGST/IGST/UTGST charged on any supply of goods/ service made by him and includes IGST paid on imports, Tax paid under RCM.*

***Meaning of 'in respect of'** – As per Translegal dictionary “used synonymously with phrases such as with regard(s) to and regarding”.*

Section 17(5)

UOI V. Mohit Mineral Pvt. Ltd 2018(17)GSTL561(SC):

The word “with respect to” is word of expansion. Similar expressions namely, “pertaining to”, “in relation to” came to be considered before this Court in M/s. Doypack Systems Pvt. Ltd. v. Union of India & Others, (1988) 2 SCC 299, where this Court held that the above expressions are used in the expansive sense.

Section 17(5)

- (a) *motor vehicles for transportation of persons having approved seating capacity of **not more than thirteen persons** (including the driver), except when they are used for making the following taxable supplies, namely:-*

Motor Vehicles Act, 1988-Sec2(28) "motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimeters;

Section 17(5)

(A) further **supply** of such motor vehicles; or

[Supply includes sale, transfer, barter, exchange, licence, rental, lease or disposal]

(B) transportation of **passengers**; or

MVR-"passenger" means any person travelling in a public service vehicle other than the driver or the conductor or an employee of the permit holder, while on duty.

MVA. Sec 2(35) "public service vehicle" means any motor vehicle used or adapted to be used for the carriage of passengers for hire or reward, and includes a maxicab, a motorcab, contract carriage, and stage carriage.

(C) imparting training on driving such motor vehicles;

Section 17(5)

(aa) vessels and aircraft except when they are used--

(i) for making the following taxable supplies, namely:-

(A) further supply of such vessels or aircraft; or

(B) transportation of passengers; or

(C) imparting training on navigating such vessels; or

(D) imparting training on flying such aircraft;

(ii) for transportation of goods;

Section 17(5)

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the input tax credit in respect of such services shall be available-

(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

Section 17(5)

- (ii) where received by a taxable person engaged-*
 - (I) in the manufacture of such motor vehicles, vessels or aircraft; or*
 - (II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;*

Section 17(5)

Chowgule Industries Pvt. Ltd. AAR-Mah. Dated 26.12.19

Every model of demo cars is used by them for demonstration only for a limited period and thereafter, the said vehicles are sold after paying the applicable taxes on sale value at that point of time. Since the applicant will be making further supplies of the Demo vehicles, and there is no time limit prescribed in the GST Act for making such further supplies, ITC is eligible.

Chowgule Industries Pvt. Ltd. AAR-Goa. Dated 26.03.19

The demo vehicle is indispensable tools for the promotion of the sale by providing trial run to the customer. The applicant capitalizes the purchase of such vehicle in the books of account. The CG used in the course or furtherance of business is entitle for ITC.

Section 17(5)

(b) the following supply of goods or services or both-

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both 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;

Section 17(5)

Food Safety and Standards Act, 2006.

Sec 3(j) –Food means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food to the extent defined in clause (zk), genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants, prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substances:

Provided that the Central Government may declare, by notification in the Official Gazette, any other article as food for the purposes of this Act having regards to its use, nature, substance or quality;

Section 17(5)

The State Of Tamil Nadu vs Tvl. Ganesh Corporation on 3 April, 2012. TC(R)No. 1825 of 2006

As per the Oxford Dictionary "beverage" means "a type of drink except water". In Webster's 3rd International Dictionary, "beverage" has been described as "liquid for drinking especially such liquid other than water (as tea, milk, fruit juice, beer) usually prepared (as by flavouring, heating, admixing) before being consumed"

Section 17(5)

'Outdoor catering' means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, at Exhibition Halls, Events, Conferences, Marriage Halls and other outdoor or indoor functions that are event based and occasional in nature.

'Restaurant service' means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.

Section 17(5)

<i>Comparison</i>	<i>Lease</i>	<i>Rent</i>
<i>Meaning</i>	<i>The contract where one party permits the right to use the assets belongs to him to the other party for a certain period is known as leasing</i>	<i>Renting, also known as hiring or letting, is an agreement where a payment is made for the temporary use of a good, service or property owned by another</i>
<i>Duration</i>	<i>Long term</i>	<i>Short term</i>
<i>Repairs & Maintenance</i>	<i>By lesser or lessee as per the agreed terms</i>	<i>By owner</i>
<i>Offer to buy</i>	<i>At the end of the lease term, the lessee gets an offer to buy the leased asset by paying residual amount.</i>	<i>No such offer</i>

Section 17(5)

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

(iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, 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(5)

(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;

(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.

Explanation. – For the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

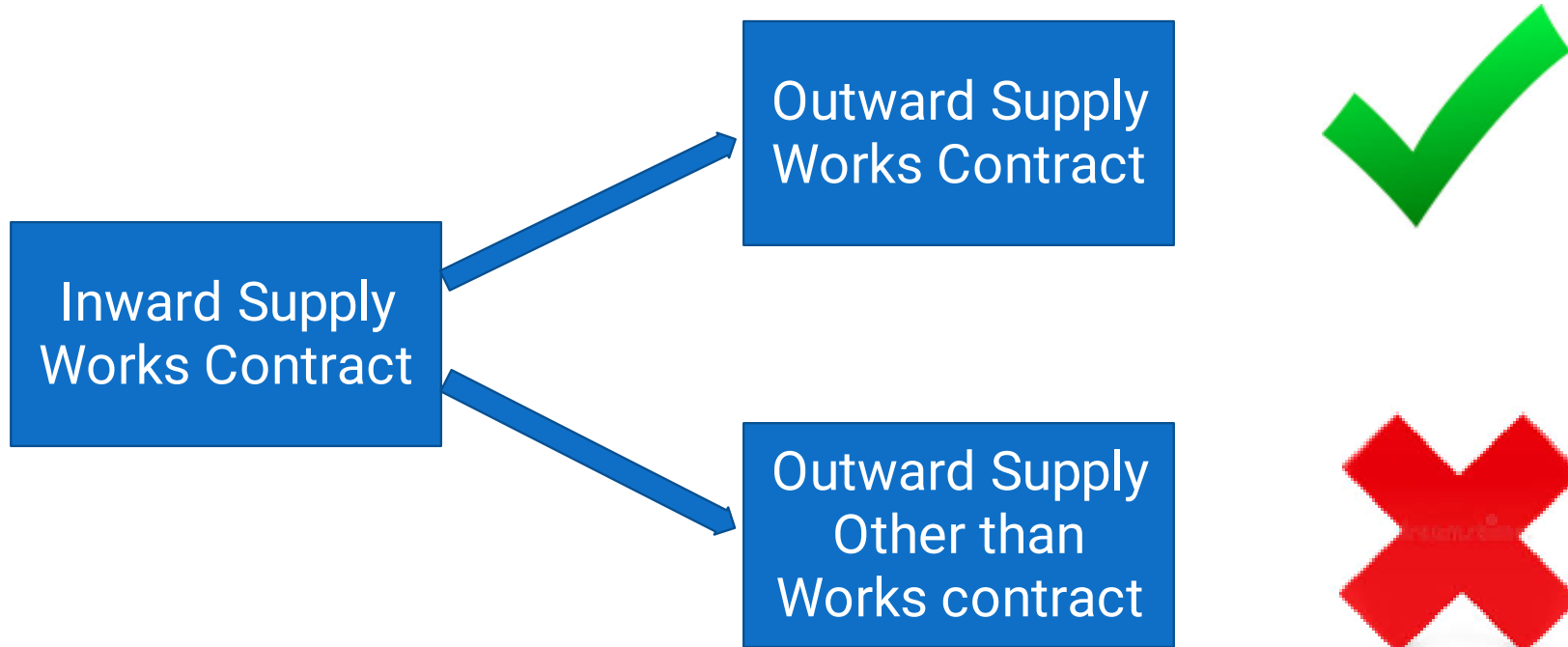
Section 17(5)

Sec 17(6)...

Explanation.— For the purposes of this Chapter and Chapter VI, the expression “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.

Section 17(5)



Section 17(5)

Satyesh Brinechem Pvt. Ltd. 2020(4) TMI631-AAR Guj.

Input tax credit of GST paid on goods and services used to construct the “bunds” is admissible provided that the bunds are used for making zero rated supplies and fulfill the conditions which are necessary for treating the bunds as “plant and machinery.”

State of Gujarat V. Pipavav Defense & Offshore Engg.Co. Ltd. 2017(6) TMI 90-Guj.

Goods used for construction of “dry dock” and “fit out berth” which were necessary for the purpose of the ship manufacturing business of the dealer qualified as “plant and machinery.”

Section 17(5)



Section 17(5)

Safari Retreats Pvt Ltd V. C.C. of CGST 2019 (25) G.S.T.L. 341 (Ori.)

- *The very purpose of the Act is to make the uniform provision for levy collection of tax, intra-State supply of goods and services both Central or State and to prevent multi taxation.*
- *While considering the provisions of Section 17(5)(d), the narrow construction of interpretation put forward by the Department is frustrating the very objective of the Act, inasmuch as the petitioner in that case has to pay huge amount without any basis*

Section 17(5)

- *Keeping in mind the language used in Eicher Motor Ltd V OUI, (1999) 2 SCC 361= 1999 (106) E.L.T. 3 (S.C.), the very purpose of the credit is to give benefit to the assessee.*
- *However, we are not inclined to hold it to be ultra vires.*

Sree Varalaxmi Mahaal LLP 2020(32)GSTL 597(AAR-GST-TN)

- *Bar on availing ITC on inputs/input services used in construction of building under Section 17(5)(d) of Central Goods and Services Tax Act, 2017 is applicable even if said immovable property is used for furtherance of business.*
- *Reliance on Safari Retreat case not sustainable inasmuch as that decision is based on particular facts of that case wherein vires of aforesaid provision was even upheld.*

Section 17(5)

- (e) goods or services or both on which tax has been paid under section 10;
- (f) goods or services or both received by a non-resident taxable person except on goods imported by him;
- (g) goods or services or both used for personal consumption;
 - *Personal consumption should be interpreted to be used for other than business purpose.*
 - *If the intention was to restrict credit on all inward supplies used by personnel, then the separate entry for food, beverage, etc would not have been there.*
 - *When it becomes the part of the cost of supply, the same cannot be said to be used for personal consumption.*

Section 17(5)

In case of Reliance Industries Ltd. Vs. Commissioner, Central Excise & Service Tax (LTU), Mumbai [2015 (11) TMI 969] Mumbai CESTAT has held that service tax paid on group insurance premium for employee shall be treated as input service and not services used primarily personal use or consumption of employee. Accordingly, CENVAT credit shall be allowed.

Chennai Port Trust 2019 (28)GSTL 600 (AAR) TN

No ITC on Inward supply of medical, diagnostic equipment, apparatus, instruments, consumables, disposables, spares and repairing services though this provision of free medical care mandatory as per the Regulations made under Major Ports Trusts Act, 1963.

Section 17(5)

National Aluminium Company Ltd 2019 (22)GSTL 526 (App.AAR) Odisha

- *Creation and maintenance of green area/zone inside plant/mining/office premises is a business necessity for controlling pollution as well as atmospheric temperature. It is also a requirement for preventing soil erosion and also mandated in various laws, ITC admissible.*
- *Cost of an input service forming part of the cost of final product alone cannot be the condition to allow credit*

Section 17(5)

Posco India Pune Processing Center Pvt Ltd. 2019(21) GSTL 351 (AAR-Mah)
GST paid for hotel stay in case of rent free hotel accommodation provided to General Manager (GM) and Managing Director (MD) of assessee was for personal comfort of both. Assessee not eligible to claim ITC for same - Sections 16 and 17(5)(g).

Wipro Ltd V. CCE, Bangalore III 2018(363)ELT 1111(Tri-LB)
Food being always mainly for personal consumption only, canteen provided in the company mainly for personal consumption of employee. Outdoor catering service not eligible for input service credit.

Section 17(5)

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

- **Requirement is not to link the input/input service/CG to taxable supply but to business.**
- **Manufacture and Profession are business. Any activity or transaction in connection with, incidental or ancillary to manufacture or profession is also business.**
- **Once it is used in business, requirement is complete, subsequent event should not alter the status.**

Section 17(5)

*Goods Lost: The 'manufacturing loss' forms part of the raw material "used" in the manufacture though not reflected in the final product. – **Multimetals Ltd V. ACCE** 1992(57) ELT 209 (SC)*

*Goods Destroyed: Modvat/Cenvat credit is not deniable on inputs destroyed in fire accident when the fact that inputs were actually issued and thereafter destroyed in fire accident. **Commissioner v. Indchem. Electronics - 2003 (157) E.L.T. A206 (S.C.)***

Section 17(5)

*Written off : Value of capital goods written off in balance sheet, statement of assets in balance sheet not relevant for allowing or denying credit. Credit depends upon use of capital goods for production in factory. **Motherson Sumi Systems Ltd. CCEx Noida 2007(219) ELT 457(Tri.Del.)***

Disposed of by way of gift or free samples:

- Dispose of - get rid off.
- Gift – Giving something out of natural love and affection on an occasion.
- Free sample - a small part or quantity intended to show what the whole is like.

Section 17(5)

- When gifts or free samples are given to existing or prospective customers as a business promotional activity should not amounts to 'disposal' by way of gift or free sample.

Expenses incurred towards promotional schemes wherein distributors/wholesalers get rewards based on reward points earned by them on basis of quantity of goods sold and goods given as brand reminders like pens, notepad, key chains, etc., distributed to distributors or doctors with name embossed on it to promote brand and sales. No input tax credit available. Sanofi India Ltd. 2019 (26) GSTL 376(AAR)

Section 17(5)

Free distribution of Electrical Items to flood effected people under CSR Activity.

Polycab Wires Pvt. Ltd. 2019(24) GSTL 103(AAR)

*Supply of Dhoop as incentive or gifts or as freebies with the supply of Agarbatti (consisting of 10 pieces of Agarbatti), credit of Inputs used for manufacture of Dhoop, purchase of dhoop from a third party vendor are not eligible for ITC. **Moksh Agarabhatti Co. 2020(4) TMI 593 AAR-Guj***

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

THANK YOU



For any clarification
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