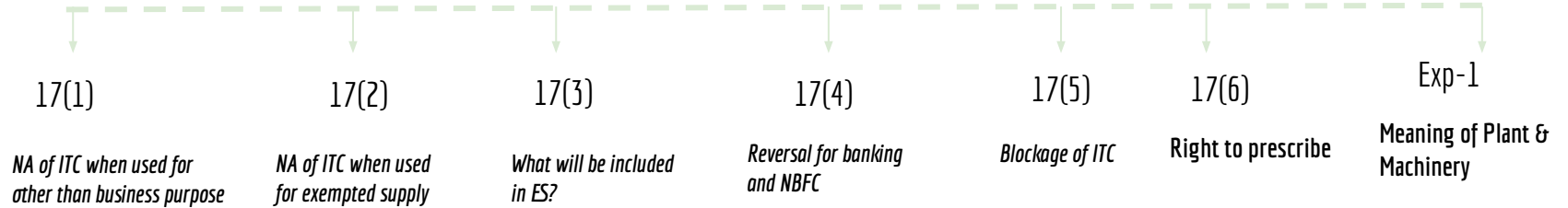




Section 17 of CGST Act



Section-17(1) – (4)

- (1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.
- (2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.
- (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.]*

1. Inserted vide Central Goods and Services Tax (Amendment) Act, 2018 w.e.f 01-02-2019



(4) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:

Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:

Provided further that the restriction of fifty per cent. shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.



Illustration :2

Provoke the brain Pvt. Ltd. is engaged in renting commercial as well as residential properties. Tax rate on commercial properties is 18% whereas the tax on renting of residential properties is exempted under GST. They are also engaged in GTA services covered in 5% tax on RCM basis. During the month of March 2020 they sold the following two properties.

Flat in south Extension: Rs. 21 Crores

Office space in DLF, Gurugram: Rs. 11 Crores.

Their revenue from GTA services was Rs. 1 Cr for the month.

The recovery of rent was 25 lac from the residential properties and Rs52 lac from the commercial properties.

You are required to calculate the amount of following for the month of March:

Exempted turnover

Taxable turnover

Total turnover



Solution:

Calculation of Exempted Turnover:

Section 17(3) adds some additional items to the exempted turnover. Taking into consideration the definition of exempted turnover and section 17(3) following items shall be added into the exempted turnover of Provoke the brain private limited

Proceeds from the sale of flat	Rs.21.00 Cr
Proceeds from the sale of office space	Rs.11.00 Cr
Outward supply covered in RCM(by virtue of section 17(3))	Rs. 1.00 Cr
Recovery from letting out of residential property, which is exempted under GST	Rs. 0.25 cr
Total value of exempted turnover for the months of March	Rs.33.25 cr



Calculation of Taxable turnover:

Taxable turnover will include the rent recovered from the letting out of commercial buildings: 52 Lac

Calculation of Total turnover:

Total turnover:		
Total exempted turnover		Rs. 33.25 cr
Add: Total taxable turnover	Rs. 0.52 cr	
		Rs. 33.77 cr



Illustration:3

Mr. Ambani is engaged in the business of processing paddy. He processes the paddy and extracts the rice and husk. Rice is exempted from tax but husk is taxable @5%. He is using office premises and pay rent @ Rs 30000 per month. He also bears tax @18% on rent. What amount of input tax credit he can avail every month for rent expenses. Turnover of rice is Rs. 100,000 and husk is Rs. 5,00,000.

Solution:

In this case office premises are used for both taxable and exempted outward supply. As per rule 42 the amount of tax paid on this inward supply will be allocated in the ratio of exempted and taxable turnover.

Formula for calculation is:

$$\text{Common input tax credit} * \frac{\text{Exempted turnover}}{\text{Total turnover}}$$
$$5400 * \frac{1 \text{ lac}}{6 \text{ lac}} = \text{Rs. } 900$$

i.e

Rs. 900 will be disallowed being related to exempted turnover.

Eligible input tax credit will be Rs. 5400-Rs. 900= Rs. 4500



Illustration 4:

Mr. Mahindra is engaged in the manufacture of Sugar. During the process they also get a by-product called Molasses. The tax rate on Sugar is 18% whereas Molasses is exempted. They produced 500 tonnes of Sugar last month and also 1000 tonnes of molasses. Their total inward supplies bearing tax were of Rs. 30,00,000 with a tax of Rs. 5,40,000. Their sales for the last month are:

Sugar 100 Tonnes.

Molasses: No sales.

The entire quantity of Molasses was used in house to burn the furnace and for processing of Spirit.

You are required to calculate the amount of input tax credit available and also the amount of ineligible input tax credit.



Solution:

In this case the production of Sugar is 500 tonnes and of molasses is 1000 tonnes. Input tax paid on purchase is Rs. 5,40,000.

Let us use the formula provided in Rule 42 assuming that all inward supplies are input and input services and there are no capital goods.

Because in case of capital goods the formula will change and rule 43 will apply.

Formula to calculate Input tax credit related to exempt supplies is

$$\text{Common input tax credit} * \frac{\text{Exempted turnover}}{\text{Total turnover}}$$

$$\text{i.e.} \quad 5,40,000 * \frac{100}{100} = \text{Rs. } 5,40,000$$

Entire amount of Rs. 5,40,000 will be available as input tax credit in this case.

We need to remember one thing. Rule 42 base turnover for ineligibility and not the production.



Section - 17(5)&(6)

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

- ~~(a) motor vehicles and other conveyances except when they are used—~~
 - ~~(i) for making the following taxable supplies, namely:—~~
 - ~~(A) further supply of such vehicles or conveyances ; or~~
 - ~~(B) transportation of passengers; or~~
 - ~~(C) imparting training on driving, flying, navigating such vehicles or conveyances;~~
 - ~~(ii) for transportation of goods;~~



Section -17(5)(a)

(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:—

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles;

Some fact clearing:

- *Whether a vehicle meant for goods carriage will be covered by blockage if it is used for passenger transportation?*
- *Whether a car which is used to carry goods will be covered by the blockage?*
- *A tempo traveller having seating capacity of 14 people including driver, carry 4 employees of the company. Will it still be covered by the blockage?*
- *A bike and scooter will be covered by the blockage?*
- *Whether a cycle will be covered by the blockage?*
- *Whether an E-rickshaw will be covered by the blockage?*



Let us answer one by one.

First

We need to notice that blockage is made applicable to “Motor Vehicles for transportation of persons”

First thing it needs to qualify is it should be a motor vehicle. It is not defined anywhere in GST. This term is defined in Motor Vehicles Act 1988.

“Section 2(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 1[twenty-five cubic centimeters”]



Let us understand this definition first:

A Motor Vehicle means:

Any mechanically propelled vehicle

Adapted for use upon roads

Power may be transmitted from an internal source or an external source

It includes:

A Chassis to which a body has not been attached.

It excludes:

Vehicles running upon fix rails

Special vehicles for internal use in factory or other enclosed area

Vehicles having less than four wheels fitted with engine capacity of not exceeding 25CC. Let us rephrase it. It will include the vehicles with less than 4 wheels if the engine capacity is more than 25 CC.



Second:

“Having approved seating capacity of not more than thirteen persons(Including driver)”

The capacity is not required to be real but approved. A car for 5 people may carry 6-7 but that is not its approved capacity.

Please try to write the answers first without checking the answers.

- *Whether a vehicle meant for goods carriage will be covered by blockage if it is used for passenger transportation?*
 - *No, The blockage is based on the approved capacity and common use of the vehicle and not the exceptional use. Even if it is used to carry passengers but it is approved as a goods carriage vehicle. It will be out of blockage. One important thing is even a goods carriage has seating for two people. But that doesn't make it a passenger vehicle.*
- *Whether a car which is used to carry goods will be covered by the blockage?*



No, a passenger vehicle with a capacity upto 13 people including the driver is covered by the blockage. Irrespective of its actual use it will not be eligible for ITC. It can be out of blockage only if it is used in following *taxable supplies*.

- a. It is used for further supply of such vehicles.
 - b. It is used for transportation of passenger
 - c. It is used in imparting the driving skills of that vehicle.
-
- A tempo traveller having seating capacity of 14 people including driver, carry 4 employees of the company. Will it still be covered by the blockage?
 - A tempo traveller having a capacity of 14 passengers is out of the blockage. Input tax credit will be available in this case.
 - A bike and scooter will be covered by the blockage?
 - A bike or scooter will be covered if their engine capacity is more than 25 CC.
 - Whether a cycle will be covered by the blockage?
 - A cycle is not propelled mechanically. It will not be covered in blockage.



- *Whether an E-rickshaw will be covered by the blockage?*
 - *An E-rickshaw will not be covered as it does not have a motor. It has less than 4 wheels. It should have an engine capacity of more than 25 CC to qualify as a motor vehicle.*

Section 17(5)(aa)

(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



Illustration:5

M/s Zumbo wheels is engaged in the sale and purchase of motor vehicles. They bought 52 Baleno cars in the last month. They were able to sell only two cars. Pls elaborate about their eligibility of ITC. The capacity of all cars was upto 5 passengers including the driver. Also the engine capacity was more than 1200 CC in each case.

Answer:

A motor vehicle having the approved capacity of upto 13 passengers is covered by section 17(5a). But there are some exceptions to this blockage.

When they are used in taxable supply of:

Such vehicles

Passenger transportation

Imparting driving skills

In our case M/s Zumbo wheels are engaged in sale and purchase of cars. Thus they will be eligible for the input tax credit for the purchase of those cars.



Illustration 6:

M/s Tata tele services is engaged in telecom services. They bought the following fleet of Motor vehicles.

One Tata Ace having an approved capacity of 50 Tonnes.

8 Tempo travellers having capacity of 18 passengers (including driver) each.

7 Tata Safari, used to provide the pick and drop to their employees.

While filing the return their finance department is confused about eligibility of input tax credit. Please elaborate which vehicles are eligible for the input tax credit.

Answer:

Tata tele is engaged in telecom services. It means they are not engaged in the supply of motor vehicles or in passenger transportation services. Section 17(5) restricts the eligibility of input tax credit in case of passenger vehicles having approved capacity to upto 13 people. This capacity of 13 people is inclusive of drivers. On the basis on this provision we can decide the eligibility of input tax credit for Tata tele services as follows:

Tata Ace is a vehicle made for carriage of goods. It is not a passenger carriage so there is no restriction on its eligibility. Its ITC will be available.

Tempo travellers have a capacity of 18 passengers. Even in this case input tax credit is available.

In the case of Tata Safari having the capacity of upto 7 passengers, Input tax credit is not available. Transportation of staff is not a taxable supply. It's a facility for the company's own staff.



Illustration 7:

M/s Bhakti yoga is engaged in sales of Bhakti yoga Agarbatti. They have 8 Scorpio cars. Total seating capacity of each car is 7 passengers. They also conduct bhakti yoga tours to their organic garden. They charge Rs. 800 per person. They used those cars in the Bhakti yoga tour. What will be the eligibility of input tax credit for those cars.

Answer:

Section 17(5a) restricts the eligibility of input tax credit on motor vehicles having approved capacity of upto 13 passengers. M/s Bhakti yoga is using the motor vehicle in further taxable supply. In this case input tax credit will be available.



Illustration 8:

M/s Seahawks is engaged in the transportation of passengers via sea. They charge Rs. 80,000 per passenger for a single journey to Italy. In the month of Feb 2021, They bought two new vessels. Whether they will be eligible for input tax credit of the tax paid on vessels.

Answer:

Section 17(5) puts a restriction on input tax credit for the purchase of vessels. But there are some exceptions provided in the section.

Input tax credit is eligible if the vessels are used in taxable supply of such vessels

Passenger transportation services

Imparting the navigation skills

In our case the vessel is used for transportation of passengers. So in this case the input tax credit will be available.



Illustration 9:

M/s Reliance petrochemicals has an oil exploration unit in the KG D6 basin. They own 5 vessels to carry machines and supplies for their own use. There is no outward supply of carriage of goods via their vessels. They also have one ship, which is used to carry their own employees from the Oil exploration unit to the nearest base line. What will be the eligibility of input tax credit in this case.

Answer:

Reliance petrochemicals is engaged in oil exploration. Thus it is clear that they are not engaged in supply of vessels. Section 17(5) puts a restriction on ITC of vessels. But there are some exceptions also. Let us see what is provided in the Act first.

Input tax credit of vessel will not be available except the following cases:

(i) When they are used in taxable supply of:

Such Vessels

Passenger transportation

Imparting the navigation skills.

(ii) For transportation of goods.



As you can see there are two parts of these exceptions. In the first one a taxable supply is required. But in the second one a taxable supply is not required. Meaning thereby that in case of transportation of goods, ITC is available even if own goods are transported. Here we can avail ITC even for in-house use. In the first case a taxable supply is required. In case of transportation of passengers, there should be a taxable outward supply. Transportation of own employees is not a taxable supply. Hence in this case the vessels used for carriage of goods, even in-house, are eligible for input tax credit. But the vessels used for transportation of employees of the company will not be eligible for any input tax credit



- *Whether an E-rickshaw will be covered by the blockage?*
 - *An E-rickshaw will not be covered as it does not have a motor. It has less than 4 wheels. It should have an engine capacity of more than 25 CC to qualify as a motor vehicle.*

Section 17(5)(ab)

(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;

(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;

*Substituted vide Central Goods and Services Tax (Amendment) Act, 2018 w.e.f 01-02-2019



Illustration 10:

M/s Jagmohan dalmia is engaged in passenger transportation services. They bought 5 new cars in the month of June 2020. They also spent Rs. 9,00,000 on servicing and repair of the cars already there in the fleet. What will be the eligibility of input tax credit?

Answer:

Clause (i) to proviso to section 17(ab) covers the eligibility of input tax credit for insurance, maintenance, repair and servicing expenses of Motor vehicles. It provides that where the vehicles covered under the blockage are used for the specified purpose which, their insurance, maintenance, servicing and repairs will also be eligible for the input tax credit. Here we need to check the conditions in section 17(5)(a) and (aa). Vehicles are used in passenger transportation. It is one of the criteria for eligibility of input tax credit. Thus input tax credit will be available in this case.



Illustration 11:

M/s MG cars is a manufacturer of MG cars. They spend the following amount for the month of April 2020. Please assess their eligibility of input tax credit.

Insurance of stock of cars laying in the factory.

Repair and cleaning of cars which were in stock for more than 8 months and were having any defects.

Maintenance and servicing of the cars in their own showrooms.

Answer:

Clause (ii) of proviso to Section 17(5) (ab) provide that ITC will be available to the following.

“(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; “

Thus in this case input tax credit of all the expanses of insurance, servicing, repair and maintenance will be available to MG Cars.



Illustration 12:

Bajaj insurance company is engaged in general insurance. They also insure motor vehicles. They insured all motor vehicle insurances with oriental insurance. Whether they will be eligible for input tax credit of the insurance from Oriental insurance?

Answer:

This case will be covered by the second entry of clause II of proviso to section 17(5)(bb). It provides where a person is engaged in general insurance services. They will be eligible for the input tax credit of general insurance, servicing, repair and maintenance of motor vehicles, Vessels and aircrafts.



Section 17(5)(b)

~~(b) the following supply of goods or services or both—~~

~~(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category 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;~~

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

~~(iii) rent a cab, life insurance and health insurance except where—~~

~~(A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or~~

~~(B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and~~

~~(iv) travel benefits extended to employees on vacation such as leave or home travel concession;~~



(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;

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

(iii) travel benefit's 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.”

*Substituted vide Central Goods and Services Tax (Amendment) Act, 2018 w.e.f 01-02-2019



- (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.
- (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;
- (h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and
- (i) any tax paid in accordance with the provisions of sections 74, 129 and 130.



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 capitalization, to the said immovable property;

(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;

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

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

(6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

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)(b)(i) - Illustration 13:

M/s Khao Khilao is engaged in outdoor catering. They got an order of catering for the marriage of daughter of Mr. Yedurappa. M/s Khao Khilao ordered the following items. Kindly assess the eligibility of input tax credit in this case.

50 Quintals of Wheat flour.

30 kg Chocolates

40 kg of self rising flour

20 tins of pure desi ghee

They also ordered 1200 packets of sweets from M/s Haldiram, to be distributed in marriage.

Answer:

Section 17(5)(bi) restricts the input tax credit on food items and outdoor catering. But proviso to section 17(5)(bi) provides for an exception.

Input tax credit of restricted inward supplies is eligible if goods/services 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.



In our case M/s Khao Khilao will be eligible for input tax credit on following inward supplies:

50 Quintals of Wheat flour.

30 kg Chocolates

40 kg of self rising flour

20 tins of pure desi ghee

They also ordered 1200 packets of sweets from M/s Haldiram , to be distributed in marriage.

All of these will fall in food items. They are used in an outward supply of outdoor catering. Thus they are a part of the composite supply named as outdoor catering.

Illustration14:

M/s Indigo is engaged in software development services. They bought the following items for their pantry. Please assess the input tax credit in these cases. -Mango drink, Coffee maker machine, Coffee powder, Tea bags, Snacks ,Wafers ,Cakes for the birthday celebrations



Answer:

Input tax credit of Food and beverages is restricted by section 17(5)(bi). Let us assess one by one, which items will be eligible for input tax credit.

- Mango drink: It is a beverage and M/s Indigo is not engaged in any supply of the same category or a mixed or composite supply, where it is a component. ITC not available.
- Coffee maker machine: It is a machine for use in the office. Only the food items are covered for blockage, it is not a food item. In this case input tax credit is available.
- Coffee powder: It is also covered by section 17(5)(bi). Input tax credit will not be available in this case.
- Tea bags: They are also covered by section 17(5)(bi), hence ITC will not be available in the case of tea bags.
- Snacks: They are a food item. Their input tax credit is restricted by section 17(5)(bi). ITC of snacks is not available.
- Wafers: It is a food item, ITC restricted by section 17(5)(bi).
- Cakes for the birthday celebrations: Cake being a food item, not eligible for input tax credit.



Section 17(5)(b)(III) - Illustration 15:

Udyan is an employee in a listed company. He is head of sales, North India region. He is on travel most of the time. His employer company provide him following benefits while he is travelling:

- Reimbursement of all travelling charges. Tickets of train and flight are paid off by the company. Whenever he need to travel by road, charges of transportation are also paid by the company.
- Charges for meals he has during the travelling period.
- Charges of his stay in the hotel.

During 1st March to 30th April, he was on leave. He was offered a travel package by his employer company. He travelled to Singapore with his family. As per the policy of the company his travelling expenses including the tickets, local travelling and food expenses were again paid off by the company. Please assess the ITC eligibility in this case.

Answer:

In this case assuming that he received the bills in the name of the company, which is a general practice. Following is the assessment of availability of input tax credit. Tax paid on Air tickets and other travelling expenses for the visits for official purpose will be eligible for input tax credit.



- Tax paid on food articles will not be allowed as it is restricted by section 17(5)(bi).
- Expenses of stay in Hotel will be allowed only if they are incurred in the same state.(you will be able to understand it better after place of supply chapter, but expense in fixed establishment situated in other state will not be allowed)

Illustration 16:

Chemcom limited is engaged in manufacturing of acids for household use. In May 2019, one of their employees was injured during packaging of acid. As per the labour Act they are required to provide him the proper medication till he reach to a normal working stage. Doctors clarified that skin of his hand is infected and they will have to remove it. After that it will be restored via plastic surgery. Checom Ltd borne the expenses of entire medication including plastic surgery. Please assess the eligibility of input tax credit for the company.

Answer:

Eligibility of input tax credit for Chemcom ltd.

- Expenses on medication are eligible for input tax credit.
- Section 17(5)(b)(i) disallows the expenses on cosmetic or plastic surgery. But provision to section 17(5)(b) provides for an exception when it is mandated by any law for the time being in force.
- In this case tax paid on expenses of plastic surgery and medication will be eligible for input tax credit.



Section 17(5)(d) - Illustration 17:

Mr A constructed a building for the purpose of his office use. Whether he will be eligible for input tax credit of Goods/services purchased for the construction?

Answer:

No, The input tax credit for the construction of immovable property is restricted by section 17(5)(d). Input tax credit will not be available in this case

Illustration 18:

M/s Shaktison wants to construct a new office for their sales division. They hired Golden home developers to construct it. Golden home will be liable for architectural drawings and interior along with the construction of 2 floors. They paid Rs. 45 lac to Golder homes as advance. Whether M/s Shaktiman will be eligible for input tax credit of tax paid of Rs. 45 lac? Whether they will be eligible for the tax they will pay on balance 3.5 crores to be paid to Golden Homes?



Answer:

M/s Shaktiman has taken work contract services from Golden Homes. Section 17(5)(c) restricts the input tax credit of works contract services when they are used to construct an immovable property. In this case input tax credit will not be available.

Illustration 19:

Mr. Bachchan wants to construct a house for his family to be named as Pratiksha. He decided to construct the house himself without the help of a contractor. He hired Mr. Angilo to draft a map and technical drawings. He paid Rs. 40 lac to him. After that he purchased 21000 Cement bags and other construction material. Please elaborate his eligibility to claim input tax credit on these services and material.

Whether it will make any difference if he hired Ms. Kapoor to do the construction for the house, Total charges quoted by Ms. Kapoor are 45 Crore.

Answer:

In this case input tax credit will not be available. Section 17(5)(d) restricts the input tax credit of services and goods used for construction of immovable property for self use.

Even if the construction contract is given to Ms. Kapoor, Input tax credit will not be available.



Illustration 20:

M/s Tata Sons hired Agile homes to renovate their office building. Charges quoted by Agile homes is Rs. 7 Crores. The amount is capitalized in the books of accounts of Tata sons. Please elaborate the eligibility of input tax credit in this case.

Answer:

Explanation to clause d of section 17(5) provides that the construction will include the renovation also. There is a condition that it should be capitalized in the books of accounts of the company. In this case the amount of renovation is capitalised. Thus the renovation will be covered for the blockage provided under section 17(5)(d).

Input tax credit will not be available in this case.

Illustration 21:

M/s Amramati is in the business of developing societies. They constructed a society in Greater Noida. Out of 45 flats 36 were sold before the completion certificate. Rest of the flats were sold after the completion certificate. What is the eligibility of input tax credit in this case.



Answer:

Sale of flats before completion certificate is considered as supply of service as per entry 5 of schedule II. Thus, sale of 36 is eligible for ITC. Whereas sale of 9 flats after completion do not fall within the definition of supply, thus no ITC available.

Illustration 22:

Mr. landlord wants to construct a house property. He wants to let out the house property to tenants. He hired M/s. Well developed to construct the property. Please write a note on eligibility of input tax credit in this case.

Answer:

In case of construction of immovable property, Input tax credit will not be available. In this case the works contract services are availed for construction of immovable property.



Section 17(5)(f) - Illustration 23:

Mr. Mark Gibson is providing some supplies in India. But he doesn't have any place of business in India. But he has a residential place in Connaught Place, Delhi. He purchased inward supplies of Rs. 20 lac with tax amount of Rs. 3,60,000. What is eligibility of input tax credit for Mr. Mark Gibson.

Answer:

First we need to check whether Mr. Mark Gibson is an NRTP in India or not. As per the definition of NRTP, A person doesn't have any fixed place of business or residence.

In our case Mr. Mark Gibson has a place of residence in India. He is not an NRTP. Thus he will be eligible for input tax credit if they are registered in India.

Illustration 24:

Will it make any difference if he doesn't have any place of residence also?

Answer:

In the same case if he doesn't have any fixed place of business either for residence, in India. He is covered by the definition of NRTP. Now he will not be eligible for the input tax credit of inward supplies purchased from India. He will be eligible only for the input tax credit for supplies he has imported from outside India.



Section 17(5)(h) - Illustration 24:

Veidk toothpaste limited launched a scheme to boost the sale of their product. They offered a tooth brush of Rs20 for free on the purchase of a large pack of toothpaste. The cost of a large pack is Rs. 200. They bought 1.2 lac tooth brushes to offer with the big pack of toothpaste. Whether they will be eligible for input tax credit of brushes purchased to offer them for free?

Answer:

In this case the toothbrush is offered with a condition to purchase the large pack.

Section 17(5)(h) provides for reversal of input tax credit when the goods are disposed of by way of gift or free sample. But the brush is not a free gift. There is a condition to purchase the large pack of toothpaste to avail the benefit of free toothbrushes. Thus in this input tax credit will be allowed. This case is not covered by the restriction of section 17(5)(h).

