



Full coverage of issues related to

ITC IN GST

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5+ Hours in 4 Sessions | Starting from 1st June 2021 - 5 PM To 6 PM





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Brief Profile of the Speaker

Adv. (CA) Pawan Arora

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



Session -2
INPUT TAX CREDIT
SECTION 17 & RULE 42

By: Adv. (CA) Pawan Arora

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03rd June 2021



Section 17(1)

Section 17 CGST Act, 2017

Apportionment of credit and blocked credits-

(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.

- Section 16 allows to claim ITC of goods or services used in course or furtherance of business.
- Thus, ITC of goods or services exclusively used other than business shall not be allowed under Section 16 itself.
- Section 17 restricts the common credit i.e. which is partly used partly for business use and partly for other than business.

Section 17(1)

- Example:
 - Laptops & Mobile issued to Employees for official purpose : In my no reversal required under Section 17.
 - Laptops issued by Company to Employees for use by their Children during lockdown period and thereafter to be returned – Reversal is required.
 - Any example with participants – Please share for discussion.

Section 17(2)

(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.

- Section 16 allows to claim ITC of goods or services used in course or furtherance of business.
- Some one may take a technical ground that goods or services used **EXCLUSIVELY** used for EXEMPT supply, no reversal is required under Section 17(2). **However, in my view this is not a logical argument and probability to succeed on this point is very low.**
- Formula prescribed in Rule 42 & 43 not allow to claim ITC on goods or services which are exclusively used for making exempt supply.

Section 17(3)

(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;]

Section 2(47)

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

Investment in mutual Funds

- Hardly one or two employee(s) are involved in trading of securities. But department ask for reversal of ITC of common inputs/input service as per Rules i.e. on the basis of value of exempt supply
- Better to segregate this division in such a manner that ITC can be separately identified.
- Where this activity is outsourced – check common credit cautiously
- Trading in Mutual Funds is different from redemption of Investment – Hon’ble CESTAT (Bang.)
 - Ace Creative Learning Pvt. Ltd.
 - Space Matrix Design Consultants
 - Trading in mutual fund is different from redemption of Mutual Funds. Makes Investment in Mutual Funds to earn profit. No reversal required under Rule 6(3) of CCR.

Section 17(4)

(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

- **Cross charge billing as per Schedule-I to branches, full ITC shall be available to Banking and Financial Companies, if they opted for option of 50% reversal.**

Rule 38

(38) Claim of credit by a banking company or a financial institution.-

A banking company or a financial institution, including a non-banking financial company, engaged in the supply of services by way of accepting deposits or extending loans or advances that chooses not to comply with the provisions of sub-section (2) of section 17, in accordance with the option permitted under sub-section (4) of that section, shall follow the following procedure, namely,-

(a) the said company or institution shall not avail the credit of,-

- (i) the tax paid on inputs and input services that are used for non-business purposes; and
- (ii) the credit attributable to the supplies specified in sub-section (5) of section 17, in FORM GSTR-2

Contd..

(b) the said company or institution shall avail the credit of tax paid on inputs and input services referred to in the second proviso to sub-section (4) of section 17 and not covered under clause (a);

(c) fifty per cent. of the remaining amount of input tax shall be the input tax credit admissible to the company or the institution and shall be furnished in FORM GSTR-2;

(d) the amount referred to in clauses (b) and (c) shall, subject to the provisions of sections 41, 42 and 43, be credited to the electronic credit ledger of the said company or the institution.

Section 17(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 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;
- 14 Seater (including Driver Seat) – ITC is allowed after amendment effective from 01.02.2019.
- If purchased for further specified supplies – ITC shall be allowed i.e. for further supply as Motor Vehicle, for transportation of passengers and by Driving Schools for imparting training.

Section 17(5)

- Motor Vehicle for transportation of goods – ITC allowed and not covered under Section 17(5)(a).
- Golf cart is not a motor Vehicle as per Motor Vehicle Act.
- Moto Bike or Scooter - ???

Contd..

(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**;

(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):

- **Prior to 01.02.2019, insurance service not specifically covered. However, the term “in respect of” has wide meaning and insurance in respect of motor vehicle was also covered earlier. Debatable Point, if already availed the credit.**

Proviso to Section 17(5)

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;

Contd..

(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

Contd..

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 centre; and

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

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

Contd..

➤ **Section 17(5) (a) & (b) - amended w.e.f. 01.02.2019 – Prior to it reads as:**

[(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;

Contd..

(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

Contd..

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.—For the purposes of clauses (c) and (d), the expression —construction includes reconstruction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;

Contd...

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.

ITC on construction of building for leasing business

- The division bench of the Hon'ble Orissa High Court in the case of *Safari Retreats Private Limited, 2019 (25) G.S.T.L. 341 (Ori.)* has interpreted section 17(5)(d) the CGST Act as regards the admissibility of ITC on goods or services received for construction of building, for the purpose of leasing.
- The said decision of the Orissa High Court is pending in appeal filed by the GST department before the Supreme Court *2020 (32) G.S.T.L. J120 (S.C.) [SLP No. 26696/2019]*. However, the decision of the Orissa High Court has not been stayed and hence has full effect as on date.

ITC on Plant & Machinery

- In any Case, credit of Plant and Machinery is not restricted under Section 17(5)(c) & (d).
- ITC can be availed when works contract services/ goods or services are used for construction of immovable property being plant and machinery subject to satisfaction of criteria specified in the definition of Plant and Machinery.
- Better to Segregate the Contract or have different contract for construction service and for supply of plant and machinery.

Telecommunication Towers – ITC under GST

- The Hon'ble Delhi High Court in the case of Vodafone case, 2018-TIOL-2409-HC-DEL-ST conclusively stated that telecommunication towers are not immovable property. The Judgment relied upon the **permanence test** laid down by the Hon'ble Supreme Court in Solid and Correct Engineering (supra).
- “Telecommunication towers” would be out of the ambit of “immovable property” and the restriction provided by Section 17(5)(d) of the CGST Act would not disallow the telecommunication service providers from taking Input Tax Credit.
- Further, Telecommunication Towers are out of the ambit of “plant and machinery” by the virtue of Explanation to Section 17.
- The Revenue could contend that telecommunication service providers cannot not avail Input Tax Credit as they do not come under “plant and machinery”, but they also do not come under the ambit of “immovable property” which is the main restriction provided in Section 17(5)(d).
- The main ingredient to be satisfied for denying credit is construction of an “immovable property”, which is not the case at all

Telecommunication Towers – ITC under GST

Bharti Airtel Ltd. v. Union of India

- Bharti Airtel Limited ('the Company') filed a WRIT petition challenging the legality of Explanation to Section 17(5)(d) of the Central Goods and Services Tax Act, 2017 ('CGST Act') to the extent it excludes 'telecommunication towers' from the meaning of the term 'Plant and Machinery'.
- Section 17(5)(d) is also challenged, to the extent it debars Input Tax Credit on construction of Immovable Property.
- Now, the Hon'ble Delhi High Court shall examine the legality and validity of Explanation to Section 17(5)(d) of the CGST Act along with similar writ petitions.

Contd..

(e) goods or services or both on which tax has been paid under section 10;

- Tax paid on goods or services purchased from composition dealer.

(f) goods or services or both received **by a non-resident taxable person** except on goods imported by him;

- *S. 2(77) 'non-resident taxable person' means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India;*
- Non-Resident Taxable person takes registration for its occasional business e.g. for taking part in Trade Fair and supplying goods.
- If it will procure any goods/ services in India, no ITC shall be allowed.
- To be noted: casual taxable person is not restricted to avail ITC.

Contd..

(g) goods or services or both used for **personal consumption**;

➤ Seems to be clarificatory in nature.

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

➤ Free Service : No restriction of ITC

➤ CSR Activity ??? – will discuss in last session

➤ Wasted goods sold as Scrap ???

Contd..

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

- Section 74: Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.
- Section 129: Detention, seizure and release of goods and conveyances in transit.
- Section 130: Confiscation of goods or conveyances and levy of penalty.

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

- Rule 42 & 43 are prescribed.

Rule 42 (1) – Monthly Computation of ITC Reversal

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

T1 = used exclusively for the purposes other than business

T2 = used exclusively for effecting exempt supplies

T3 = Blocked Credit under section 17(5)

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

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

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

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

$$D1 = C2 * E / F$$

E = aggregate value of exempt supplies during the tax period

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

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

Values of Last Tax Period

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

Explanation: For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 and entry 92A of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

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

Non Business Purpose & Computation of Balance ITC available

(j) the amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as 'D2', and shall be equal to five per cent. of C2; and

(k) the remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as 'C3', where,-

$$C3 = C2 - (D1+D2)$$

Explanation after Rule 43

Explanation 1:-For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude:-

a. omitted

(b) the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of 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; and

(c) the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.

Explanation after Rule 45

Explanation.- For the purposes of this Chapter,-

(1) the expressions 'capital goods' shall include 'plant and machinery' as defined in the Explanation to section 17;

(2) for determining the value of an exempt supply as referred to in sub-section (3) of section 17-

(a) the value of land and building shall be taken as the same as adopted for the purpose of paying stamp duty; and

(b) the value of security shall be taken as one per cent. of the sale value of such security.

Illustration 1

Compute amount of input credit to be reversed as per Rule 42

| Presumptive Facts | Amount |
|--|-------------|
| Turnover of taxable Good namely 'P' | 14,00,000 |
| Turnover of taxable Good namely 'Q' (tax is payable on Reverse Charge) or say "Q" is an exempt product | 6,00,000 |
| Turnover of taxable Good namely 'R' | 10,00,000 |
| Export of M with payment of IGST | 2,50,000 |
| Export of O with letter of undertaking | 10,00,000 |
| Sale of Building (Stamp duty value - 1,25,00,000) | 1,20,00,000 |
| Sale of shares (Purchase price - 2,40,00,000) | 2,50,00,000 |
| Total ITC credited to electronic ledger | 7,53,000 |
| Common credit | 6,90,000 |

Illustration 1 - Solution

| Value of exempt turnover: | Amount |
|-----------------------------------|--------------------|
| Turnover of product Q | 6,00,000 |
| Sale of Building | 1,25,00,000 |
| Sale of Shares (1% of sale value) | 2,50,000 |
| Total (E) | 1,33,50,000 |

| Value of Total Turnover: | Amount |
|---------------------------------|--------------------|
| Turnover of P | 14,00,000 |
| Turnover of Q | 6,00,000 |
| Turnover of R | 10,00,000 |
| Export of M | 2,50,000 |
| Export of O | 10,00,000 |
| Sale of Building | 1,25,00,000 |
| Sale of Shares | 2,50,000 |
| Total (F) | 1,70,00,000 |

Common credit attributable to exempt supply which is to be reversed as per Rule 42 [Common credit * E/ F)

$$= 6,90,000 \times \frac{1,33,50,000}{1,70,00,000}$$

$$= 5,41,853/-$$

Rule 42(2) – Yearly Computation of ITC Reversal

Rule 42(2)

- Except for the services of Para 5(b) of Schedule II (i.e. Sale of Flats before CC etc.), Final calculation is required at the end of FY before the due date of furnishing of the return of September following the end of the FY to which such credit relates.
- Where aggregate amount of D1 & D2 calculated finally at year end, exceeds aggregate of the amount calculated during the year, such excess shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 in the month not later than the month of September following the end of the FY.
- Interest on the such excess amount shall be payable for the period starting from the first day of April of the succeeding financial year till the date of payment at the rate specified in Section 50(1).
- Where aggregate of the amount calculated during the year exceeds aggregate amount of D1 & D2 calculated finally at year end, such excess amount shall be claimed as credit in the return for a month not later than the month of September following the end of FY.

Illustration 2

Compute common ITC and amount of ITC to be reversed as per Rule 42

| | Presumptive Facts | CGST | SGST | IGST |
|----|--|-------------|-------------|-------------|
| T | Total ITC | 1,08,000 | 1,08,000 | 54,000 |
| T1 | ITC exclusively relating to services used for personal use | 10,800 | 10,800 | 5,400 |
| T2 | ITC exclusively relating to exempt supply | 18,000 | 18,000 | 7,200 |
| T3 | Blocked credit | 18,000 | 18,000 | 6,300 |
| T4 | ITC exclusively relating to taxable supply | 54,000 | 54,000 | 3,600 |
| E | Value of exempted supply of service | 15,00,000 | | |
| | Value of taxable supply of service | 32,00,000 | | |
| | Value of zero rated supply of service | 8,00,000 | | |
| | Value of service made for personal use | 5,00,000 | | |
| F | Total turnover | 60,00,000 | | |

Illustration 2 - Solution

| | | | | |
|----|--|--------------|--------------|--------------|
| C1 | ITC credited to electronic credit ledger [C1 = T -(T1 +T2+T3)] | 61,200 | 61,200 | 35,100 |
| C2 | Common Credit [C2 = C1 - T4] | 7,200 | 7,200 | 31,500 |
| D1 | ITC attributable to exempt supplies [D1 = C2 * E/F] | 1,800 | 1,800 | 7,875 |
| D2 | ITC attributable to non-business purpose [5% of C2] | 360 | 360 | 1,575 |
| | Amount for reversal [D1 + D2] | 2,160 | 2,160 | 9,450 |
| C3 | Net eligible common credit [C3 = C2 -(D1 + D2)] | 5,040 | 5,040 | 22,050 |



Real Estate Sector – Reversal under Rule 42

to be continued in 3rd Session



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