



## Chapter 5

S.16	S.17	S.18	S.19	S.20	S.21
Eligibility and conditions for taking input tax credit.	Apportionment of credit and blocked credits.	Availability of credit in special circumstances. Read with Rule 40	Taking input tax credit in respect of inputs and capital goods sent for job work.	Manner of distribution of credit by Input Service Distributor.	Manner of recovery of credit distributed in excess.
Rule - 36 Rule - 37	Rule - 38 Rule - 39 Rule - 42 Rule - 43	Rule - 40 Rule - 44 Rule - 41	Rule - 40 Rule - 45	Rule - 39	





## Chapter 5 of CGST Rules

### Rule 36

#### Docs /other Requirement

- 1- Documents
- 2- Details in documents
- 3- No ITC for tax paid in Pursuance of Demand
- 4- No ITC if not declared by supplier

### Rule 37

#### Reversal of ITC

- 1- Declare default in GSTR 1st Proviso- Exceptions  
-Schedule 1  
-Sec 15(2b)
- 2- ITC added back in Outward tax liability
- 3-Interest
- 4- no time limit for re-availing ITC

### Rule 38

#### ITC for banks /FI

Claim of credit by bank Or Financial Institution

### Rule 39

#### ITC by ISD

- 1- manner of distribution of ITC by ISD
- 2- Reduction of ITC
- 3- Issue of ISD invoice & include ISD invoice/CN in Form GSTR-6

### Rule 40

#### Claiming Credit in Special Circumstances

Deduction from ITC under section 18 @5% per quarter or part of a quarter

### Rule 41

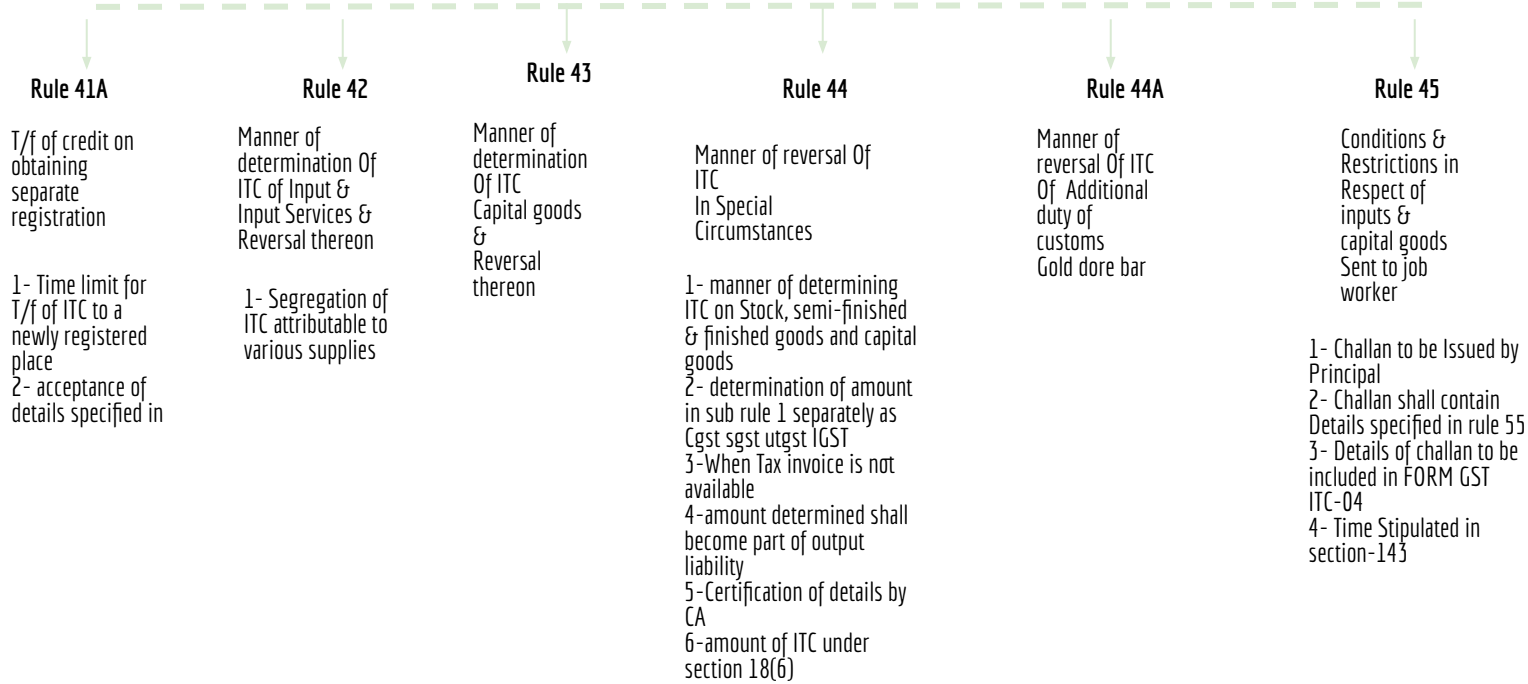
#### T/f of credit on Sale Merger/Amalg./Lease Or T/f of business

- 1- T/f of unutilized Credit
- 2- certificate from CA
- 3- Acceptance of details in Form GSTR ITC -02
- 4- itc accounted in books





## Chapter 5 of CGST Rules





## Section 16 of CGST Act

16(1)

*Who can avail ITC, of what*

- Registered person
- used/Intended to be used.
- in course or furtherance of business

16(2)& Exp 1

*Basic conditions for ITC*

- 16.2.a Tax Document
- 16.2.aa Statement of outward supply
- 16.2.b Receipt of supply
- Exp.1 deemed receipt
- 16.2.c Payment of tax
- 16.2.d Filing of return

Proviso 1,2&3

*Proviso 1-*

Lots/installment , ITC on last one

*Proviso 2-* Payment with 180 days either, pay ITC with OTL Read with Rule 37

*Proviso 3-* Reavail ITC if paid

16(3)

*Depreciation*

On amount without tax

16(4)

Time limit to take ITC  
Upto *due date* of GSTR 3b of September of FY.

Proviso to 16(4)

Time limit extended for first year upto 31st March 2019 via ROD.



## Section - 16(1)

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

### Illustration:1

A is a manufacturer of plastic bottles and his cost is Rs. 80. He paid Rs.10 in form of tax on his purchases. Other expenses related to labour and the heads not liable for tax. He decides to keep a margin of Rs. 20 and sell it in Rs. 100.

As per the value added feature of Tax. He will collect tax on sale from the customer.

Amount collected= Rs. 100 of sale price and Rs. 18 of tax. At the time of payment he will be liable to deposit Rs. 18 to the account of the government.

But he also paid tax of Rs. 10 on purchases which was deposited to the account of the government by his seller. So now Mr. A is required to pay Rs. 18 after adjustment of tax paid on purchase.His liability to pay via cash ledger is Rs. 18-Rs.10 = Rs. 8

This right to adjust the tax paid on purchase form the tax payable at the time of sales is called Input tax credit.



You create an asset at the time of purchase and use it at the time of sale.

Let us understand the journal entries of this transaction.

At the time of purchase.

Purchases .....	Dr	100	
CGST/SGST/IGST recoverable a/c ...	Dr	10	
To Vendor			110

We have created a recoverable with the tax paid at the time of purchase.

At the time of sale:

Customer.....	Dr	118	
To CGST /SGST/IGST payable			18
To sales		100	

Now we can check that all ledgers are correct.



A liability to pay for purchase is there for Rs. 110. Vendor account will be paid by Bank/cash. Total cash burn is Rs. 110. Amount of tax recoverable as tax is Rs. 10. Value of purchase is Rs. 100.

In case of entry of sales: Customer will pay Rs. 118. Tax payable for this particular transaction is Rs. 18. Price charged for sales of the item is Rs. 100.

At the time of filing of return and adjustment of tax.

CGST/SGST/IGST Payable .....	Dr.	18	
To CGST /SGST/IGST recoverable			10
To cash Ledger			8



## Section - 16(2)

Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,--

**(a)** he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

“(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;”.

**(b)** he has received the goods or services or both.





~~[Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;]~~

Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-- (i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise; (ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.”

(c) subject to the provisions of section 41 or section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

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



(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or installments, the registered person shall be entitled to take credit upon receipt of the last lot or installment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.



## Rule 36: Prescribed documents for ITC

(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,

- (a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31
- (b) an invoice issued in accordance with the provisions of Clause (f) of subsection (3) of section 31, subject to the payment of
- (c) a debit note issued by a supplier in accordance with the provisions of section 34;
- (d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;
- (e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub rule (1) of rule 54.



## Section-16(3)

Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

### Illustration -1

A ltd purchased a machine for Rs. 20 lac plus GST of Rs. 3,60,000. They capitalised the entire value of Rs. 23,60,000 for income tax and claimed the depreciation on the entire amount.

What is their eligibility for the input tax credit in this case



## Section-16(4)

A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice [ ~~or invoice relating to such debit note~~]<sup>1</sup> pertains or furnishing of the relevant annual return, whichever is earlier

[“Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.”]<sup>2</sup>

1. Omitted vide Finance Act, 2020 dated 27-03-2020 w.e.f. 01-01-2021
2. Inserted via: Removal of difficulty Order No. 02/2018-Central Tax



## Rule 36(4)

- (4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been ~~Uploaded~~ furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the invoice furnishing facility, shall not exceed ~~20 per cent~~ ~~10 per cent~~ 5 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been ~~Uploaded~~ furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the invoice furnishing facility,

Provided that the said condition shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in FORM GSTR-3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above

Inserted vide Notification No. 49/2019 - Central Tax dated 09-10-2019

Substituted vide NOTIFICATION NO. 94/2020-Central Tax dated 22-12-2020 w.e.f. 01-01-2021

Inserted vide NOTIFICATION NO. 94/2020-Central Tax dated 22-12-2020 w.e.f. 01-01-2021

Substituted vide Notification No. 75/2019 - Central Tax dated 26-12-2019 w.e.f. 01-01-2020

Substituted vide NOTIFICATION NO. 94/2020-Central Tax dated 22-12-2020 w.e.f. 01-01-2021

Inserted vide NOTIFICATION No. 30/2020-Central Tax dated 03-04-2020



~~Provided further that such condition shall apply cumulatively for the period April and May, 2021 and the return in FORM GSTR-3B for the tax period May, 2021 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above~~

Provided further that such condition shall apply cumulatively for the period April, May and June, 2021 and the return in FORM GSTR-3B for the tax period June, 2021 or quarter ending June, 2021, as the case may be, shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.

Inserted vide NOTIFICATION NO. 13/2021- Central Tax dated 01-05-2021

Substituted vide NOTIFICATION NO. 27/2021 - Central Tax dated 01-06-2021

1.	From 09.10.2019 to 31-12-2019	20%
2.	From 1.1.2020 to 31-12-2020	10%
3.	From 1-1-2021 onwards	5%



## Rule 86A- Applicable from 26-12-2019

(1) The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible in as much as

a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36-

i. issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained;

or

ii. without receipt of goods or services or both; or

b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or

c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or





## Rule 86A- Applicable from 26-12-2019

d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under Rule 36,  
may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.

(2)The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.

(3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.]

Inserted vide Notf no. 75/2019 – CT dt 26.12.2019



## Rule 86B- DoA- 01-01-2021

Notwithstanding anything contained in these rules, the registered person shall not use the amount available in electronic credit ledger to discharge his liability towards output tax in excess of ninety-nine per cent. of such tax liability, in cases where the value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds fifty lakh rupees:

Provided that the said restriction shall not apply where -

- (a) the said person or the proprietor or karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees, as the case may be, have paid more than one lakh rupees as income tax under the Income-tax Act, 1961(43 of 1961) in each of the last two financial years for which the time limit to file return of income under subsection (1) of section 139 of the said Act has expired;
- (b) (b) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (i) of first proviso of subsection (3) of section 54; or



(c) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (ii) of first proviso of sub-section (3) of section 54; or

(d) the registered person has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year; or

(e) the registered person is -

(i) Government Department; or

(ii) a Public Sector Undertaking; or

(iii) a local authority; or

(iv) a statutory body:

Provided further that the Commissioner or an officer authorised by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit.

Inserted vide Notification No. 94 /2020 – Central Tax



Sl.No.		
1	M/s NarsinghTransport, MP AAR	ITC of Car used for lease is allowed.
2	M/s ReeshamAssociates, MohanaGhose, WB AAR	No ITC on car purchased for rent a cab service
3	Storm Communications Private Limited	ITC of another state to a person registered in one state
4	GGL HOTEL AND RESORT COMPANY LIMITED	No ITC for lease rent for construction of an immovable property
5	M/s A M Motors: Kerala	ITC of Demo car
6	BiostadtIndia Limited (GST AAR Maharashtra)	ITC of gold coins
7	M/s. MRF Limited(Tamilnaduadvanced ruling)	Payment of discount value ITC allowed



### **M/s A M Motors: Kerala**

Input tax credit on demo cars: Whether the ITC of demo cars will be available as ITC to the dealer of cars?

Held: ITC of demo cars will be available as ultimately these cars will be sold. Also section 18(6) covers the cases where a capital goods, whose ITC is taken is sold. The tax is higher of transaction value tax or ITC less 5% each qtr, whichever is higher.

### **Biostadt India Limited (GST AAR Maharashtra)**

Issue: whether Input Tax Credit (“ITC”) can be claimed by the applicant on procurement of Gold coins which are to be distributed to the customers at the end of scheme period for achieving the stipulated lifting or payment criteria?

Held: No

### **M/s. MRF Limited (Tamilnadu advanced ruling)**

ITC when payment is made after discount value.

Held: ITC will be available proportionately when amount is paid after discount.

CBIC clarification: In circular no. 92/11/2019 dated 7th march 2019.



## **Important High Court Rulings:**

### **AAP & Co.: Date for taking ITC is date of annual return**

It would also be apposite to point out that the Notification No.10/2017 Central Tax dated 28th June 2017 which introduced mandatory filing of the return in Form GSTR 3B stated that it is a return in lieu of Form GSTR 3.

However, the Government, on realising its mistake that the return in Form GSTR 3B is not intended to be in lieu of Form GSTR 3, rectified its mistake retrospectively vide Notification No.17/2017 Central Tax dated 27th July 2017 and omitted the reference to return in Form GSTR 3B being return in lieu of Form GSTR 3

### **Guj HC in AAP & Co.: Date for taking ITC is date of AR**

Thus, in view of the above, the impugned press release dated 18th October 2018 could be said to be illegal to the extent that its para 3 purports to clarify that the last date for availing input tax credit relating to the invoices issued during the period from July 2017 to March 2018 is the last date for the filing of return in Form GSTR 3B .

The said clarification could be said to be contrary to Section 16(4) of the CGST Act/GGST Act read with Section 39(1) of the CGST Act/GGST Act read with Rule 61 of the CGST Rules/GGST Rules.



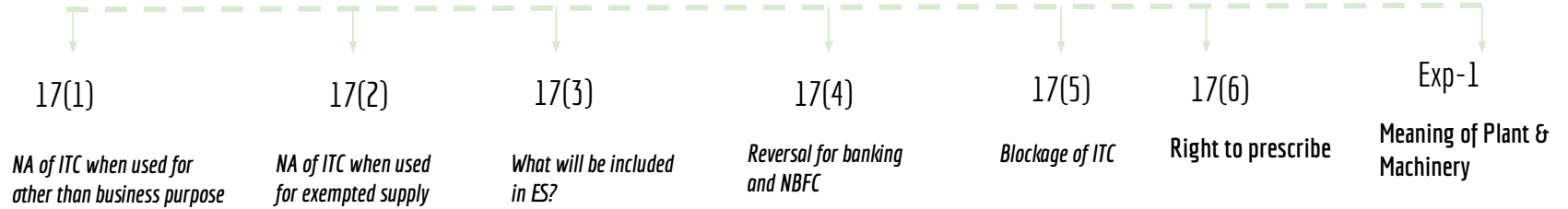
## Orissa HC in case of safari retreats

20. In that view of the matter, in our considered opinion the provision of Section 17(5)(d) is to be read down and the narrow restriction as imposed, reading of the provision by the Department, is not required to be accepted, inasmuch as keeping in mind the language used in **(1999) 2 SCC 361 (supra)**, the very purpose of the credit is to give benefit to the assessee. In that view of the matter, if the assessee is required to pay GST on the rental income arising out of the investment on which he has paid GST, it is required to have the input credit on the GST, which is required to pay under Section 17(5)(d) of the CGST Act.





## 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
<b>Total value of exempted turnover for the months of March</b>	<b>Rs.33.25 cr</b>



### 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 car, 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).







## Section 18 of CGST Act

18(1)

*Transfer of ITC in various scenarios*

- a. Mandatory Reg.- Inputs on DoL
- b. Voluntary Reg.- Inputs on DoR
- c. 10-9 - I/CG  
Proviso- Reduce CG ITC by 5%
- d. 11-9- I/CG  
Proviso- reduce ITC of CG by 5%

18(2)

*Restriction on opening ITC*

No Opening ITC after one year of invoice

18(3)

*Transfer of ITC to transferee of business*

Transfer of business- ITC can be transferred- Form ITC 02A

18(4)

*Reversal of ITC on shifting to 10 or 11 from 9*

The ITC on I/CG shall be reversed  
Proviso- Rest of the ITC shall lapse

18(5)

**Right to prescribe**

18(6)

*Transfer of CG or P&M*

Transfer of CG or P&M- Higher of the following will be payable- ITC taken (reduce 5% for each or part of quarter of use)  
Or  
Tax on transaction value  
Proviso- Moulds, dies, jigs and fixtures are out from 18(6)



## Section - 18

**18. (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 of credit in special circumstances.
- (b)** 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;
- (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 semi-finished 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;*

**(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.*

**(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.

**(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 unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.



**(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.

**(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.

**(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 25:**

Sigma limited is located in Tiruchirapalli. They made the following supplies in the month of April 2020.

Sale of Packing machine, used for packing of chips. The packing machine is 9 month old. It was purchased for Rs. 2,00,000 with ITC of Rs. 36000. Now it is sold for Rs. 98000.

Sale of offices located in outer areas. It was capitalised in the Office building in books of accounts.

Sale of Chips: 700 cartoons \* 100 packets of chips in each costing Rs. 50 each.

What will be the tax liability this month for the company?



## Rule 40

### Manner of claiming credit in special circumstances.-

(1) The input tax credit claimed in accordance with the provisions of sub-section (1) of section 18 on the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or the credit claimed on capital goods in accordance with the provisions of clauses (c) and (d) of the said sub-section, shall be subject to the following conditions, namely,-

**(a)** the input tax credit on capital goods, in terms of clauses (c) and (d) of subsection (1) of section 18, shall be claimed after reducing the tax paid on such capital goods by **five percentage points per quarter of a year or part thereof** from the date of the invoice or such other documents on which the capital goods were received by the taxable person.

**[(b)** the registered person shall within a period of thirty days from the date of becoming eligible to avail the input tax credit under sub-section (1) of section 18, or within such further period as may be extended by the Commissioner by a notification in this behalf, shall make a declaration, electronically, on the common portal in **FORM GST ITC-01** to the effect that he is eligible to avail the input tax credit as aforesaid:

**Provided** that any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.



## Rule 40

**(c)** the declaration under clause (b) shall clearly specify the details relating to the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or as the case may be, capital goods-

**(i)** on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of the Act, in the case of a claim under clause (a) of sub-section (1) of section 18;

**(ii)** on the day immediately preceding the date of the grant of registration, in the case of a claim under clause (b) of sub-section (1) of section 18;

**(iii)** on the day immediately preceding the date from which he becomes liable to pay tax under section 9, in the case of a claim under clause (c) of sub-section (1) of section 18;

**(iv)** on the day immediately preceding the date from which the supplies made by the registered person becomes taxable, in the case of a claim under clause (d) of sub-section (1) of section 18;



## Rule 40

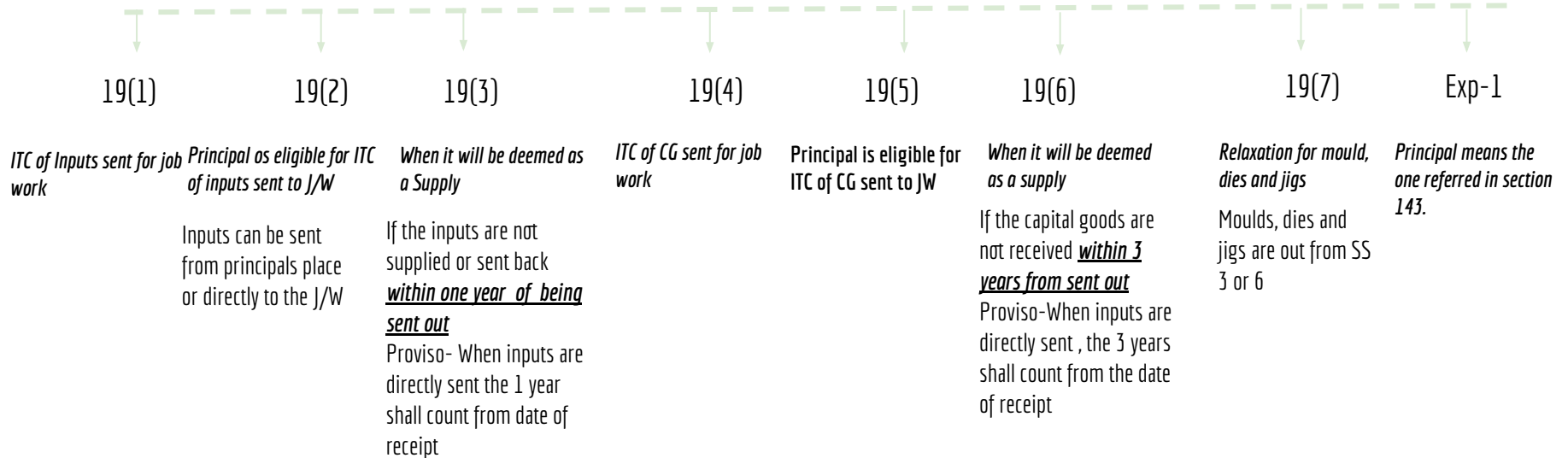
- (d) the details furnished in the declaration under clause (b) shall be duly certified by a practicing chartered accountant or a cost accountant if the aggregate value of the claim on account of central tax, State tax, Union territory tax and integrated tax exceeds two lakh rupees;
- (e) the input tax credit claimed in accordance with the provisions of clauses (c) and (d) of sub-section (1) of section 18 shall be verified with the corresponding details furnished by the corresponding supplier in FORM GSTR-1 or as the case may be, in FORM GSTR- 4, on the common portal.
- (2) The amount of credit in the case of supply of capital goods or plant and machinery, for the purposes of sub-section (6) of section 18, shall be calculated by reducing the input tax on the said goods at the rate of five percentage points for every quarter or part thereof from the date of the issue of the invoice for such goods.







## Section 19 of CGST Act



## Section - 19

(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 job worker.



(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.

(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.





## Section 20 of CGST Act

20(1)

### *Transfer of ITC by ISD*

CGST- CGST or IGST  
IGST- IGST or CGST

20(2)

### *Conditions for transfer of ITC*

- A. Document
- B. Credit distributed <total amount of credit
- C. Attributable
- D. Pro rata basis

Exp-1

### *Definitions*

- A. Relevant period
- B. Recipient of Credit
- C. Turnover



## Section - 20

- (1) The Input Service Distributor shall distribute the credit of central tax as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed.
- (2) The Input Service Distributor may distribute the credit subject to the following conditions, namely:--
- (a) the credit can be distributed to the recipients of credit against a document containing such details as may be prescribed;
  - (b) the amount of the credit distributed shall not exceed the amount of credit available for distribution;
  - (c) the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;
  - (d) the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipients to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;



(e) the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.

Explanation.--For the purposes of this section,--

(a) the “relevant period” shall be--

(i) if the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or

(ii) if some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;

(b) the expression “recipient of credit” means the supplier of goods or services or both having the same Permanent Account Number as that of the Input Service Distributor;

(c) the term “turnover”, in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entry 84, **entries 84 and 92A** of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.

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





Section 21 of CGST Act



*Recovery of excess credit distributed*

Sec 73, 74 shall mutatis mutandis apply



## Section - 21

Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of amount to be recovered.





