



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 - 3
INPUT TAX CREDIT
SECTION 18, 19 & RULE 42, 43, 44, 45

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05th June 2021





Real Estate Sector – Reversal under Rule 42

to be continued in 3rd Session

Proportionate Reversal of Credit on Flats sold post CC

- Section 17 (1) & (2) provides that credit shall not be allowed used partly for exempted/non-taxable supplies.
- Thus, ITC proportionate to Flats sold after CC or First Occupation is required to be reversed.
- Rule 42 and 43 provides the manner for computation of ITC required to be reversed in proportionate to exempted/ Non-Taxable Supply.
- Formula prescribed in Rule 42 & 43 is turnover based. Further, it provides reversal formula based on credit availed during the tax period and final computation for Financial Year.
- Formula in Rule 42 does provide for considering credit availed during previous financial year.
- Whereas, department used to compute the CENVAT reversal under Service Tax Regime based on area sold after CC and for the entire project period.

Contd...

Section 2(47)

(47) 'exempt supply' means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

Section 17(3)

The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

Explanation.-For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.

N.No. 11/2017-CT(R) dated 28.06.2017 - Para (iv)

Wherever a rate has been prescribed in this notification subject to the condition that credit of input tax charged on goods or services used in supplying the service has not been taken, it shall mean that,-

(a) credit of input tax charged on goods or services used exclusively in supplying such service has not been taken; and

(b) credit of input tax charged on goods or services used partly for supplying such service and partly for effecting other supplies eligible for input tax credits, is reversed as if supply of such service is an exempt supply and attracts provisions of sub-section (2) of section 17 of the Central Goods and Services Tax Act, 2017 and the rules made thereunder.

Illustration -3 (With Simple Facts to understand)

S.No	Particulars	2017-18	2018-19
1	C2 (ITC availed during the Year)	21 CR	6 CR
2	E (Aggregate value of exempt supplies during the tax period – i.e. Flats sold after CC)	0	20 CR
3	F (Total turnover in the State of the registered person during the tax period)	100 CR	100 CR
4	D1 (The amount of input tax credit attributable towards exempt supplies of the common credit)	Zero	1 .20 CR

* For explaining the formula prescribed in Rule 42(2) it is assumed that in CC is received during FY 2018-19.

Illustration -3 (with additional Facts)

Total Area	1,00,000 Sq. Ft.
Area Sold prior to CC	70,000 Sq. Ft.
Area remain Unsold on date of CC	30,000 Sq. Ft.
CC received on	01.08.2018
ITC availed : 01.04.2018 31.07.2018	Rs. 4 Crores
ITC availed : 01.08.2019 to 31.03.2019	Rs. 2 Crores
On or after 01.08.2019 only proportionate credit can be availed on Monthly basis [Rule 42(1)]	<p>Availed – 2 cr. Reversal u/r 42(1) – Rs. 0.6 Cr Someone may take stand and argue that reversal to be made on turnover basis – Lower probability to succeed in this argument after receipt of CC, as area remain unsold is known and it is exempted.</p>
Yearly Reversal [Rule 42(2)]	<p>To be computed on 6 Cr.</p> <p>How to compute ??? Turnover Base or Area Base ???</p>

Rule 42 amended w.e.f. 01.04.2019

- Rule 42 amended w.e.f. 01.04.2019.
- Specific mechanism provided for reversal for Real Estate Developers.
- ITC has to be reversed based on Carpet area.
- Final Reversal : Proportionate to area remain unsold on the date of CC or First OC – to be done for entire project duration or from 01.07.2017, whichever is later.

Changes in Rule 42(1) w.e.f. 01.04.2019

T = Total input tax involved on inputs and input services **in a tax period**

T1 = used exclusively for the purposes other than business

T2 = used exclusively for effecting exempt supplies

T3 = Blocked Credit under section 17(5)

C1 = ITC credited to the electronic credit ledger [$C1 = T - (T1+T2+T3)$]

T4 = Zero [Para 5(b)-Schedule-II Transaction] – as goods/services are commonly Used

T4 = used exclusively for effecting supplies other than exempted but including zero rated supplies

C2 = Common Credit [$C2 = C1 - T4$]

D1 = Credit attributable towards exempt supplies [Proportionate Reversal to be made under Rule 42]

$$D1 = C2 * E / F$$

E = aggregate value of exempt supplies during the tax period

E includes – (i) Construction on which No ITC is available;
(ii) Area which remain un-booked on date of CC or First OC

F = Total turnover in the State of the registered person during the tax period:

Section 2(106) '**tax period**' means the period for which the return is required to be furnished;

E= aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;
F= aggregate carpet area of the apartments in the project;

Contd...

- Rule 42(5) : Ongoing projects shifted to new Scheme, no reversal is required on receipt of CC, as during transition to new tax structure on 01.04.2019, they have already reversed proportionate ITC attributable to period on or after 01.04.2019.
- Rule 42(6) : *Where any input or input service are used for more than one project, input tax credit with respect to such input or input service shall be assigned to each project on a reasonable basis and credit reversal pertaining to each project shall be carried out as per sub-rule (3).*
- No reversal required on residential projects on which credit is not availed on or after 01.04.2019.

Illustration 4

T	Total Input Tax Credit in a month	Rs. 10,00,000
T1	ITC attributable to supply used by Director for personal use	Rs. 75,000
T2	ITC on inputs used for renting of a residential property	Rs. 1,50,000
T3	ITC attributable to Food and cab expenses	Rs. 45,000
T4	ITC on goods and services exclusively used for construction of Flats to be sold before CC	Rs. 0
E	Exempt Turnover (Construction on which no ITC is available)	Rs. 22,50,000
F	Total Turnover during the tax period	Rs. 25,00,000
C1	ITC credited to Credit ledger [T – (T1+T2+T3)]	Rs. 7,30,000
C2	Common Credit [C1-T4]	Rs. 7,30,000
D1	ITC attributable to Exempt Supply [C2*E/F] required to be reversed	Rs. 6,57,000

Rule 42(3) – Final Computation of Reversal

- Rule 42 (3) : Final Computation of ITC Reversal on completion of project
- To be reversed before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project.
- Credit availed during entire duration of construction has to be taken in final computation of reversal – or from 01.07.2017, whichever is later.
- **What about transitional credit transferred through Tran-1:** My view – Not required to be taken. Why ??? - Let's Discuss relevant provisions.

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Section 16 : Eligible to take Credit of **Input Tax**

Section 17 : Proportionate Reversal of **Input Tax**

Section (62) : '**input tax**' in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes'

- (a) the integrated goods and services tax charged on import of goods;
- (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
- (c) the tax payable under the provisions of sub-section (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
- (d) the tax payable under the provisions of sub-section (3) and sub-section (4) of section 9 of the respective State Goods and Services Tax Act; or
- (e) the tax payable under the provisions of sub-section (3) and sub-section (4) of section 7 of the Union Territory Goods and Services Tax Act,

but does not include the tax paid under the composition levy;

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Section 140: Transitional arrangements for input tax credit.

(1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, **the amount of CENVAT credit** of eligible duties carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law 4[within such time and] in such manner as may be prescribed

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:'

- (i) 'where the said amount of credit is not admissible as input tax credit under this Act; or
- (ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or
- (iii) 'where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.

Illustration-1(Final Computation as per amended Rules)

Total Area	1,00,000 Sq. Ft.
Area Sold prior to CC	70,000 Sq. Ft.
Area remain Unsold on date of CC	30,000 Sq. Ft. [30%]
Transitional ITC – transferred through Tran-1	Rs. 3 Crores
CC received on	01.08.2019
ITC availed 01.07.2017 to 31.07.2019	Rs. 10 Crores
Reversal on receipt of CC [Rule 42(3)]	3 Crores [10 Crores*30%]
ITC availed on and after 01.08.2019	Rs. 2 Crores
On or after 01.08.2019 only proportionate credit can be availed on Monthly basis	<p>Availed – 2 Cr.</p> <p>Reversal u/r 42(1) – Rs. 0.6 Cr.</p>

Legal Dispute during Service Tax Regime

Position prior to 01.04.2016

1. Till the date of obtaining CC, all transaction of the Developer are taxable, therefore during the period of construction no reversal is required to be made. It is settled law that once credit is legally and validly availed, the same cannot be denied and/or recovered unless specific provisions exist for the same under the law.
2. Sale of flats after Completion Certificate being a non-service, is not included within the ambit of exempted service and therefore reversal under Rule 6 of CCR would not be attracted.
3. However, credit which has been availed **after** the date of obtaining CC, is required to be reversed in proportionate to unsold units based on some reasonable method e.g. area ratio or value formula. In this regard the Tribunal/ Courts have held that that once the assessee is engaged in provision of exempt goods/service, full cenvat credit cannot be taken of common inputs/ input services and some reasonable method has to be applied to avail the proportionate credit attributable to only taxable service.

Contd...

Position after 01.04.2016

1. Rule 6(1) was amended w.e.f 01.04.2016 wherein an explanation was inserted which clarified that for the purposes of Rule 6, exempted services as defined in clause (e) of rule 2 shall include an activity, which is not a service as defined in section 65B(44) of the Finance Act, 1994 provided that such activity has used inputs or input services.
2. Rule 6(3) of the CCR provides an option to a provider of output service who is providing both non-exempted services as well as exempted services for the procedure to be followed for reversal of Cenvat Credit.
3. Rule 6(3A)(b) provides that the provider of output service shall determine the credit required to be reversed out of the total credit of inputs and input services **taken during the month**, on provisional basis. **The reversal under Rule 6(3A)(b) is done on a provisional basis using values exempt and non-exempt services provided during the preceding financial year.**

Contd...

Position after 01.04.2016

4. Rule 6(3A)(c) provides that the reversal of Cenvat Credit attributable to provision of exempted services shall be determined for the **whole of the financial year**, using the figures for the entire Financial Year in the formula prescribed in Rule 6(3A)(c) which is almost similar to formula prescribed under Rule 6(3A)(b) and considers the Annual Figures of the credit and turnover of the current Financial Year .
5. Accordingly, on applying the formula prescribed under Rule 6(3A)(b) till the date of CC provisional reversal would come out to be zero in absence of any exempted turnover.
6. Further, as per formula prescribed under Rule 6(3A)(c) final reversal would come out to be zero in absence of any exempted turnover, till the end of financial year preceding the date of CC. It is to be further noted that, there is no other manner prescribed under the CCR where the credit availed during the previous Financial Years is required to be reversed on exemption of services in a particular Financial Year.
7. Thus, as per formula prescribed under Rule 6(3A), positive final reversal come out in the FY in which CC is received and subsequent FY.

Judicial Position

- **M/s Alembic Ltd. Shreno Ltd. Vs. C.C.E & S.T. Vadodara-I Appeal No. ST/11475,11476,10017,10018/2018-DB** wherein the Hon'ble CESTAT held as under:
 - 6. *We find some merit in the submission made by the Ld. Counsel for the Appellants that for the purpose of invoking provisions of Rule 6 of the Cenvat Credit Rules, 2004, in the present set of facts and circumstances, the output service must first be exempt service. That upon receipt of Completion Certificate for the projects, the output activity of sale of residential units becomes “non-service” as per provisions of Section 65B of the Finance Act, 1994 read with definition of the term “exempt service” under Rule 2(e) of the CCR, 04. This is further supported by specific amendment carried out in Rule 6(1) of the CCR, 04 whereby w.e.f. 1.4.16, Explanation 3 was inserted specifically dealing with a situation as in the present case, where a deeming fiction was created that for the purposes of Rule 6 of CCR, 04, exempted services as defined in clause (e) of rule 2 shall include an activity, which is not a ‘service’ as defined in section 65B(44) of the Finance Act, 1994 provided that such activity has used inputs or input services. That there was no such stipulation prior to 1.4.16 in law and prima facie such situation was not to be treated as exempt service and did not attract the mischief created under Rule 6 of the CCR, 04.*
- The above referred view of the CESTAT Ahmedabad has also been upheld by the Hon'ble High Court of Gujarat in its judgement dated 12.04.2019 in the appeal arising out of the said order.

Judicial Position

- The above referred judgement was followed by CESTAT Bangalore in the case of *M/s. TPL Developers Versus Commissioner of Central Tax, Bangalore North ST/20074/2019-SM*
- The Hon'ble Supreme Court in *Dai Ichi Karkaria Ltd. 1999 (112) E.L.T. 353 (S.C.)* has held that Cenvat Credit is a vested right. Once it is legally and validly availed, the same cannot be denied and/or recovered unless specific provisions exist for the same.

Rule 43 – Proportionate Reversal on Capital Goods

Rule 43(1) – Monthly Computation of ITC Reversal

Clause (b): No ITC shall be available on Capital Goods used exclusively for the purposes other than business or used exclusively for effecting exempt supplies

Clause (b): ITC shall be available on Capital used exclusively for effecting supplies other than exempted but including zero rated supplies

Clause (c)

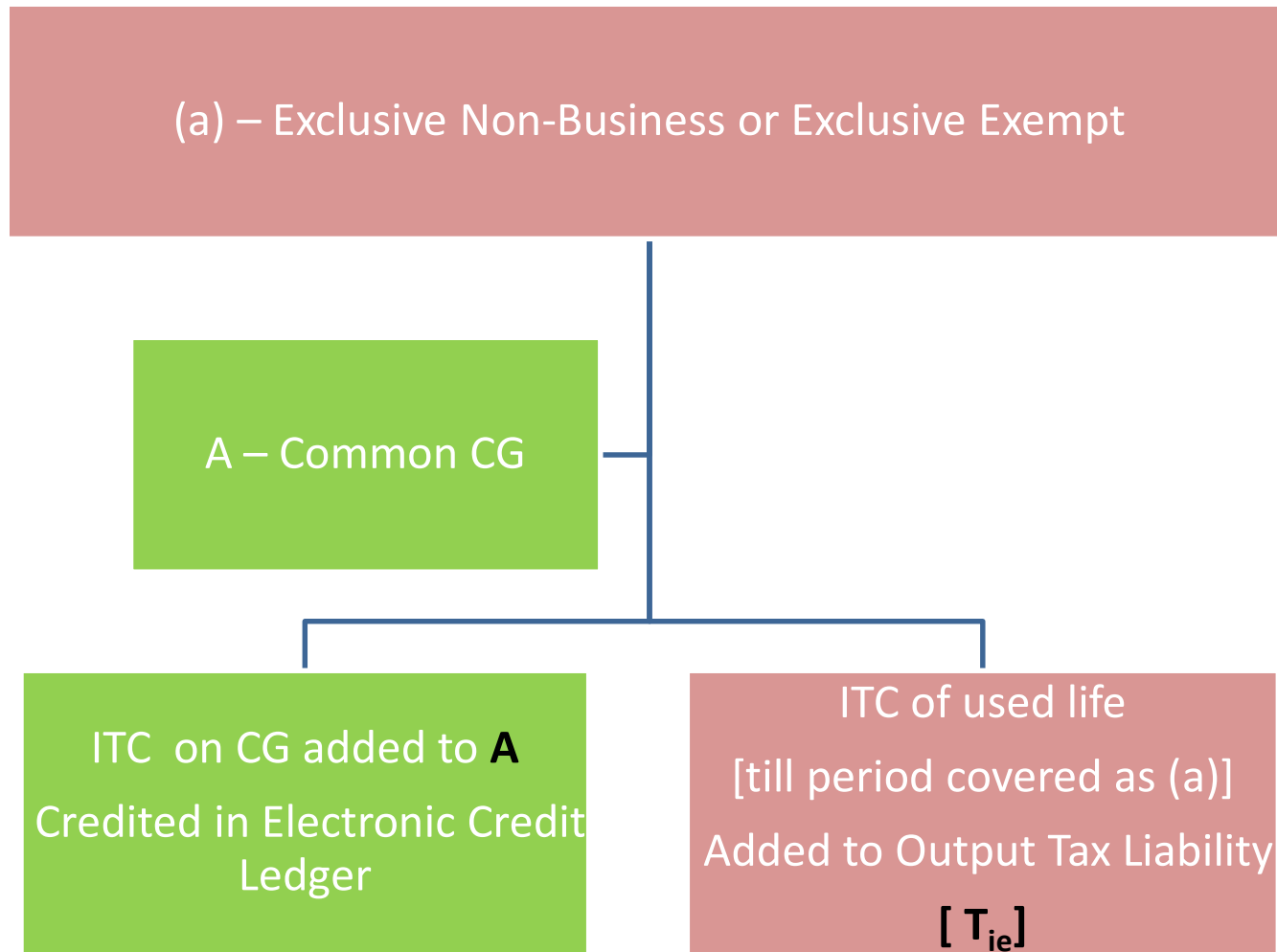
A = ITC on Capital Goods not included in (a) & (b)

- **Validity of the useful life of such goods shall extend upto five years from the date of the invoice for such goods**

Clause (d)

T_c = Aggregate amount of A credited to the Electronic Credit Ledger whose useful life remaining during the tax period.

Change in Use [*Proviso to Rule 43(1)(c)*]



Change in Use [*Proviso to Rule 43(1)(d)*]

(a) – Exclusive for taxable including Zero Rated

A – Common CG

ITC on CG added to **A**
for computation of aggregate Value
'Tc'

Rule 43(1) – Monthly Computation of ITC Reversal

Clause (e)

T_m = ITC attributable to a tax period on common capital goods during their useful life

$$T_m = T_c / 60$$

- Useful life of any capital goods = five years from the date of invoice
- Above formula shall be applicable during the useful life of the said capital goods.

Clause (g)

T_e = amount of common credit attributable towards exempted supplies

$$T_e = (E' / F) \times \text{Aggregate of } T_m$$

'E' is the aggregate value of exempt supplies, made, during the tax period, and

'F' is the total turnover 5[in the State] of the registered person during the tax period.

Values of Last Tax Period

- Provided further that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available,
- the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available,
- previous to the month during which the said value of 'E/F' is to be calculated;

Explanation: For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 and entry 92A of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule; **[In my View – Technically this explanation is not required]**

- Not to be added in Aggregate Value of exempt supplies:
 - VAT and State Excise Duty paid on Alcoholic Liquor for Human Consumption
 - Excise Duty and VAT paid on Petroleum Products
 - CST paid on above products on inter-statement movement.

Monthly Reversal of ITC on Common Capital Goods

Clause (h)

the amount Te **along with the applicable interest** shall, **during every tax period** of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit.

Illustration – Reversal of Capital Goods

Compute amount of ITC on capital goods to be credited in electronic Credit ledger and also amount of reversal required as per Rule 43 in the month of June 2021.

Presumptive Facts	Amount	
Value of Taxable supply of Goods	12,00,000	
Value of zero rated supply of service	5,50,000	
Value of Exempted Supply of Goods	5,00,000	
Supply of goods made for non-business use	50,000	
	CGST	SGST
ITC on capital goods used exclusively for supplying exempted goods	10,800	10,800
ITC on capital goods used exclusively for supplying taxable goods (including zero rated)	45,000	45,000
ITC on capital goods used exclusively for non-business use	11,700	11,700

Contd...

Compute amount of ITC on capital goods to be credited in electronic Credit ledger and also amount of reversal required as per Rule 43 in the month of June 2021.

Capital Goods used for supplying both exempted and taxable goods	CGST	SGST	Date of purchase
Machine A	50,400	50,400	12-01-2021
Machine B	23,040	23,040	21-04-2021
Machine C	41,040	41,040	01-06-2021

Illustration - Solution

Total ITC on Capital Goods credited in credit ledger in the month of June 2021:	CGST	SGST
ITC on capital goods used exclusively for supplying taxable goods (including zero rated)	45,000	45,000
ITC on Machine C	41,040	41,040
Total	86,040	86,040
Common credit attributable to exempt supply to be added to output tax liability of June 2021:		
	CGST	SGST
ITC on Machine A / 60 [Tm]	840	840
ITC on Machine B / 60 [Tm]	384	384
ITC on Machine C / 60 [Tm]	684	684
Aggregate of Tm	1,908	1,908
Common credit attributable to Exempt supply:		
Te = Aggregate Tm * (Exempt + Non-business turnover) / Total Turnover = 1908 * (5,00,000 + 50,000) / 23,00,000	456	456

ITC Restriction through Tax Rate Notification

Is it Allowed by Section 16 or 17 of CGST Act ?

ITC restricted on Construction of Residential Apartment w.e.f. 01.04.2019

- **W.e.f. 01.04.2019**
 - ITC is restricted to be availed on construction of residential apartments.
 - Accumulated ITC cannot be used for payment of outward tax liability @5% / 1% on residential apartment. Thus, Unutilized ITC available for previous periods is like cash stuck.
- **Notification 11/2017 – CT Rate (conditions)**
 - *Provided that the central tax at the rate specified in column (4) shall be paid in cash, that is, by debiting the electronic cash ledger only;*
 - *Provided also that credit of input tax charged on goods and services used in supplying the service has not been taken except to the extent as prescribed in Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP;*

Section 16 of CGST/SGST Act

- Section 16 of CGST Act allows the ITC on all goods/ services received in course or furtherance of business.
- Section 16 does not empower the Government to restrict the credit through tax rate notification.

Section 16:

Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person

Section 17(5)(c) & (d)

- **Section 17(5)(c) & (d) do not restrict the Credit to Developers.**

Section 17(5)(c) & (d)

S.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:-

*(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 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.*

Way forward

- **Way forward:**
 - Challenge the notification no. 11/2017-CT(R) which restricts the Credit
 - In the meanwhile take ITC and reverse
 - If notification quashed, the balance ITC and the ITC availed later would become available.

Section 18(1)

Availability of credit in special circumstances—

(1) Subject to such conditions and restrictions as may be prescribed—

(a) a person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;

- **As per S.18(1)(a) – ITC on closing Stock can be availed**
- **ITC b/w effective date of Registration & Issuance date of RC – Can be availed.**
 - **Ask Supplier to amend its GSTR-1**
 - **Request him to modify Invoice & insert GSTIN No.**

Contd...

(a) a person who takes registration under sub-section (3) of section 25 shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration;

- **S. 25(3) – Person taking Voluntary Registration**
- **Eligible to avail ITC of Closing Stock**
 - **inputs held in stock and**
 - **inputs contained in semi-finished or finished goods held in stock**

Contd..

(c) where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semifinished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed;

- **Composition Dealer to Normal Dealer**
- **Eligible to avail ITC of Closing Stock**
 - **inputs held in stock and**
 - **inputs contained in semi-finished or finished goods held in stock**

Contd..

(d) where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed.

- **Exempt Supply to Taxable Supply**
- **Eligible to avail ITC of Closing Stock**
 - **inputs held in stock and**
 - **inputs contained in semi-finished or finished goods held in stock**

Section 18(2)

(2) A registered person shall not be entitled to take input tax credit under sub-section (1) in respect of any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply.

➤ **If Closing Stock is older than one year (from invoice date) – No ITC shall be allowed**

Section 18(4)

(4) Where any registered person who has availed of input tax credit opts to pay tax under section 10 or, where the goods or services or both supplied by him become wholly exempt, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of exercising of such option or, as the case may be, the date of such exemption:

Provided that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

- **Taxable Supply to Exempt Supply**
- **Normal Dealer to Composition Dealer**
- **Liable to Pay amount equivalent to ITC availed in respect of Closing Stock**
 - **inputs held in stock and**
 - **inputs contained in semi-finished or finished goods held in stock**

SUMMARY - SECTION 18 (1), (2) & (4)

Fresh registration under the act – when becomes liable to registration

Entitled to ITC w.r.t. inputs held in stock & inputs held in finished/ semi-finished goods in stock held in stock on the day immediately preceding when he becomes liable to payment of tax under GST.

Voluntary registration under the act

Entitled to ITC w.r.t. inputs held in stock & inputs held in finished/ semi-finished goods in stock held in stock on the day immediately preceding date of grant of registration.

RP ceases to pay tax under Composition Levy

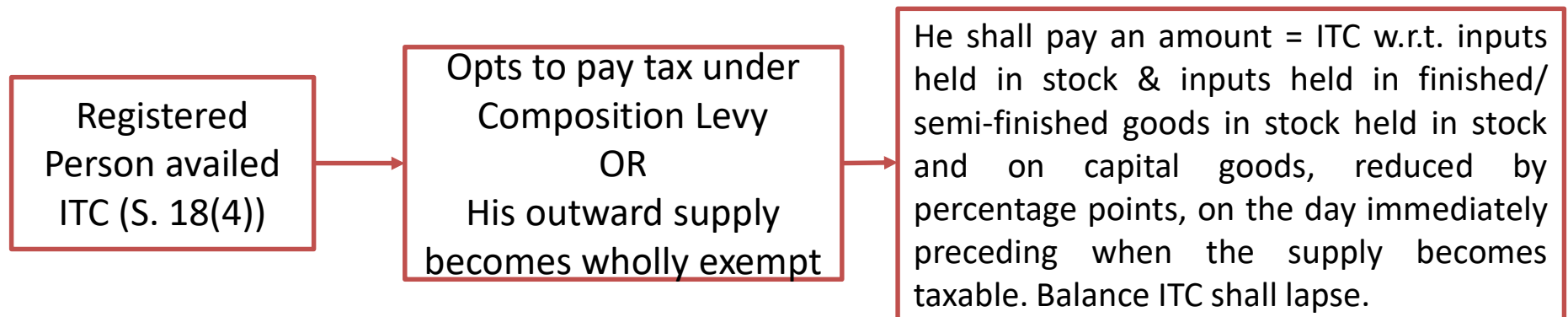
Entitled to ITC w.r.t. inputs held in stock & inputs held in finished/ semi-finished goods in stock held in stock and on capital goods on the day immediately preceding when he becomes liable to payment of tax under Section 9.

When exempt supply becomes taxable supply

Entitled to ITC w.r.t. inputs held in stock & inputs held in finished/ semi-finished goods in stock held in stock relating to the exempt supply and on capital goods exclusively for the exempt supply on the day immediately preceding when the supply becomes taxable.

SUMMARY - CONTD...

Such 4 categories of registered persons, as mentioned on the previous slide SHALL NOT BE ENTITLED TO ITC AFTER THE EXPIRY OF ONE YEAR FROM THE DATE OF INVOICE RELATING TO SUCH SUPPLY. (S. 18(2))



Section 18(3)

(3) Where there is a change in the constitution of a registered person on account of **sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities**, the said registered person shall be allowed to transfer the input tax credit which remains unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.

- Unutilized balance of ITC of Transferor can be transferred to Transferee

Procedure for Transfer of Unutilized ITC by Transferor

Unutilized balance of ITC of Transferor is to be transferred to Transferee by following the below procedure: [Rule 41]

- a. The credit has to be transferred by filing FORM ITC 02 by Transferor [Rule 41(1)]
- b. At the time of filing the said Form Transferor is required to submit a copy of a **certificate issued by a practicing chartered accountant or cost accountant** certifying that the transfer of business has been done with a specific provision for the transfer of liabilities.
- c. Transferee is required to accept the details furnished by Transferor and upon such acceptance, credit specified in FORM ITC 02 shall be credited to electronic credit ledger of Transferee.
- d. It is important to ensure that inputs and capital goods transferred shall be duly accounted by the Transferee in their books of accounts.

Section 18(5)

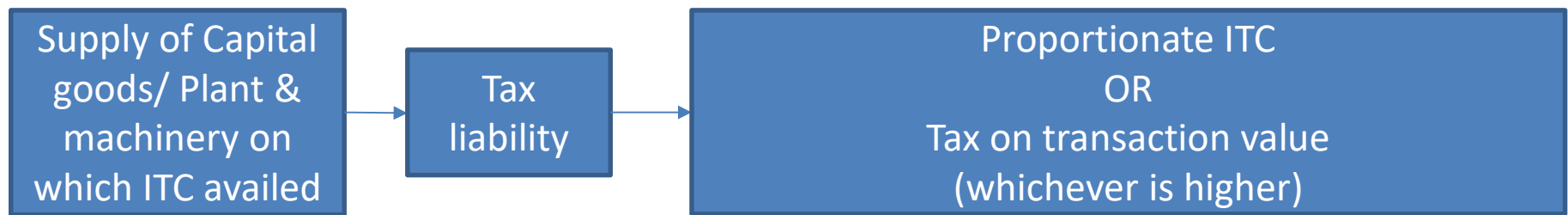
(5) The amount of credit under sub-section (1) and the amount payable under sub-section (4) shall be calculated in such manner as may be prescribed.

Section 18(6)

(6) In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher:

Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15

ILLUSTRATION – S.18(6)



- Fixed Asset was purchased for 40,000. ITC claimed= $40,000 * 12\% = 4,800$
- Consideration = 15,000
- 15,000 shall be the transaction value as per (2)
- Tax payable in (1)= $4,800 * 3.5/5 = 3,360$ [Assuming FA has been sold after 1.5 years]
- Tax payable in (2)= $15,000 * 12\% = 1,800$ [Assuming GST Rate to be 12%]
- Higher of (1) and (2) shall be payable.

ITC IN CASE OF JOB-WORK – SECTION 19

- Principal entitled to ITC on **inputs and capital goods** sent to job-worker for job-work (even if directly sent to job-worker without first bringing to principal's place of business).
- If the **inputs** are not received back by the principal within 1 year – deemed to be supply to job-worker – on the day they were sent out to the job-worker.
- If the **capital goods** are not received back by the principal within 3 years – deemed to be supply to job-worker – on the day they were sent out to the job-worker.

Section 19

19. Taking input tax credit in respect of inputs and capital goods sent for job work.—

- (1) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on inputs sent to a job worker for job work.
- (2) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job work without being first brought to his place of business
- (3) Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise or are not supplied from the place of business of the job worker in accordance with clause (a) or clause (b) of sub-section (1) of section 143 within one year of being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out:

Provided that where the inputs are sent directly to a job worker, the period of one year shall be counted from the date of receipt of inputs by the jobworker.

Contd...

(4) The principal shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on capital goods sent to a job worker for job work.

(5) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on capital goods even if the capital goods are directly sent to a job worker for job work without being first brought to his place of business.

(6) Where the capital goods sent for job work are not received back by the principal within a period of three years of being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out:

Provided that where the capital goods are sent directly to a job worker, the period of three years shall be counted from the date of receipt of capital goods by the job worker.

Contd...

(7) Nothing contained in sub-section (3) or sub-section (6) shall apply to moulds and dies, jigs and fixtures, or tools sent out to a job worker for job work.

Explanation.—For the purpose of this section, —principal means the person referred to in section 143.

Rule 45

Delivery challan for sending goods for job work: For transportation of inputs or capital goods for job work, a delivery challan shall be issued by principal.

Delivery Challan shall also be issued when the material is sent directly to the place of job worker from the place of supplier [**Rule 45(1)**]

Contents of Delivery Challan: The Challan issued by the principal to the job worker shall contain the details specified in Rule 55 [**Rule 45(2)**]

The details of challans in respect of goods dispatched to a job worker or received from a job worker during a quarter shall be included in **Form GST ITC 04** furnished for that period on or before the twenty-fifth day of the month succeeding the said quarter or within such further period as may be extended by the Commissioner by notification in this behalf. [**Rule 45(3)**]

Payment of tax with interest if inputs or capital goods are not returned within the prescribed period – If inputs or capital goods are not returned within the period prescribed in section 143 (one or three years), the supply shall be declared in form GSTR-1. Tax with applicable interest shall be paid [**Rule 45(4)**]



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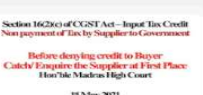
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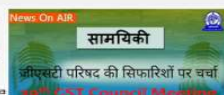
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