



Full coverage of issues related to

ITC IN GST

By Adv. Pawan Arora
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5+ Hours in 4 Sessions | Starting from 1st June 2021 - 5 PM To 6 PM





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Brief Profile of the Speaker

Adv. (CA) Pawan Arora

- ❖ B. Com, CA and Law Graduate. Practising as Advocate.
- ❖ He has more than 10 Years of relentless and steady experience of Advisory and Litigation matters in Indirect Taxation and handled matters of clients from diverse industries and his field of specialization is Indirect Taxes.
- ❖ He has also worked in multinational companies at managerial positions handling their Indirect Taxation and has been instrumental in re-designing their tax policies and streamlines their systems from indirect tax perspective. During his tenure in the Industry, he gained vast experience of in-house consultancy on Indirect Tax issues.
- ❖ He is a frequent Speaker in GST Workshops/Seminars organized by tax departments, CAG, NICF, PHD Chamber of Commerce and professional forums including Study Circles of CA Institute. He also provides GST Trainings to personnel of Corporates.
- ❖ He is leading Kirti Nagar Branch (Delhi) of the Firm, Athena Law Associates.



Session - 4
INPUT TAX CREDIT

SECTION 20
& OTHER ASPECTS OF ITC

By: Adv. (CA) Pawan Arora

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06th June 2021



Section 20 – Input Service Distributor



Illustration

Facts

- ABC Ltd., Gujarat (H.O.) pays for certain services which are supplied by 3rd Parties to the branches of ABC Ltd. in other States (might be registered or not registered under GST).
- ABC Ltd., Gujarat (H.O.) also incurs expenditure which are common and not attributable to particular branch such as:
 - a. Auditing;
 - b. Software maintenance;
 - c. Advertisement;
 - d. Sponsorship;
 - e. Directors Fee.
- There are certain expenditures which are incurred and consumed by ABC Ltd., Gujarat (H.O.) itself:
 - a. Manpower expenses;
 - b. Security for building;
 - c. Building Rent;
 - d. Employee Travel.

Legal Provision

Schedule- I	<p><u>Schedule I: Activities To Be Treated As Supply Even If Made Without Consideration:</u></p> <p><i>“2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:”</i></p>
Input Service Distributor (ISD)	<p><u>Input Service Distributor – Section 2(61) of the CGST Act, 2017:</u></p> <p><i>(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;</i></p> <p>The e-flier on ‘Input Service Distributor in GST’ available on the CBEC website (www.cbec.in), which mentions the following:</p> <p><i>“...Since the <u>common expenditure is meant for the business of all units, it is but natural that the credit of input services in respect of such common invoices should be apportioned between all the consuming units. ISD mechanism enables such proportionate distribution of credit of input services amongst all the consuming units...</u></i>”</p>

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	<p><i>“...Since the services relate to other locations the corresponding credit <u>should be transferred to such locations</u> (having separate registrations) as the output services are being provided there...”</i></p> <ul style="list-style-type: none"><i>• Let’s take an example to understand this concept. The Corporate office of ABC Ltd., is at Bangalore, with its business locations of selling and servicing of goods at Bangalore, Chennai, Mumbai and Kolkata. Software license and maintenance is used at all the locations, but invoice for these services (indicating CGST and SGST) are received at Corporate Office. <u>Since the software is used at all the four locations, the input tax credit of entire services cannot be claimed at Bangalore. The same has to be distributed to all the four locations.</u> For that reason, the Bangalore Corporate office has to act as ISD to distribute the credit.</i>
Author’s Comment	<ul style="list-style-type: none"><i>• It is to be noted that, cross-charge can be done only where Head Office provides a service to another office/branches. On the other hand, <i>Credit is to be distributed through ISD</i> where the Head Office procures certain services which are for common utilization of all/ some of its branches across the country. The bills for such expenses would be raised on the Head Office.</i>

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- The Head office is procuring the goods or services which are common or distributable to other offices;
- It is pertinent to note that since the ABC Ltd. (H.O.) is only incurring expenditure on common services it would be better to obtain ISD and distribute credit;
- In our view, once the head office acts as an ISD, then it would get out of the scope of distinct persons as provided for in Schedule I. This is so because ISD [as defined in Section 2(61)] refers to:
 - i. an office of the supplier of goods or services or both*
 - ii. which receives tax invoices issued under section 31 towards the receipt of input services and*
 - iii. 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.*
- Thus, ISD is treated as the office of the supplier, and not a distinct person.
- Thus, in the present case ABC Ltd. (H.O.) may distribute the credit **(as eligible/ineligible credit)** by obtaining the ISD registration.

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Distribution of Credit prior to obtaining the ISD registration

- Through a amendment, via Notification 3/2018-Central Tax, dated 23rd January, 2018, a rule (Rule 54(1A)) has been inserted whereby the normal registered tax payer, i.e. i.e. ABC Ltd., Gujarat (H.O) (which is registered in the same state as the ISD and has the same PAN as the ISD) can raise an invoice to the ISD for the purpose of transferring the credit to, the ISD with the particulars that are mentioned under Rule 54(1A) of the CGST Rules, 2017 (Rule 54(1A) is extracted in **slide no. 14**).
- Therefore, for the credit that is as on date available with ABC Ltd. Head Office can be transferred to the ABC Ltd., Gujarat ISD (once registration is obtained) through the mentioned invoice. Thereafter the ISD may distribute the credit to the concerned recipient offices of ABC Ltd. through an ISD invoice with the particulars mentioned under Rule 54(1) of the CGST Rules, 2017.

Service which attract tax under Reverse Charge Mechanism (RCM)

- In this case, Head office shall discharge liability to pay tax under RCM and further transfer the credit to ISD office through raising an invoice stating all the particulars as provided in rule 54(1A) of CGST Rules, 2017. Further ISD will distribute such credit to concerned branch offices.

Procedural Compliance

Registration Procedure

- **Application:** File an application FORM GSTR REG-01 for registration as Input Service Distributor [Rule 8 r/w sec.25 r/w. Sec.24]
- **Grant of Registration:** within 7 working days from submission of application or deficiency is to be intimated by officer within 7 working days. If no action taken within 7 days by officer – application shall be deemed to have been approved.

Manner of Distributing the Credit

- The amount of credit distributed shall not exceed the credit available for distribution;
- The credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that person;
- The credit attributable to all/more than one recipient, shall be distributed on pro-rata basis of the turnover in a State or in a UT during the relevant period.
- An ISD will distribute the credit amongst the Unit as per the following conditions and procedure of distribution, namely:-
 - a. the input tax credit available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in FORM GSTR- 6.
 - b. **the Input Service Distributor shall separately distribute the amount of ineligible input tax credit (ineligible under section 17(5) or otherwise) and the amount of eligible input tax credit;**



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- c. the input tax credit on account of CGST, SGST, UTGST and IGST shall be distributed separately.
- d. the input tax credit that is required to be distributed to one of the recipients 'R1', shall be the amount, "C1", to be calculated by applying the following formula

$$C1 = (t1/T)*C$$

where,

"C" is the amount of credit to be distributed,

"t1" is the turnover of person R1 during the relevant period,

"T" is the aggregate of the turnover, during the relevant period, of all recipients to whom the input service is attributable

- e. the input tax credit on account of IGST shall be distributed as input tax credit of IGST to every recipient.
- f. the input tax credit on account of CGST and SGST or UTGST tax shall-
 - i. in respect of a recipient located in the same State or Union territory in which the Input Service Distributor is located, be distributed as input tax credit of CGST and SGST or UTGST respectively;
 - ii. in respect of a recipient located in a State or UT other than that of the Input Service Distributor, be distributed as IGST and the amount so distributed shall be equal to the aggregate of the amount of input tax credit of CGST and SGST or UTGST that qualifies for distribution to such recipient in accordance with clause d.
- g. the ISD shall issue an **ISD invoice** indicating that is issued only for distribution of credit.
- h. the ISD shall issue an **ISD credit** note for reduction of credit in case the ITC already distributed gets reduced for any reason.

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Invoicing (Rule 54)

Sub-rule 1: ISD to Normal Registered Person

- a. name, address and GSTIN of the Input Service Distributor;
- b. a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characteristic any combination thereof, unique for a financial year;
- c. date of its issue;
- d. name, address and GSTIN of the recipient to whom the credit is distributed;
- e. amount of the credit distributed; and signature or digital signature of the Input Service Distributor or his authorised representative.
- f. signature or digital signature of the ISD or his authorised representative.

Sub-rule 1A: Normal Registered Person to ISD

A registered person, having the same PAN and State code as an ISD, may issue an invoice or, as the case may be, a credit or debit note to transfer the credit of common input services to the ISD, which shall contain the following details:

- a. name, address and GSTIN of the registered person;
- b. a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characteristic any combination thereof, unique for a financial year;
- c. date of its issue;
- d. GSTIN of the supplier of common service and invoice number;
- e. name, address and GSTIN of the ISD;
- f. taxable value, rate and amount of the credit to be transferred; and
- g. signature or digital signature of the registered person or his authorised representative.



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Return Filing (S. 39 r/w R. 65)

- Every ISD shall, on the basis of details contained in FORM GSTR-6A, and where required, after adding, correcting or deleting the details, furnish electronically the return in FORM GSTR-6.
- Every ISD shall furnish its return every calendar month within 13 days after the end of such month.

Compliances - Summary

1. Registration by filing GST Reg-01 along with an application;
2. Intimate the Suppliers about GSTIN;
3. Distribution of credit;
4. File return in GSTR-6 by 13th of every month.

Interest Liability on wrongly availed but Unutilized ITC

M/s Commercial Steel Engineering Corporation Civil Writ Jurisdiction Case No. 2125 of 2019- Patna High Court

Hon'ble Patna High Court has held that words "availed" or "utilized" used in Section 73 each denote a positive act, and when such positive act is substantiated, only then can the dealer concerned be liable for recovery of such amount of tax availed from the input tax credit or utilized by him. However, such credit must have been used by him i.e. the credit balance must have reduced.

The Hon'ble Court further stated that recovery u/s 73(1) can be initiated only where the input tax credit has been availed or utilized to reduce tax liability. Mere reflection of credit in electronic credit ledger would not amount to an act of availment for initiating proceedings u/s 73(1). The relevant extracts of the judgement are reproduced as under:

*32. In my opinion, the Assistant Commissioner of State Taxes has somewhere got confused to treat the transitional credit claimed by the dealer as an availment of the said credit when in fact **an availment of a credit is a positive act and unless carried out for reducing any tax liability by its reflection in the return filed for any financial year, it cannot be a case of either availment or utilization.** It is rightly argued by Mr. Kejriwal that **even if the respondent No. 3 was of the opinion that the petitioner was not entitled to such transitional credit at best, the claim could be rejected but such rejection of the claim for transitional credit does not bestow any statutory jurisdiction upon the assessing authority to correspondingly create a tax liability especially when neither any such outstanding liability exists nor such credit has been put to use.***

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*33. Had it been a case where the credit shown in electronic ledger, was availed or utilized for meeting any tax liability for any year, there would be no error found in the action complained but it would be stretching the term 'availment' beyond prudence to treat the mere reflection of the transitional credit in the electronic credit ledger as an act of availment, for drawing a proceeding under Section 73(1) of 'the BGST Act'. The provisions underlying Section 73 is self eloquent and it is only if such availment is for reducing a tax liability that it vests jurisdiction in the assessing authority to recover such tax together with levy of interest and penalty under Section 50 but until such time that the statutory authority is able to demonstrate that any tax was recoverable from the petitioner, **a reflection in the electronic credit ledger cannot be treated as an 'availment'**.*

[Emphasis Supplied]

CASES RELATED TO ERROR IN FILING GST TRAN-1



Vision Distribution Pvt. Ltd. W.P.(C) 8317/2019- Delhi HC

The Hon'ble Delhi High Court while allowing refund of tax paid in cash on exports due to not availability of option to claim carry forward ITC on 01.07.2017 held that

The business activity in the country could not be expected to come to a standstill, only to await the Respondents making the GST system workable. The failure of the Respondents in first putting a workable system in place, before implementing the GST regime, reflects poorly on the concern that the Respondents have shown to the difficulties that the trade faced throughout the length and breadth of the country. Unfortunately, even after passage of over two years, the Respondents have not remedied their omissions and failures by taking corrective steps. They continue to take shelter of the limitations in, and the inability of their software systems to grant refund, despite the same being justified. The rights of the parties cannot be subjugated to the poor and inefficient software systems adopted by the Respondents. The software systems adopted by the Respondents have to be in tune with the law, and not vice versa. The system limitations cannot be a justification to deny the relief, to which the Petitioner is legally entitled.

[Emphasis Supplied]

SRC AVIATION (P) LTD W.P.(C) 12167/2019- Delhi HC

The Hon'ble Delhi High Court directed the Department to either open online portal to enable the petitioner to file Form TRAN-1 electronically or accept the same manually on or before 31.12.2019 while noting that it is not fair to expect that each person who may not have been able to upload the Form GST TRAN-1 should have preserved some evidence of it such as, by taking a screen shot. Many of the registered dealers/traders come from rural/semiliterate background. They may not have had the presence of mind to create any record of their having tried, and failed, to upload the Form GST TRAN-1. The Hon'ble Court also held credit to be "property" protected by Article 300A. The relevant extracts are reproduced as under:

9. The factual position in the present case is not any different and petitioner is also entitled to similar relief. At this juncture, it may be noted that as per Notification No. 49/2019 dated 09.10.2019 issued by CBIC, the date prescribed for filing of Form GST TRAN-1 under Rule 117 (1A) of the CGST Rules has been extended to 31.12.2019. This itself demonstrates that the Respondents recognise the fact that the registered persons were not able to upload the Form GST TRAN-1 due to the glitches in the system. It is not fair to expect that each person who may not have been able to upload the Form GST TRAN-1 should have preserved some evidence of it – such as, by taking a screen shot. Many of the registered dealers/traders come from rural/semiliterate background. They may not have had the presence of mind to create any record of their having tried, and failed, to upload the Form GST TRAN-1. They cannot be made to suffer in this background, particularly, when the systems of the Respondents were not efficient.

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From the documents placed on record, it emanates that the Respondents have no cogent ground to deny the benefit of the Notification No. 49/2019 dated 09.10.2019 issued specifically to grant relief to taxpayers who faced difficulty in filing Form GST TRAN-1 due to technical glitches.

10. We may further add that the credit standing in favour of an assessee is “property” and the assessee could not be deprived of the said property save by authority of law in terms of Article 300 (A) of the Constitution of India. There is no law brought to our notice which extinguishes the said right to property of the assessee in the credit standing in their favour.

[Emphasis Supplied]

Hans Raj Sons CWP 36393/2019- P&H HC

The Hon'ble P&H High Court while allowing the petitioner to avail ITC by filing Form TRAN-1 by 31.12.2019 in alternative also allowed the petitioner to avail benefit of unutilized credit in their GSTR-3B for January 2020 if the petitioner is hampered in any way for filing TRAN-1 due to non opening of the Portal by the Department. The relevant extract is reproduced as under:

In view of above, present petition is allowed in terms of the said CWP No.30949 of 2018 decided on 04.11.2019 with permission/modification to file the said Statutory Form TRAN-I by 31.12.2019.

It is clarified that in case the petitioner is hampered in any manner from availing the benefit of aforesaid judgment, due to non opening of the Portal by the Respondents, then the petitioner shall be permitted, in the alternative to claim the benefit of unutilized credit in their GST-3B Forms to be filed for the month of January,2020 either electronically or manually.

[Emphasis Supplied]

THE TYRE PLAZA W.P.(C) 8970/2019- Delhi HC

The Hon'ble High Court observed that the entire GST system is still in a trial and error phase and it will be too much of a burden to place on the Assesseees to expect them to comply with the requirement of the law where they are unable to even connect with the system on account of network failures or other failures. Thus, the Hon'ble Court directed the Department to open the Portal to enable the Petitioner to file Tran-1, failing which they shall accept the Form Tran-1 manually filed by the Petitioner. The relevant extracts are reproduced as under:

*7. As observed by this Court in several orders i.e. in **Bhargava Motors v. Union of India 2019 SCC OnLine Del 8474**, **Kusum Enterprises Pvt. Ltd. v. Union of India [WP(C) 7423/2019]** and **Sanko Gosei Technology India Pvt. Ltd. v. Union of India & Ors. [WP(C) 7335/2019]**, the entire GST system is still in a trial and error phase and it will be too much of a burden to place on the Assesseees to expect them to comply with the requirement of the law where they are unable to even connect with the system on account of network failures or other failures.*

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8. *The Court would urge the ITGRC to review the policy it has adopted in such cases, and acknowledge instances like the present one, where the Petitioners are not able to link with the Portal and therefore, the fact of a technical glitch is not able to be accounted for in the system.*

9. *The Court therefore, directs that the Respondents to either open the Portal to enable the Petitioner to again file the TRAN-1 Form electronically, failing which they will accept the TRAN-1 Form already filed manually by the Petitioner.*

[Emphasis Supplied]

Recent Judgments

- *Brand Equity – Delhi High Court [Stayed by Hon'ble Delhi High Court]*
- *SKH Metal Sheet – Delhi High Court*
- *Super India Limited - Delhi High Court*

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