

# Input Tax Credit [Section 16 to 21 of CGST Act read with Rules] (1/4)

## Section 16 read with Rules

### CONDITIONS TO AVAIL INPUT TAX CREDIT [SECTION 16(1) & SECTION 16(2)]

Subject to payment of tax, ITC can be taken by recipient on purchase of goods or services used or intended to be used for furtherance or in course of business on fulfilment of below conditions:

- a) Recipient should have **tax invoice or debit note** or other prescribed tax paying documents  
**Other tax paying documents [R. 36(1) of CGST Rules]:** Tax invoice or debit note, Bill of Entry, Self-Invoice, Invoice or Debit Note for ISD
- b) Recipient has **received the goods or services** or both.  
**Exception** - Bill to Ship to Model for goods as well as services.  
**Circular:** In case of BTST Model Third person can take ITC on invoice issued by supplier once goods are removed from supplier's place of business (irrespective of receipt to recipient). Once goods are dispatched it is deemed to be **delivered**.  
**Note:** - If Goods are **received in lots** or instalments, ITC to be taken on **receipt of last instalment**. [Pr.1 to Section 16(2)]
- c) The **tax charged by supplier shall be paid** to the Government by such supplier  
**Rule 37A:** In case a supplier files GSTR – 1, but has not filed GSTR 3B (i.e., taxes are not paid) by 30<sup>th</sup> September of succeeding financial year, the recipient would be liable to reverse ITC availed by him in GSTR 3B on or before 30/11/SFY. In case of non-reversal of input tax credit by recipient by 30<sup>th</sup> November, he would be liable to pay along with interest as well u/s 50.
- d) Recipient has furnished the **return** under section 39 (GSTR 3B)
  - aa) GSTR – 1 filed by supplier and **reflecting in B2B** field in GSTR 2B
  - ba) ITC in GSTR 2B shall not appear in **Restricted category**.

### CONCEPT OF 180 DAYS: [PROVISO 2 TO 16(2)]

Every recipient shall pay to its supplier within 180 days from date of invoice, the INVOICE VALUE, otherwise he shall be liable to pay ITC along with interest payable u/s 50 from date of utilisation till date of reversal.

**Exception to above: - (i.e., 180 days payment rule shall not be applicable in below 3 scenarios): -**

- ❖ **RCM Supplies**
- ❖ **Schedule I** – Activities which are supply even if no consideration.
- ❖ Additions made in **value of supply u/s 15(2)(b) of CGST Act** – Amount incurred by buyer on behalf of supplier.

Notes: **ITC** can be taken once the invoice value is paid. Further, if proportion is outstanding beyond 180 days, ITC only to that proportion shall be reversed.

### 2. TIME LIMIT TO AVAIL ITC [SECTION 16(4) & 16(6)]: -

Time limit to avail ITC in case of invoices and debit notes shall be upto: -

- (a) 30<sup>th</sup> November of succeeding financial year or,
  - (b) Actual Date of filing annual return;
- whichever is earlier.

**Note:**

- R. 37(4) r/w Proviso 3 to Section 16(2): - If consideration is paid after 180 days, ITC can be taken on payment, irrespective of time limit.
- Self-invoice shall be issued within 30 days from receipt of service. ITC in respect of self-invoice can be taken upto 30<sup>th</sup> Nov of next year from self – invoice date (even if self – invoice is generated after it's time-limit).
- **Revocation cases ITC [S. 16(6)]:** In case of revocation of registration if ITC was not restricted as on date of cancellation, then it can be taken in 3B filed upto 30<sup>th</sup> Nov of SFY or return filed within 30 days from revocation order whichever is later.

### 3. CAPITALISATION OF TAX COMPONENT [SECTION 16(3)]

If tax component has been capitalised and depreciation is claimed on such tax component under Income Tax Act (S.32 of Income tax act), then ITC cannot be claimed.

### ITC Availability Combined Reading of Section 17(1), 17(2), 17(3):

Purchased for making	Allowability
Exclusively exempt supplies	Not allowed
Exclusively exempt supplies (export)	Allowed (refund can be taken)
Exclusively taxable supplies	Allowed
Exclusively taxable supplies (export)	Allowed (refund can be taken)
Non business supplies	Not allowed
Partly exempt & partly taxable	Proportionately reversal as per Rule 42, Rule 43

### Format with Analysis for Reversal of ITC of Rule 42:

Sr. No.	Particulars (Computation of all elements shall be done separately i.e., C, S, IGST)	Denote by
I	Total input tax involved on inputs and input services	T
II	Input tax Exclusively for the purposes other than business ( <b>Non-Business Purpose</b> )	(T <sub>1</sub> )
III	Input tax <b>Exclusively</b> for effecting exempt supplies	(T <sub>2</sub> )
IV	<b>Ineligible Credit</b> as per 17(5)	(T <sub>3</sub> )
V	<b>Amount of input tax credit credited to the electronic credit ledger (T – T<sub>1</sub> – T<sub>2</sub> – T<sub>3</sub>)</b>	C <sub>1</sub>
VI	ITC for exclusively for effecting Taxable & Zero-Rated Supplies	(T <sub>4</sub> )
VII	<b>Common ITC available for apportionment (C<sub>1</sub> – T<sub>4</sub>)</b>	C <sub>2</sub>
VIII	Common Credit Attributable towards exempt supplies (E – Exempt T.O., F – Total T.O.) (See Notes)	(D <sub>1</sub> )
IX	Common Credit Attributable towards Non-Business purpose (D <sub>2</sub> = 5% of C <sub>2</sub> )	(D <sub>2</sub> )
X	<b>Common credit attributable towards effecting Taxable &amp; Zero-Rated Supplies (C<sub>2</sub> – D<sub>1</sub> – D<sub>2</sub>)</b>	C <sub>3</sub>
XI	<b>Total credit eligible (Exclusive + Common)</b>	T <sub>4</sub> + C <sub>3</sub>

### ❖ Calculation of “E”:

Include	Exclude
Exempt supply	Value of duty credit scripts
RCM Outward	VAT & Excise on Petroleum products
1% OF <b>SALE VALUE</b> (Not book value or FMV) of securities	Int. Disc. Turnover (except Banking Co., financial institutions, NBFC)
Stamp Duty value of Land & Building	
Supply of warehoused goods to any person before clearance for H.C.	

- ❖ The amount equal to aggregate of “D1” and “D2” shall be **reversed** by the registered person in FORM GSTR-3B or through FORM GST DRC-03 (Added to Output Tax Liability has been substituted with reversal in form GSTR 3B / DRC 03 [Notification No. 16/2019-CT])
- ❖ Final Calculation of D1, D2 shall be **re-computed at end of financial year** [Short reversal shall attract interest @ 18% p.a. from 1<sup>st</sup> April of Next financial year till the date of reversal. However, if excess reversal has been done, ITC can be re-availed on or before 30<sup>th</sup> November of next FY or annual return whichever is earlier.

## 2) Manner of Reversal of ITC of Capital Goods used for effecting taxable & exempt supplies

Capital Goods used to effect	ITC Allowability
Exclusively Taxable supplies	ITC fully allowed
Exclusively Exempt Supplies	ITC not allowed
Zero rated supplies	ITC fully allowed
Taxable as well as exempt supplies	ITC fully allowed Subject to reversal every month as per Rule 43 (refer below steps)

As per Rule 43; ITC on capital goods which are used in current tax period for **effecting taxable as well as exempt supplies and whose useful life (out of 5 yrs.) remains** shall be reversed in below manner:

<b>Step 1:</b>	$T_c = \sum A$ ("A" credited to the electronic credit ledger capital goods used for taxable and exempt supplies both and whose useful life remains, denoted as "Tc")
<b>Step 2:</b>	$T_m = T_c / 60...$ (Since life is 5 years it is taken as 60 months) [Monthly common]
<b>Step 3:</b>	$T_e = (E / F) \times T_m$ [Liable for reversal]
Note 1	<b>Shift of use from exclusively exempt supply to Taxable &amp; exempt supply:</b> (a) Take full ITC (b) Reduce Tie = 5% per quarter (c) Take Net ITC = (a) – (b) (d) Reverse ITC as per Rule 43 by following above 3 steps. "A" = Full ITC Value
	<b>While going from Taxable to Exempt</b> <b>Reversal Amount</b> = ITC x Balance useful life in months/60 <b>While going from Exempt to Taxable</b> <b>Amount of ITC</b> = ITC (-) 5% per quarter can be taken
	<b>In case of capital goods case, no rechecking at end of financial year for exempt and taxable turnover to be done.</b>
Interest shall be payable every month on ITC reversed from the date of utilisation till the date of reversal.	

## 5. Special Provision for Banking Co. or a Financial Institution & NBFC

### Option 1: -

Comply with the provisions of 17(2) of CGST Act r/w Rule 42 of CGST Rules, 2017 i.e., reversal of input tax credit attributable to exempt supplies (Pt. 2 of Chart)

*(Bank provides exempt supplies by earning interest income)*

**Any Option to be exercised for a full FY**

### Option 2 – 17(4) r/w Rule 38 of CGST Rules, 2017: -

- ❖ **NOT avail** the credit of Tax paid on inputs and input services that are used for non-business purposes, and the **ineligible ITC**, in FORM GSTR-2B
- ❖ The said company or institution **SHALL AVAIL 100%** of the credit of tax paid supplies made by one registered person to **another registered person having the same Permanent Account Number.**
- ❖ **Avail the credit of 50% of eligible ITC of inputs, input services and capital goods.** The balance ITC shall lapse.

## 6. Ineligible Input Tax Credit (Blocked Credit) – S. 17(5) of CGST Act, 2017

Section 17(5) of CGST Act is NON-OBSTANTE clause for anything contained in 16(1) and 18(1) of CGST Act, meaning thereby even if it has been used in course or furtherance of business unless specifically provided.

### Section 17(5)(a) & 17(5) (aa) & 17(5) (ab): Transactions related to MV, A/C, Vessel

#### Credit in respect of Motor Vehicle / Aircraft / Vessel:

**S. 17(5)(a):** ITC will not be eligible on **Motor vehicles** (as per MV Act) for **TRANSPORTATION OF PERSONS** (*it means transportation of goods is allowed*) which has approved seating **capacity of less than or equal to 13 persons** (including the driver). However, credit will be available when they are used for making the following taxable supplies:

- ❖ Further supply of such motor vehicles (Motor vehicle Dealers);

#### Clarification:

- **Authorised Dealers will be allowed to take ITC** on Demo vehicles (subj. to capitalisation) as they are used for making further supply of cars on their own account
- Marketing Agencies will **not be** allowed to take ITC on demo vehicles as they are not involved in purchasing and selling car on their own acc.

- ❖ Transportation of passengers (e.g. Maxi Cab);

- ❖ Imparting training on driving such motor vehicles (Driving Schools);

**(Two-wheeler having upto 25 CC Engine capacity is not a motor vehicle)**

**S. 17(5) (aa):** ITC will not be available on **vessels & aircrafts**; however it will be eligible if used for making the following taxable supplies, namely: -

- ❖ Further supply of such vessels or aircraft; or
- ❖ Transportation of passengers; or
- ❖ Imparting training on navigating such vessels; or
- ❖ Imparting training on flying such aircraft;
- ❖ Transportation of goods.

**S. 17(5) (ab): Services in relation to MV/AC/Vessel:** ITC of general insurance, servicing, repair and maintenance shall be available in so far as it relates to motor vehicle, vessels or aircraft on which credit is available or where such services are 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.

#### Circular:

- Insurance company receives invoice from authorised garages for indemnifying repair cost to insured. Insurance co. can take ITC of such repairing services to the extent of claim accepted, if invoice is issued in their own name

### 17(5)(b): - Supply of Certain Services: FOBHCL<sup>2</sup>

Food & Beverage, Outdoor Catering, Beauty Treatment, Health services, cosmetic & plastic surgery, Leasing renting hiring of motor vehicle, life insurance health insurance

3 Exceptions:

- ❖ Inward supplies for making outward supply
- ❖ Obligation for employer to provide to employee under any law for time being in force
- ❖ Inward supply for composite or mixed outward supply (ex.: Event management)

**ITC on Membership of Club, health and fitness centre; and travel benefits extended to employees on vacation is not allowed:**

**Exception:** Obligation for employer to provide to employee under any law for time being in force

## Input Tax Credit [Section 16 to 21 of CGST Act read with Rules] (3/4)

### Works Contract Services (WCT) 17(5)(c)

ITC is not eligible for works contract services when supplied for **CONSTRUCTION (capitalisation)** of an immovable property. However, it is available in following cases (exceptions). (Construction means capitalisation i.e., debited to fixed asset account and not charged to P & L account)

#### Exceptions: -

- **IMMOVABLE PLANT AND MACHINERY (even if capitalized).**
- **Further supply** of works contract service; (Sub-contracting Services)
- Construction of **other than plant & machinery** & debited to Profit & Loss Account

**(Imp Note: Land & Building, Telecommunication Towers, Pipelines laid outside factory premises are not plant and machinery).**

**Circular:** Construction of manholes and ducts for optic fibre will be treated as P&M – ITC allowed

### Goods & Services used in Self Construction [S. 17(5)(d)]

ITC on 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 is not eligible. (If debited to PNL then ITC will be allowed)

#### Case Law: Safari Retreats

- ❖ Safari Retreats Pvt. Ltd. built a shopping mall for leasing/renting out premises and claimed ITC on construction inputs, amounting to over ₹34 crore.
- ❖ Tax authorities denied the credit under Section 17(5)(d)
- ❖ The Court distinguished the definition of “plant or machinery” under clause (d) from “plant and machinery” defined elsewhere in the Act.
- ❖ It introduced the “functionality test”: a building can qualify as a “plant” if constructed to serve specific technical requirements essential for business operations (e.g. leasing).
- ❖ The Court held that immovable property used for leasing may qualify as “plant” and thus not be blocked for ITC. It upheld the constitutionality of clauses (c) and (d) of Section 17(5)

#### Other Cases:

- c)** Goods or Services or both on which tax has been paid under **section 10** (Composition Scheme)
- d)** Goods or services or both received by a **non-resident taxable person except** on goods **imported by him;**
- fa)** Goods or services or both received by a taxable person, which are used or are intended to be used for activities relating to obligations under the **Corporate Social Responsibility** as per Section 135 of Companies Act, 2013
- e)** Goods or services or both used for **personal consumption**
- f) Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples:**
  - **Normal losses are allowed.**
  - Schemes such as “**Buy 1 Get 1 free**” are very common in such cases even if one item is given free, ITC **reversal is not required on such free item**
- g)** Any tax paid in accordance with the provisions of sections 74, 74A (fraud cases)

### 7. Availability of credit in special circumstances (Change in nature of supply or change in nature of registered person) – Section 18 of CGST Act, 2017

Sr. No.	Supplier	Inputs / Semi Finished / Finished	Capital Goods	ITC on Stock to be considered as on day immediately preceding the
1	Liable for registration: Applies for registration within 30 days of becoming liable for registration and obtains registration – <b>18(1)(a)</b>	Available	<b>Not Available</b>	Date from which he becomes <b>liable to pay tax.</b>
2	Voluntary Registration – 18(1)(b)	Available	<b>Not Available</b>	<b>Date of grant of registration</b>
3	Composition Scheme to Regular Scheme – 18(1)(c) r/w Rule 40	Available	Available after reducing 5% p.q. <b>from Date of Invoice.</b>	Date from which <b>supplier is liable to pay tax under regular scheme</b>
4	Supplies of <b>REGISTERED</b> Exempt supplier becomes Taxable 18(1)(d) r/w Rule 40	Available	Available after reducing 5% p.q. <b>from Date of Invoice.</b>	Date from which <b>exempt supplies become taxable</b>
5	1) Regular Scheme to Composition Scheme u/s 10 of CGST Act 2) Taxable to exempt supplies 3) Cancellation of Registration u/s 29(5) of CGST Act (Sec 18 (4) of CGST Act r/w R. 44(1) of CGST Rules) (Note 7)	-	-	Reverse (or + in output tax) amount of tax in respect of: - <b>Stock</b> on which ITC has been availed at the time of purchase. Capital Goods after reducing ITC proportionately on the basis of usage life in months. Balance ITC if any shall be lapsed (Rule 44 of CGST Rules)

#### 1) Sale of Capital Goods under GST, GST to be discharged as [18(6)]: -

- (a) ITC reduced by 5% per quarter or
  - (b) Tax on Transaction Value whichever is higher.
- (Note: - For Moulds, Dies, Jigs, Tools, and fixtures Transaction Value can be taken directly)

#### 2) Credit of Stock & Capital goods will **not be allowed after expiry of 1 year** from invoice date. [S. 18(2) of CGST]

#### 3) If a supplier obtains regn within 30 days of becoming liable, the effective date of regn would be date on which he was liable for regn. Thus, he shall issue revised tax inv. **within 1 month from the date of issuance of certificate of registration, for the period from effective date of registration** (date on which he crossed limits) **till the date of issuance of certificate of registration** to him. [Section 31(3)(a)]

#### 4) Declaration in Form GST ITC-01 must be filed within 30 days from the date of becoming eligible to input tax credit as **Certificate from a practicing CA/CMA** if ITC claimed exceeds Rs. 2 lakhs.

#### 5) Where tax invoices are not available credit amount shall be reversed on **basis of market price.**

#### 6) In respect of 18(4) (Point 5 of Table above) details to be furnished in GST ITC 03 & GSTR 10 (final return in case of cancellation of registration). Further, it should be certified by CA / CMA.

# Input Tax Credit [Section 16 to 21 of CGST Act read with Rules] (4/4)

## 8. Input Service Distributor (S. 20 of CGST Act r/w R. 39, 54 of CGST Rules)

ISD is an office of supplier of SERVICES (not goods) i.e., ISD can distribute credit of common services only. HO takes various services for its branches and then distributes ITC to its branches by taking ISD registration. It is to be noted that ISD is mandatory w.e.f. 1<sup>st</sup> April, 2025 to all entities having multiple GSTIN. They cannot cross charge.

### (A) Conditions for Distribution (S. 20 of CGST Act)

1. The **credit can be distributed** to the recipients of credit against a **ISD Invoice**.
2. The amount of the credit **distributed** shall **not exceed** the amount of credit **available for distribution**;
3. **SPECIFICALLY ATTRIBUTABLE**: SHALL BE DISTRIBUTED TO THAT RECIPIENT
4. **MORE THAN 1 RECIPIENT**: SHALL BE DISTRIBUTED IN TO OPERATIONAL UNITS IN RATIO OF THEIR PFY TURNOVER.

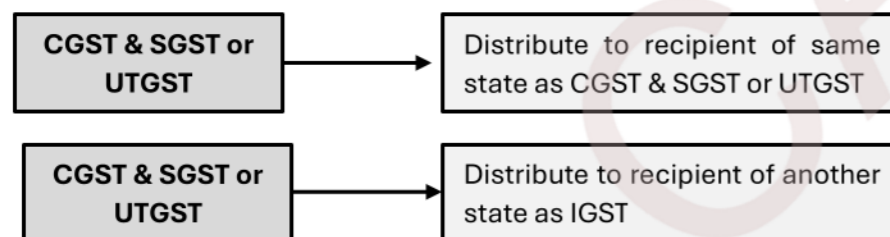
**Notes: -**

- (i) If **above is not available then the last quarter, previous to the month** during which credit is to be distributed for which details of such turnover of all the recipients are available,
- (ii) Turnover means taxable goods as well as goods not taxable (exempt) under this Act reduced by excise duty & VAT levied

**Distributed as:**  $C_1 = (t_1 \div T) \times C$  where,

- (i) "C" is the amount of credit to be distributed,
- (ii) "t<sub>1</sub>" is the turnover in state of recipient during relevant period;
- (iii) "T" is the aggregate of the turnover during relevant period for all recipients to whom credit is attributable.

**(IGST to be distributed as IGST only)**



**Section 21 of CGST Act:** Where ISD distributes excess credit in contravention of the provisions, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 73, 74, 74A shall be applicable

## 9. Clarification on Demerger of Entity:

Issues	Clarification
(i) In case of Demerger, the ratio of value of assets demerged shall be taken state wise or PAN India wise	<p><b>State wise.</b> Example:</p> <ul style="list-style-type: none"> <li>❖ If an entity has business in state of MH &amp; RJ. MH has 2 units namely A, B; having assets Rs. 10 &amp; Rs. 20 respectively. Thus, total assets in MH are Rs. 30. Further it has assets of Rs. 30 in RJ. It wishes to demerge unit A.</li> <li>❖ Thus, total assets = 60</li> <li>❖ Ratio of unit A shall be 10/60 or 10/30.</li> <li>❖ Answer is 10/30 (State wise)</li> </ul>
(ii) Whether the ratio of value of assets, as prescribed under proviso to rule 41 (1) of the CGST Rules, shall be applied in respect of each of the heads of input tax credit viz. CGST/SGST/IGST/Cess	<p>The ratio may be applied on total of balance of unutilised ITC by keeping following 2 principles in mind:</p> <p>(a) ITC to be apportioned shall not exceed balance available in respective tax head</p> <p>(b) Total ITC apportionment shall not exceed ratio on total balance of ITC.</p>
(iii) Date of which ratio of value of assets shall be taken	Appointed date of demerger (not date of order)
(iv) The ratio of assets shall be applied on balance of ITC of which date	Date on which GST - ITC 02 is filed.

## Clarification on Warranty Contracts

Manufacturer provides warranty to customer through distributor. The price of product included free warranty. Further, customer goes to distributor for replacement of part during warranty period, accordingly distributor has below options and below is taxability: -

Option	Taxability
1. Sending product to manufacturer for repairing	<ul style="list-style-type: none"> <li>❖ Mfg. will not charge anything as product is in warranty</li> <li>❖ Replacement of part for free is not a supply (even if ITC is availed) because the original price of the product already factored in warranty cost.</li> <li>❖ ITC not to be reversed as the product was not free but was already charged at the time of original supply</li> </ul>
2. Replacing by purchasing from open market	<ul style="list-style-type: none"> <li>❖ Tax invoice shall be issued by distributor on mfg.</li> <li>❖ Distributor can take ITC of purchase from open market</li> <li>❖ ITC can be taken by mfg. on invoice from distributor</li> </ul>
3. Replacing part from own stock purchased for selling in market	<p><b>Case I – Replaces and Requests Mfg. to send part</b></p> <ul style="list-style-type: none"> <li>❖ Replace the part</li> <li>❖ Request the part to mfg. to send to distributor – Not a Supply as no consideration is charged (<b>Document – Delivery Challan</b>)</li> <li>❖ ITC not to be reversed by mfg. as it is not free (price already takes into account warranty charges)</li> </ul> <p><b>Case II – Replaces and Requests Mfg. to reduce payable</b></p> <ul style="list-style-type: none"> <li>❖ Replace the part</li> <li>❖ Ask Mfg. to issue CN to Distributor, ITC of distributor would be reduced, and corresponding liability of mfg. will be reduced.</li> </ul>
4. Extended Warranty	<ul style="list-style-type: none"> <li>❖ Purchased at the time of buying a product – Supply of Goods</li> <li>❖ Purchased separately afterwards – Supply of Services</li> </ul>