



CHAPTER 13

INPUT TAX

CREDIT

**CHAPTER OVERVIEW**

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INPUT TAX CREDIT [SECTION 16-21]

INTRODUCTION

The GST regime promises seamless credit on goods and services across the entire supply chain. **Exceptions** are as follows:

1. Supplies charged to tax under **composition scheme** and
2. Supply of **exempted** goods and/or service.

TAX CREDITS

ITC is considered to be the backbone of the GST regime. In fact, it is ITC which essentially make **GST a value added tax i.e.**, collection of tax at all points of supply chain after allowing credit of tax paid at earlier points.

Sections 16 to 21 & Chapter V: Input Tax Credit of the CGST Rules [Rules 36-45] prescribe provisions relating to ITC.

RELEVANT DEFINITIONS

“input” means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;

“input service” means any service used or intended to be used by a supplier in the course or furtherance of business;

“capital goods” means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business

“Input Service Distributor” means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same PAN as that of the said office

“input tax” in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—

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



- e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act, but does not include the tax paid under the composition levy;

“input tax credit” means the credit of input tax;

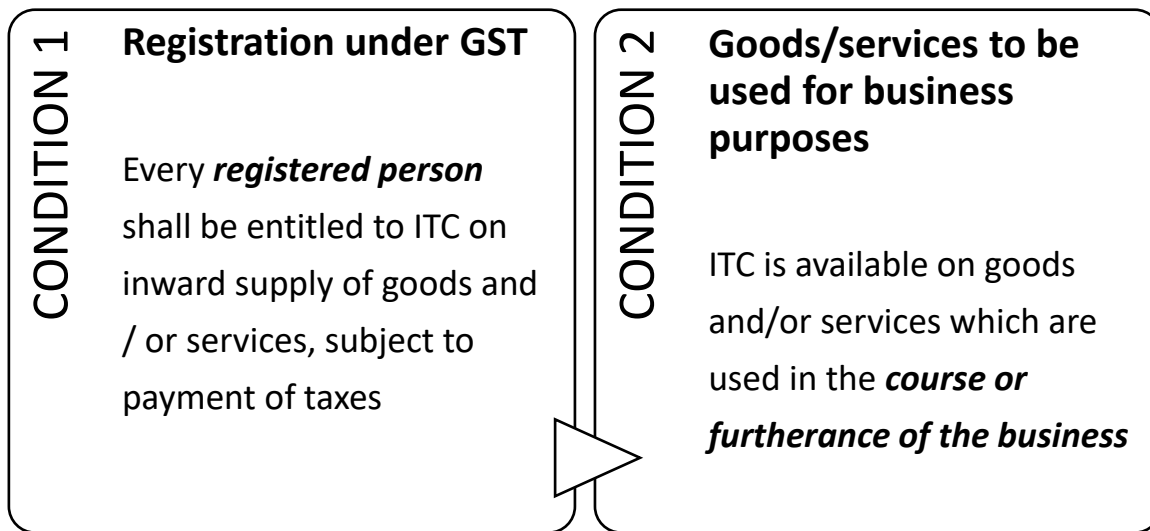
“exempt supply” means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply

“non-taxable supply” means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;

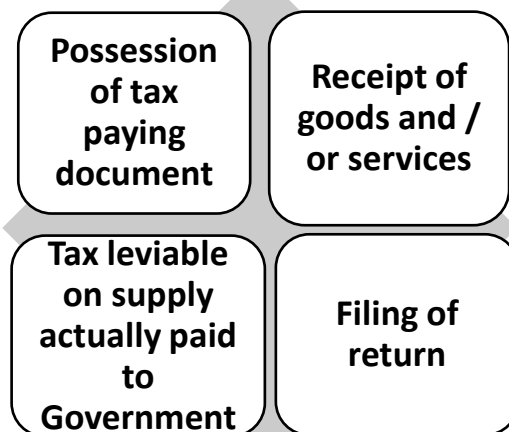
“output tax” in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;



ELIGIBILITY FOR TAKING ITC [Section 16(1)]



CONDITIONS FOR TAKING ITC [Section 16(2)]



A Possession of tax paying document [Section 16(2)(a) r/w Rule 36 of CGST Rules]

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 u/r 36. ITC can be availed on basis of any of the following documents:

- (1) Invoice issued by supplier of goods and/or services
- (2) Invoice issued by recipient (receiving goods and/or services from unregistered supplier) along with proof of payment of tax (in case of reverse charge)
- (3) Debit note issued by supplier
- (4) Bill of entry or similar document prescribed under Customs Act
- (5) Revised invoice
- (6) Document issued by Input Service Distributor



Input tax credit shall be availed by a **registered person only** if all the applicable particulars as specified in the provisions of Chapter VI [Tax invoice rules] are contained in the said document.

Provided that **if the said document does not contain all the specified particulars** but contains the details of the amount of **tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person.**

No input tax credit shall be availed by a registered person in respect of **any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts**

Rule 48 of the CGST Rules specifies that **original copy is for the recipient of goods**. The original copy may preferably be kept for record to support the credit entry.

B Invoices furnished by supplier and reflected in Form GSTR 2B of recipient [Section 16(2)(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;”.

Restriction on availment of ITC in respect of invoices/debit notes not furnished by the suppliers in their GSTR-1 or using IFF [Rule 36(4) of the CGST Rules]

No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under subsection (1) of section 37 unless:

- a. the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and
- b. the details of **input tax credit in respect of** such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60.

Introduction of an Auto drafted ITC statement in GSTR 2B

ITC on all invoices/debit notes which are furnished by the suppliers in their GSTR-1s can be availed in full. The recipient gets details of tax invoices and debit notes furnished by the suppliers in their GSTR-1s, in his (recipient's) GSTR-2A and **GSTR-2B**. GSTR-2B is an **auto-drafted ITC statement** generated for every registered person based on GSTR-1 filed by supplier.

C Receipt of the goods and / or services [Section 16(2)(b)]

The person taking the ITC must have received the goods and / or services.

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;**



INPUT TAX CREDIT

“Bill to Ship to” Model also included:

Receipt of goods includes delivery to another person on the direction of the registered person by way of “transfer of documents of title to goods or otherwise” either before or during the movement of goods.

It would be deemed that registered person has received the goods in such scenario. So, ITC will be available to the registered person on whose order the goods are delivered to third person.

Example: A is a trader who places an order on B for a consignment of soda ash. A receives a buying order from C for the same quantity of soda ash. A instructs B to deliver the goods to C, and in turn he raises an invoice on C. Though the goods are not physically received at the premises of A, this condition is satisfied, and A is entitled to ITC on the consignment.

ITC in case of bill to ship to situations in case of services [Explanation to section 16(2)(b) of the CGST Act]

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.

D Details of input tax credit in respect of the said supply communicated to such registered person u/s 38 has not been restricted [Section 16(2)(ba)]

E Tax leviable on supply actually paid to Government [Section 16(2)(c)]

Tax should actually have been paid, by cash or through utilization of ITC subject to Section 41, on goods and / or services for which ITC is being taken.

Availment of Input tax Credit [Section 41]

- (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.
- (2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:

Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.

**Reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment thereof [Rule 37A added vide N/N 26/2022 dated 26/12/2022]**

Where input tax credit has been availed by a registered person in the return in FORM GSTR-3B for a tax period in respect of such invoice or debit note, the details of which have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility,

- but the return in FORM GSTR-3B for the tax period corresponding to the said statement of outward supplies has not been furnished by such supplier **till the 30th day of September following the end of financial year** in which the input tax credit in respect of such invoice or debit note has been availed,
- **the said amount of input tax credit shall be reversed by the said registered person, while furnishing a return in FORM GSTR-3B on or before the 30th day of November** following the end of such financial year:

Provided that where the said amount of input tax credit is not reversed by the registered person in a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year during which such input tax credit has been availed, **such amount shall be payable by the said person along with interest thereon under section 50.**

Provided further that where the said supplier subsequently furnishes the return in FORM GSTR-3B for the said tax period, the said registered person **may re-avail the amount of such credit in the return in FORM GSTR-3B for a tax period thereafter**

F Filing of return [Section 16(2)(d)]

The registered person taking the ITC must have filed his return u/s 39.

ITC ON GOODS RECEIVED IN LOTS [First Proviso to Section 16(2)]

In case the goods covered under an invoice are not received in a single consignment but are received in lots / instalments, **the ITC can be taken only upon receipt of the last lot / instalment.**

Example: XYZ makes an advance payment in August and orders 10 MT of a particular chemical which is in short supply. The supplier of the chemical raises a bill for the entire amount in August and collects GST from XYZ on the advance paid. The chemical is delivered in lots over a period of 3 months and the supply is completed in November. Though XYZ paid some tax in advance as early as August, he can take the ITC only on receipt of last instalment of the chemical in the month of November.



**PAYMENT FOR THE INVOICE TO BE MADE WITHIN 180 DAYS
[Second Proviso to Section 16(2) r/w Rule 37]**

The registered person who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the amount towards the value of such supply **whether wholly or partly** along with the tax payable thereon, within **180 days from date of issue of invoice**.

Where recipient fails to make payment to the supplier of goods or services or both other than supplies on which tax is payable under reverse charge basis, the amount towards value of supply along with tax payable within 180 days from date of invoice issued by supplier, the supplier shall **pay or reverse** an amount equal to the **input tax credit availed** in respect of such supply **proportionate to the amount not paid to the supplier along with interest payable thereon u/s 50**, while furnishing the return in GSTR 3B for the tax period immediately following the period of 180 days from date of issue of invoice.

Once the payment is made to the supplier towards the value of supply of goods or services or both along with tax payable thereon, recipient will be entitled to avail the credit again without any time limit.

EXCEPTIONS – CASES WHERE RULE 37 IS NOT APPLICABLE

This condition of payment within 180 days **does not apply** in following situations:

- (1) Supplies on which tax is payable under **reverse charge**;
- (2) Deemed supplies without consideration as referred in **Schedule I**
- (3) The value of supplies on account of any amount added in accordance with Section 15(2)(b) shall be **deemed to have been paid** for the purposes of the second proviso to Section 16(2).

Example 1: Due to a quality dispute, PZP Ltd withheld payment on a machine supplied by a vendor till it could be rectified. Over 180 days went by in this dispute. The credit taken by PZP on the invoice got added to the output tax liability of PZP and thus, it had to pay back the credit. Only after the vendor rectified the machine and PZP released the payment, could PZP take the credit again

DEPRECIATION CLAIMED ON TAX COMPONENT [Section 16(3)]

ITC on tax component shall not be allowed, if the person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the Income-tax Act 1961,

Dual benefit cannot be claimed under Income-tax Act, 1961 and GST laws simultaneously.

**TIME LIMIT FOR AVAILING ITC [Section 16(4)]**

- (1) **30th day of November** of the succeeding financial year to which such invoice or debit note pertain
- (2) Date of filing of the relevant annual return

whichever is earlier.

Note: The effect of the amendment is that date of debit note, and date of underlying invoice have been delinked. Thus, debit note in respect of an invoice can be raised even after 30th November following end of financial year to which the invoice pertains. It means the recipient can avail ITC of GST paid through debit note, even if the supply pertains to previous financial years.

UPPER LIMIT OF TAKING ITC – 30 NOVEMBER OF NEXT FINANCIAL YEAR.

The underlying reasoning for this restriction is that no change in return is permitted after 30th November of next financial year. If annual return is filed before 30th November, then no change can be made after filing of annual return.

Time limit u/s 16(4) does not apply to claim for re-availing of credit that had been reversed earlier.

Example: Hercules Machinery delivered a machine to XYZ in January 2023 under Invoice no. 49 dated 28th January, 2023 for ₹4,15,000 plus GST, and undertook trial runs and calibration of the machine as per the requirements of XYZ. The amount chargeable for the post-delivery activities was covered in a debit note raised in April 2023 for ₹50,000 plus GST. Hercules Machinery did not file its annual return till November, 2023.

Since the debit note was received in the next financial year, therefore, the time limit for taking ITC available on ₹50,000 is 30th November, 2024; earlier of the date of filing the annual return for 2022-23 or 30th November 2024

Restrictions on utilisation of ITC [Rule 86A]

The Commissioner or an authorized officer, not below the rank of an AC, having reasons to believe that input tax credit available in the electronic credit ledger has been **fraudulently availed or is ineligible can impose restrictions** in following cases:

- (a) ITC has been availed on the basis of tax invoices/ valid documents
 - i. issued by non-existent supplier or by person or by person not conducting any business from the registered place of business; or
 - ii. **without receipt** of goods or services or both; or
 - iii. tax charged in respect of which has not been paid to the Government; or



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- (b) Registered person availing input tax credit has been found non-existent or **not to be conducting any business from the registered place of business**
- (c) Registered person availing input tax credit is **not in possession of a tax invoice**/valid document.

If the ITC is so availed, the restrictions can be imposed by not allowing such ITC to be used for discharging any liability u/s 49 or not allowing refund of any unutilised amount of such ITC.

Can the Commissioner withdraw the restriction i.e. allow payment through ITC if conditions of disallowing no longer exist?

The Commissioner/officer authorized by him, can withdraw such restriction (i.e. **allow such debit**) if he is satisfied that conditions for imposing the restrictions no longer exist.

What is the validity of this restriction?

The restriction shall cease to have effect after the expiry of **1 year** from the date of imposing such restriction.

Restrictions on use of amount available in electronic credit ledger [Rule 86B]

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 99% of such tax liability, in cases where the value of taxable supply other than exempt supply and zero-rated supply, in a **month** exceeds **₹ 50 lakhs**.

Non-Applicability of above restriction:

- (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 ₹ 1 lakhs** as income tax under the Income-tax Act, 1961 in each of the last two financial years for which the time limit to file return of income u/s 139(1) of the said Act has expired; or
- (b) the registered person has received a refund amount of **more than ₹ 1 lakhs** in the preceding financial year on account of unutilised input tax credit under clause (i) of first proviso of section 54(3); or
- (c) the registered person has received a refund amount of **more than ₹ 1 lakhs** in the preceding financial year on account of unutilised input tax credit under clause (ii) of first proviso of section 54(3); 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 authorized by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit.”

BLOCKED CREDITS [SECTION 17(5)]

ITC of tax paid on almost every inputs and input services used for supply of taxable goods or services or both is allowed under GST **except a small list of items provided u/s 17(5).**

(1) Motor vehicles* for transportation of persons with seating capacity \leq 13 persons (including the driver) **EXCEPT WHEN USED** for making the following taxable supplies:

- ✓ Further supply of motor vehicles; or
- ✓ Transportation of passengers; or
- ✓ Imparting training on driving such motor vehicles

Examples:

- ITC on cars purchased by a manufacturing company for official use of its employees is _____ [blocked/allowed]
- ITC on cars purchased by a car dealer for sale to customers is _____. [Allowed/Disallowed]
- ITC on cars purchased by a company engaged in renting out cars for transportation of passengers, is _____. [Allowed/Disallowed]
- ITC on cars purchased by a car driving school is _____. [Allowed/Disallowed]

- ITC on buses purchased by a company for transportation of its employees from their residence to office and back, is _____. [Allowed/Disallowed]

- ITC on trucks purchased by a company for transportation of its finished goods is _____ [Allowed/Disallowed]

Notes:

- (a) ITC on motor vehicles for transportation of persons with seating capacity \leq 13 persons (including the driver) used for any purpose other than ones mentioned above is **not allowed**.
- (b) ITC on motor vehicles for transportation of persons with seating capacity $>$ 13 persons (including the driver) used for any purpose **is allowed**.
- (c) ITC on any other motor vehicle (e.g. motor vehicle used for transportation of goods, dumpers, tippers etc.) used for any purpose **is allowed**.



INPUT TAX CREDIT

(2) 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;

Examples:

- ITC on aircraft purchased by a manufacturing company for official use of its CEO is blocked
- ITC on aircraft purchased by an Aviation School providing training on flying aircrafts, is allowed.

(3) Services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred above

Exceptions - The input tax credit shall be allowed in following cases:

- (i) Where the motor vehicles, vessels or aircraft referred above are **used for the purposes specified therein**;
- (ii) Where received by a taxable person engaged—
 - ✓ in the manufacture of such motor vehicles, vessels or aircraft; or
 - ✓ in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

Examples:

- ITC on general insurance taken on a car used by employees of a manufacturing company for official purposes, is blocked.
- ITC on maintenance & repair services availed by a company for a truck used for transporting its finished goods, is allowed

(4) Foods and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred on which ITC is not allowed, life insurance and health insurance

Exceptions: ITC is available in following cases

(1) Where an inward supply of such goods or services is used by 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.



(2) The Government has made it obligatory for an employer to provide any of these services to its employees.

It is clarified that “leasing” referred herein refers to leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items. Accordingly, availment of ITC is not barred in case of leasing, other than leasing of motor vehicles, vessels and aircrafts.

Examples: (1) A caterer for a wedding gets the sweet dish course supplied by a specialist in desserts. He is allowed ITC of the tax paid by him to the specialist.

(2) AB & Co., a caterer of Amritsar, has been awarded a contract for catering in a marriage to be held at Ludhiana. The firm has given the contract for supply of snacks, to be served in the marriage, to CD & Sons, a local caterer of Ludhiana. ITC on such outdoor catering services availed by AB & Co., is allowed.

(3) ITC on outdoor catering services availed by a company, for a team development event organised for its employees, is blocked

(4) ITC on outdoor catering service availed by a company to run a canteen in its factory. The Factories Act, 1948 requires the company to set up a canteen in its factory. ITC on such outdoor catering is allowed.

(5) Membership of a club, health and fitness centre, except when the Government has made it obligatory for an employer to provide any of these services to its employees.

(6) Travel benefits to employees on vacation such as LTC or home travel concession, except when the Government has made it obligatory for an employer to provide any of these services to its employees.

(7) **Works contract services** for “construction” of an immovable property **EXCEPT WHEN**

✓ It is input service for further supply of works contract service

✓ Immovable property is plant and machinery

(8) Inward supplies received by a taxable person for “construction” of an immovable property (**other than plant and machinery**) **on his own account** even when such supplies are used in the course or furtherance of business.

Example: A company buys material and hires a contractor to construct an office building to house the plant supervisory staff. The input tax paid on such goods and services is not allowed as credit.

“Construction”, includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.



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“Plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural supports that are used for making outward supply of goods or services or both and includes such foundation and structural supports

but excludes land, building or other civil structures, telecommunication towers, and pipelines laid outside the factory premises.

- (9) Inward supplies on which tax has been paid under the **composition scheme**
- (10) Inward supplies received by a **non-resident taxable person** except goods imported by him
- (11) Goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under **corporate social responsibility** referred to in section 135 of the Companies Act, 2013.
- (12) Goods and / or services used for **personal consumption**
- (13) Goods that are lost, stolen, destroyed, written off or disposed of by way of **gift or free samples**
- (14) Tax paid as a result of evasion of taxes, or upon detention of goods or conveyances in transit, or towards redemption of confiscated goods/conveyances [tax paid as a result of Section 74, 129 and 130]

Clarification on ITC in the hands of the supplier in respect of sales promotional schemes [Circular No. 92/11/2019 GST dated 28.03.2019]

Free samples and gifts

It has been clarified that ITC shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration. However, where the activity of distribution of gifts or free samples falls within the scope of “supply” on account of the provisions contained in Schedule I of the said Act, the supplier would be eligible to avail the ITC.

Buy one get one free offer:

It is clarified that ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

Discounts including ‘Buy more, save more’ offers

It is clarified that the supplier shall be entitled to avail the ITC for such inputs, input services and capital goods used in relation to the supply of goods or services or both on such discounts.



APPORTIONMENT OF INPUT TAX CREDITS [SECTION 17]

Goods or services used partly for business and other purpose [Section 17(1)]

When goods and / or services are used by the **registered person** partly for

- purpose of 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.

Example 1: A registered person (partnership firm) purchases 5 laptops but one of the laptop is being used by the son of one of the partners of the firm. ITC will not be available on such laptop as it is used for personal purposes.

Goods or services used partly for taxable supplies including zero rated supplies and partly for exempt supplies [Section 17(2)]

When goods and / or services are used by the **registered person** partly for

- making taxable supplies including zero-rated supplies and
- partly for making exempt supplies. **[Section 17(2)]**

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*.

Example 1: Out of 10 containers purchased by a registered person engaged in taxable supply of goods, 5 are used for storing non-taxable goods (exempt supply) such as petroleum (petroleum is out of GST gamut till the time the GST Council takes a decision in this regard). ITC on 5 containers used for non-taxable goods cannot be availed.

ITC is available on goods and / or services used for zero rated supplies **[supplies made in the course of export or to an SEZ unit or SEZ developer]**

Example 2:

A technical testing agency tests and certifies each batch of machine tools before dispatch by BMT Ltd. Some of these tools are dispatched to a unit in a SEZ without payment of GST as these supplies are not taxable. The finance personnel of BMT Ltd. want to know whether they need to carry out reversal of ITC on the testing agency's services to the extent attributable to the SEZ supplies. Give your comments.



Definition of Exempt supply expanded for purpose of Section 17 [Section 17(3)]

Exempt supplies **includes**:

- supplies charged to tax under **reverse charge**,
- transactions in **securities [1% of sale value of security]**
- sale of land [Stamp Duty Value] and
- sale of building [Stamp Duty Value],

when entire consideration is received after completion certificate issued by the competent authority.

a) Aggregate value of exempt supplies and total turnover **excludes** the central excise duty, State excise duty and VAT.

b) Value of exempt supply are as follows

- a. **Land and building** = Value adopted for paying **stamp duty** and
- b. **Security** = **1%** of the **sale value** of such security.

For the purpose of Section 17(3), the 'value of exempt supply' shall not include the value of activities or transactions specified in Schedule III, **except**,

- (i) the value of activities or transactions specified in paragraph 5 of the said Schedule; and
- (ii) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule

Therefore, while in all other items of Schedule III, ITC will not be required to be reversed; in case of sale of land and building and supply of warehoused goods to any person before clearance for home consumption, ITC will need to be reversed.

METHODOLOGY OF APPORTIONMENT OF ITC ON INPUTS & INPUTS SERVICES & REVERSAL [RULE 42]

Rule 42 of the CGST Rules provides the methodology for apportionment of ITC on inputs and input services and reversal of ineligible credit as follows:

Step 1: Compute Common Credit

Total input tax involved on inputs & input services in a tax period	T
Less: Input tax on inputs & input services that are intended to be used exclusively for non-business purposes	(T1)
Less: Input tax on inputs & input services that are intended to be used exclusively for exempt supplies	(T2)
Less: Input tax on inputs & input services which are ineligible for credit [blocked credits]	(T3)



INPUT TAX CREDIT

ITC credited to Electronic Credit Ledger	C1
Less: ITC on inputs & input services that are intended to be used exclusively for taxable supplies including zero rated supplies	(T4)
Common ITC available for apportionment	C2

The portion identified as pertaining to taxable supplies in C2 will be allowed as ITC.

'T 1', 'T 2', 'T 3' and 'T 4' should be determined and declared by the registered person at **summary level in GSTR 3B**.

Step 2 – Compute credit attributable to exempt supplies (ineligible credit) by apportionment of common credit

Apportion C2 into credit attributable to exempt supplies D1 as under

$$D1 = (E/F) * C2$$

E = Aggregate value of exempt supplies during the tax period

F = Total turnover in the State during the tax period

Points to be remembered:

- Values for the last tax period may be used, if the registered person does not have any turnover during the said tax period or above information is not available
 - Exempt supplies include supplies charged to tax under reverse charge, transactions in securities, sale of land and sale of building when entire consideration is received after completion certificate issued by the competent authority.
 - Aggregate value of exempt supplies and total turnover **excludes** the central excise duty, State excise duty, VAT and central sales tax.
- c) Value of exempt supply are as follows
- Land and building** = Value adopted for paying **stamp duty** and
 - Security** = 1% of the **sale value** of such security.

Step 3: Compute credit attributable to non-business purposes D2 as under

$$D2 = 5\% \text{ OF } C2 \text{ (Common Credit)}$$



INPUT TAX CREDIT

Step 4 – Compute eligible credits

Compute C3 attributable to business purposes and taxable supplies including zero rated supplies as under:

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

Step 5 – Restrict ineligible credits

The aggregate of 'D1' and 'D2' should be reversed by the registered person in GSTR 3B or in the prescribed form.

Points to be remembered:

- a) C3, D1, and D2 should be computed separately for ITC of CGST , SGST /UT GST and IGST and declared in GSTR 3B or through a prescribed form. D1 is ITC attributable towards exempt supplies. D2 is the ITC attributable to non- business purposes.
- b) Compute $\Sigma (D1 + D2)$ for the whole financial year, by taking exempted turnover and aggregate turnover for the whole financial year, before the due date for filing the return for September in the following financial year.
- c) Where the amount of input tax relating to inputs or input services ***used partly for the purposes other than business and partly for effecting exempt supplies has been identified and segregated at the invoice level*** by the registered person, the same shall be included in 'T1' and 'T2' respectively, and the remaining amount of credit on such inputs or input services shall be included in 'T4'.
- d) **If $\Sigma (D1 + D2) >$ the amount already added to output tax liability every month**
The differential amount shall be **reversed by the registered person in GSTR 3B or in the prescribed form** in any month not later than September in the following financial year and interest @ rate 18% should be paid on such differential amount from 1st April of succeeding year till the date of payment.
- e) **If the amount added to output tax liability every month $>$ $\Sigma (D1 + D2)$**

The additional amount paid has to be claimed back as credit in the return of the month not later than September in the next financial year



METHODOLOGY OF APPORTIONMENT OF CREDIT OF CAPITAL GOODS AND REVERSAL THEREOF [RULE 43]

Step 1 - Determine common credit 'Tc' on capital goods as under

- a) Identify input tax on capital goods used/ intended to be used **exclusively** for **non-business purposes** / making **exempt supplies** and declare the same in GSTR 3B [*Such amount will not be credited to Electronic Credit Ledger*]
- b) Identify input tax on capital goods used/ intended to be used **exclusively** for making **taxable supplies** including **zero rated supplies** and declare the same in GSTR 3B. [Such amount will be credited to **E-credit ledger**]
- c) Identify input tax in respect of capital goods not covered under clauses (a) and (b), denoted as "**A**" being the amount of tax as reflected on the invoice, shall credit directly to the electronic credit ledger and the validity of the useful life of such goods shall extend upto **5 years** from the date of the invoice for such goods:

Change in use from exclusive exempt purpose to common use

Provided that where any capital goods earlier covered under **clause (a)** is **subsequently covered under this clause**, input tax in respect of such capital goods denoted as "**A**" shall be credited to the **electronic credit ledger** subject to the condition that the **ineligible credit attributable to the period during which such capital goods were covered by clause (a), denoted as "Tie"**, shall be 5% for every quarter or part thereof and **added to the output tax liability of the tax period in which such credit is claimed**:

Provided further that the amount "**Tie**" shall be computed separately for input tax credit of CGST, SGST, UTGST and IGST and declared in FORM GSTR-3B.

Explanation.- An item of capital goods declared under clause (a) on its receipt shall not attract Section 18(4), if it is subsequently covered under this clause."

- d) The aggregate of the amounts of "**A**" credited to the electronic credit ledger under clause (c) in respect of common capital goods whose useful life remains during the tax period, to be denoted as "**Tc**", shall be the common credit in respect of such capital goods.

Change in use from exclusive taxable supplies to common use

Provided that where any capital goods earlier covered under **clause (b)** are **subsequently covered under clause (c)**, the input tax credit claimed in respect of such capital good(s) shall be added to arrive at the aggregate value "**Tc**".



INPUT TAX CREDIT

Step 2 - Determine common credit during the useful life of capital goods for a tax period as under and denote the same as 'Tm':

$$T_m = T_c / 60$$

Explanation.- For the removal of doubt, it is clarified that useful life of any capital goods shall be considered as five years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods

Step 3 - Apportion common credit attributable to exempt supplies as under:

$$T_e = (E/F) * T_m$$

Where:

E = Aggregate value of exempt supplies made during the tax period

F = Total turnover in the State during the tax period

Points to remembered – Similar as Step 2 of Rule 42

Step 4: Restrict ineligible credit

Add **T_e** to the **output tax liability** along with applicable interest during every tax period of the useful life of the capital goods concerned.

It should be computed separately for ITC of CGST , SGST /UTGST and IGST and declared in GSTR 3B

Exclusion from value of exempt supply u/r 42 and 43

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

- a. 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
- ~~b. 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.~~
- c. the value of supply of Duty Credit Scrips specified in the notification of the Government of India, Ministry of Finance, Department of Revenue No. 35/2017-Central Tax (Rate), dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number GSR 1284(E), dated the 13th October, 2017



Explanation 3: For the purpose of rule 42 and rule 43, the value of activities or transactions mentioned in sub-paragraph (a) of paragraph 8 of Schedule III of the Act which is required to be included in the value of exempt supplies under clause (b) of the Explanation to sub-section (3) of section 17 of the Act **shall be the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers.**” . [Inserted vide N/N 38/2023 dated 04/08/2023]

Example: Roi Industries is a manufacturing company registered under GST. It manufactures two taxable products ‘X’ and ‘Y’ and one exempt product ‘Z’. The turnover of ‘X’, ‘Y’ and ‘Z’ in the month of April, 20XX was ₹ 2,00,000, ₹ 10,00,000 and ₹ 12,00,000. Roi Industries is in possession of certain machines and purchases more of them. Useful life of all the machines is considered as 5 years. From the following particulars furnished by it, compute the amount to be credited to the electronic credit ledger of Roi Industries and amount of common credit attributable towards exempted supplies, if any, for the month of April, 20XX.

Particulars	GST paid (₹)
Machine ‘A’ purchased on 01.04.20XX for being exclusively used for non-business Purposes	19,200
Machine ‘B’ purchased on 01.04.20XX for being exclusively used in manufacturing zero- rated supplies	38,400
Machine ‘C’ purchased on 01.04.20XX for being used in manufacturing all the three products – X, Y and Z	96,000
Machine ‘D’ purchased on April 1, 2 years before 01.04.20XX for being exclusively used in manufacturing product Z. From 01.04.20XX, such machine will also be used for manufacturing products X and Y	1,92,000
Machine ‘E’ purchased on April 1, 3 years before 01.04.20XX for being exclusively used in manufacturing products X and Y. From 01.04.20XX, such machine will also be used for manufacturing product Z	2,88,000

Solution:

Particulars	Value in (₹)	Working Note
Capital goods C Used both for taxable and exempted supplies	96,000	Rule 43(1)(c) of CGST Rules, 2017
Capital goods D (has been exclusively used for 2 years for exempted supplies). Now there is change in use, both for taxable and exempted supplies.	1,92,000	Proviso to rule 43(1)(c) of CGST Rules, 2017. ₹ 1,92,000 ITC allowed fully, provided, ₹ 77,800 is considered as output tax liability in April, 20XX. 1.92 L x 5% x 8 quarters = ₹ 76,800
Capital goods E (has been exclusively used for 3 years for taxable supplies).	2,88,000	Proviso to rule 43(1)(d) of CGST Rules, 2017.



INPUT TAX CREDIT

Now there is change in use, both for taxable and exempt supplies.		ITC already availed and hence, ITC in April 20XX is not allowed
Common Credit	5,76,000	
Amount of input tax credit attributable to a tax period on common capital goods during their useful life	9,600	$5,76,000 \div 60 = ₹ 9,600$
Common credit attributable towards exempted supplies	4,800	$₹ 9,600 \times ₹ 12,00,000 / ₹ 24,00,000$

Statement showing Total ITC to the Electronic Credit Ledger for the month of April 20XX:

Particulars	Value in ₹
Capital goods B used exclusively for taxable supplies (i.e. Zero-rated supply)	38,400
Capital goods C Used both for taxable and exempted supplies	96,000
Capital goods D (has been exclusively used for 2 years for exempted supplies)	1,92,000
Now there is change in use, both for taxable and exempted supplies	
Electronic Credit Ledger	3,26,400

**OPTIONAL METHOD FOR BANKS [SECTION 17(4)]****Who has the option?**

Banking company / financial institution including a NBFC, which accepts deposits, or extends loans or advances

What is the option?

Option to limit its availment of ITC to **50% of the eligible ITC** on inputs, capital goods and input services **each month** and **the remaining ITC shall lapse**. If a person follows this option, he is not required to follow Section 17(2).

Non-applicability and other restrictions

- (I) Restriction of availing 50% ITC shall **not apply** to the tax paid on supplies procured from another registration **within the same entity** having same PAN i.e., 100% credit of such tax can be availed.
- (II) The option once exercised **cannot be changed** during the remaining part of the financial year.
- (III) Credit of tax paid on inputs and input services that are used for non-business purposes and blocked credits cannot be availed.

Procedure to follow to claim credit by bank or financial institution [Rule 38 of CGST Rules]

(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 ***Section 17(5)***,

(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 Section 17(4) and not covered under **clause (a) (above)**; [Tax paid on supplies made by one registered person to another registered person having same PAN fully allowed]

(c) **50%** of the **remaining amount of input tax** shall be the input tax credit admissible to the company or the institution **and the balance amount of input tax credit shall be reversed in FORM GSTR-3B**;



CREDIT IN SPECIAL CIRCUMSTANCES [SECTION 18]

Entitlement of ITC at the time of registration/voluntary registration or switching to regular tax paying status or coming into tax-paying status [Section 18(1)]	Reversal of ITC on switching to composition levy or exit from tax-paying status [Section 18(4)]
Amount payable on supply of capital goods or plant and machinery on which ITC has been taken [Section 18(6)]	Transfer of ITC on account of change in constitution of registered person [Section 18(3)]

A. Entitlement of ITC at the time of registration/voluntary registration or switching to regular tax paying status or coming into tax-paying status [Section 18(1)/18(2) r/w Rule 40 of CGST Rules]

Persons eligible to take credit	Goods entitled to ITC	Restrictions/ conditions
Person who has applied for registration within 30 days from date on which he becomes liable to registration and has been granted such registration [Section 18(1)(a)]	Inputs held in stock and Inputs contained in semi-finished or finished goods held in stock <u>AS ON</u> The day immediately preceding the date from which he becomes liable to pay tax (date of registration)	ITC to be availed within 1 year from date of issue of tax invoice by supplier [Section 18(2)]
Person who is not required to register, but obtains voluntary registration [Section 18(1)(b)]	Inputs held in stock and Inputs contained in semi-finished or finished goods held in stock <u>AS ON</u> The day immediately preceding the date of grant of registration	



<p>Registered person who ceases to pay composition tax and switches to regular scheme</p> <p>[Section 18(1)(c)]</p>	<p>Inputs held in stock and Inputs contained in semi-finished or finished goods held in stock and capital goods</p> <p><u>AS ON</u></p> <p>The day immediately preceding the date from which he becomes liable to pay tax under regular scheme.</p>	<p>ITC on capital goods will be reduced by <u>5% per quarter</u> of a year or part of the year from the date of invoice.</p> <p>ITC to be availed within <u>1 year</u> from the date of the issue of the tax invoice by the supplier [Section 18(2)]</p>
<p>Registered person whose exempt supplies become taxable supplies</p> <p>[Section 18(1)(d)]</p>	<p>Inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such <u>exempt supply</u> and <u>capital goods exclusively used for such exempt supply</u></p> <p><u>AS ON</u></p> <p>The day immediately preceding the date from which such supply becomes taxable</p>	<p>ITC claim shall be verified with the corresponding details furnished by the corresponding supplier in Form GSTR 1 and GSTR 4</p>

Filing of declaration [Rule 40(1)(b)]

The declaration is to be filed within **30 days** from the date when the registered person becomes eligible to avail ITC or within such further period as may be extended by the Commissioner in **Form GST ITC 01** to the effect that he is eligible to avail the input tax credit.

Contents of declaration [Rule 40(1)(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 Section 18(1)(a);
- (ii) on the day immediately preceding the date of the grant of registration, in the case of a claim under Section 18(1)(b);



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- (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 Section 18(1)(c);
- (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 18(1)(d);

Certificate of CA/CMA is required

If the aggregate value of claim of ITC pertaining to CGST, SGST/UTGST, IGST put together exceeds ₹ 2,00,000, the declaration needs to be certified by a practicing Chartered Accountant/Cost Accountant.

Example 1: Mr. Z becomes liable to pay tax on 1st August and has obtained registration on 15th August. Mr. Z is eligible for ITC on inputs held in stock and as part of semi-finished goods or finished goods held in stock as on 31st July. Mr. Z cannot take ITC on capital goods.

Example 2: Mr. A applies for voluntary registration on 5th June and obtains registration on 22th June. Mr. A is eligible for ITC on inputs held in stock and as part of semi-finished goods or finished goods held in stock as on 21st June. Mr. A cannot take ITC on capital goods.

Example 3: Mr. B, a registered taxable person, was paying tax at composition rate upto 30th July. However, w.e.f. 31st July, Mr. B becomes liable to pay tax under regular scheme. Mr. B will be eligible for ITC on inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods as on 30th July. ITC on capital goods will be reduced by 5% per quarter from the date of the invoice.



B. Transfer of ITC on account of change in constitution of registered person [Section 18(3) r/w Rule 41 of CGST Rules)

Change in Constitution: Sale, lease, demerger, transfer of business, amalgamation, merger etc.

The registered person shall furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in **FORM GST ITC-02**.

The ITC being unutilized in electronic credit ledger of the registered person can be transferred to the **new entity**, provided there is a specific provision for transfer of liabilities in such change of constitution.

The transferee shall, on the common portal, accept the details so furnished by the transferor and, upon such acceptance, the **un-utilized credit specified in FORM GST ITC-02** shall be credited to his electronic credit ledger.

A certificate from practicing Chartered Account/Cost Accountant certifying that the change in constitution has been done with a specific provision for transfer of liabilities is required to be submitted.

The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.

Demerger

In the case of demerger, ITC will be apportioned in the **ratio** of the “**value of assets**” of the **new units** as specified in the demerger scheme.

The “**value of assets**” **means** the value of the **entire assets of the business, whether or not ITC has been availed thereon**.



C. Reversal of ITC on switching to composition levy or exit from tax-paying status [Section 18(4) r/w Rule 44 of CGST Rules]

(i) **When it is required to be reversed**

ITC is required to be reversed when a registered person who has availed ITC **switches to composition levy** or when his supplies get wholly **exempted** from tax.

(ii) **How will it be reversed:**

ITC on inputs will be reversed proportionately based on corresponding invoices on which credit had been availed on such inputs

(iii) **What if invoices are not available**

Reversal of ITC will be based on **prevailing market price** of such goods on the date of switch over/exemption. The details furnished on the basis of prevailing market value will be duly certified by a practicing Chartered Accountant/ Cost Accountant.

(iv) **How will ITC be reversed on capital goods**

ITC involved in the remaining useful life (in months) of the capital goods will be reversed on *pro-rata* basis, taking the useful life as **5 years**

Example: Capital goods have been in use for 4 years, 6 month and 15 days. The useful remaining life in months = 5 months ignoring a part of the month.

ITC taken on such capital goods = C

ITC attributable to remaining useful life = $C \times 5/60$

(v) **Procedure of reversal**

a) The registered person to debit the electronic credit or cash ledger by the reversal amount on the day immediately preceding the date of switch over/ date of exemption. Balance of ITC, if any, lying in the electronic credit ledger shall lapse.

b) The ITC to be reversed on inputs and capital goods will be calculated separately for ITC of CGST, SGST/UTGST and IGST.

c) The reversal amount will be added to the output tax liability of the registered person and it shall be furnished in **FORM GST ITC-03**, where such amount relates to any event specified in **Section 18(4)** and in **FORM GSTR-10**, where such amount relates to the cancellation of registration. Such details shall be duly certified by practicing CA/CMA.



D. Amount payable on supply of capital goods or plant and machinery on which ITC has been taken [Section 18(6) r/w Rule 40(2) & 44(6) of CGST Rules]

He must pay an amount that is the **higher** of the following:

- (i) ITC taken on such goods reduced by **5% per quarter** of a year or part thereof from the **date of issue of invoice** for such goods (i.e., ITC pertaining to remaining useful life of the capital goods), or
- (ii) tax on **transaction value**

Where amount so determined exceeds the tax payable on the transaction value of the capital goods, such amount will have to be paid and thus, will be **added to the output tax liability and the same shall be furnished in FORM GSTR-1.**

*For refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap - the taxable person may pay tax on the **transaction value.***

**Note: Under rule 44(6), ITC involved in the remaining useful life (in months) of the capital goods is reversed on pro rata basis, taking the useful life as 5 years*

E. Transfer of credit on obtaining separate registrations for multiple places of business within a State/Union territory [New rule 41A inserted in the CGST Rules, 2017]

The new rule lays down that a registered person (transferor) who has obtained separate registration for multiple places of business and who intends to transfer, either wholly or partly, the unutilised ITC lying in his electronic credit ledger to any or all of the newly registered place of business, should furnish the prescribed details on the common portal within 30 days from obtaining such separate registrations. Upon acceptance of such details by the newly registered person (transferee) on the common portal, the unutilised ITC would get credited to his electronic credit ledger.

The ITC is transferred to the newly registered entities in the ratio of the **value of assets** held by them at the time of registration. Here, the 'value of assets' means the value of the entire assets of the business **whether or not ITC has been availed thereon.**

F. Clarification in respect of transfer of ITC in case of death of sole proprietor

Issue: Whether section 18(3) of the CGST Act provides for transfer of ITC which remains unutilized to the transferee in case of death of the sole proprietor?

Clarification: For the purpose of section 18(3) of the CGST Act and rule 41(1) of the CGST Rules, transfer or change in the ownership of business will include transfer or change in the ownership of business due to death of the sole proprietor. [Circular No. 96/15/2019 GST dated 28.03.2019]

In case of transfer of business with the specific provisions for transfer of liabilities, unutilized ITC can be transferred to the transferred business in terms of section 18(3) of the CGST Act. Rule 41(1) of the CGST Rules requires the registered person to furnish the details of transfer of business in the prescribed form electronically on the common portal along with a request for transfer of unutilized ITC lying in his electronic credit ledger to the transferee.



TAKING INPUT TAX CREDIT IN RESPECT OF INPUTS AND CAPITAL GOODS SENT FOR JOB WORK [SECTION 19]

Definitions

“**Job Work**” means any treatment or process undertaken by a person on goods belonging to another registered person.

The person who undertakes the job of treatment or process for another person is called **job worker**.

The owner of the goods who engages the job worker is called **Principal**.

Can principal take ITC on inputs sent to job-worker?

- a) A principal (a person supplying taxable goods to the job worker) is entitled to take the credit of input tax paid on inputs and/or capital goods sent to the job-worker for the job work.
- b) The principal can also take ITC even when the inputs and/or capital goods have been directly sent to the job worker **without being brought into his place of business. [Condition of claim of ITC u/s 16(2) (b) is relaxed]**
- c) The principal **need not wait** till the inputs and/or capital goods are first brought to his place of business

Time limits for the return of goods sent for job-work or supply from job worker’s place of business

Inputs should be brought back to the Principal OR alternatively sold from the job worker’s premises on behalf of the Principal within:

- a. 1 year in case of **inputs (can be further extended by another 1 year if permitted by Commissioner)**
- b. 3 years in case of **capital goods* (can be further extended by another 2 years if permitted by Commissioner)**

from being sent out

**Capital goods excludes moulds and dies, jigs and fixtures, or tools*

Where the inputs are sent directly to a job worker, the period of 1/3 years shall be counted from the date of **receipt of inputs by the job worker

Consequences of failure to meet above time limit

It is deemed that the inputs and capital goods **were supplied** by the principal to the job worker (in other words, tax will be payable on them) **on the day they were sent out to the job worker**. The said supply is required to be declared in GSTR-1 and the principal is liable to pay tax along with applicable interest.

Subsequent return of the inputs and capital goods by the job worker, after the stipulated time, will be treated as a separate supply.

**Can Principal supply goods from job-worker premises?**

Principal can supply goods from the place of business of job worker if the Principal declares the place of business of the job worker as his additional place of business, **except in following two conditions:**

- a) job worker is registered under section 25; or
- b) Principal is engaged in the supply of such goods as may be notified by the Commissioner

Other relevant points for consideration

- a) The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the Principal.
- b) Any waste and scrap generated during the job work may be supplied by the job worker directly from his place of business on payment of tax, if such job worker is registered, or by the Principal, if the job worker is not registered.
- c) Input includes intermediate goods arising from any treatment or process carried out on the inputs by the Principal or the job worker.

Example 1: A supplier of notebooks for schools sends the paper of required dimensions and GSM to a job worker for making the notebooks as per the design given by him.

However, the Government changes the specifications of notebooks for supply to its schools. The supplier sends a fresh stock of paper with fresh instructions to the job worker and instructs him to hold the earlier consignment in stock till a buyer is found. The new notebooks are easily sold, but the paper and semi-finished notebooks of the old design lie in the godown of the job worker for **over** a year.

Here, sending of paper by the notebook supplier to the job worker in the **first lot will be deemed as a supply** and thus, tax would be payable on the same.

Example 2:

Question: ABC Ltd., sends T Shirts to its job workers for fixing the collar, in batches and a batch was sent on 14th July, 2017. The collars were fixed and the T-shirts were sent back to the Principal on 31st October, 2018.

Solution: In this case, since the goods were not returned to the Principal by the job worker after completion of the work within 1 year of it being sent back, the supply between the principal and the job worker would be a deemed supply, and hence tax would be need to be paid along with applicable interest.

Also, in such a case, when the goods are returned by the job worker to the Principal, that again would be construed as a separate supply.



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Procedure for sending goods for job work [Rule 45 of CGST Rules]

a) The inputs, semi-finished goods or capital goods are required to be sent to the job worker under a challan issued by the principal,

including where such goods are sent directly to a job-worker, and where the goods are sent from one job worker to another job worker, the challan may be issued either by the principal or the job worker sending the goods to another job worker.

b) Endorsement of challans issued by principal

The challan issued by the principal may be endorsed by the job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal:

The challan endorsed by the job worker may be further endorsed by another job worker, indicating therein the quantity and description of goods where the goods are sent by one job worker to another or are returned to the principal.

c) Time limit to furnish details of challans in Form GST ITC 04

The details of various challans relating to goods sent to /received from job worker during **a specified period** are to be included in **Form GST ITC 04** submitted by **25th day of the month succeeding the said period** or within such further period as may be extended by the Commissioner by a notification in this behalf. “**Specified period**” shall mean

Aggregate turnover of principal during preceding FY	Frequency	Due date(s) for filing Form GST ITC-04
Upto ₹ 5 crore	Annual basis	25 th April i.e., for FY 2021-22, due date will be 25 th April, 2022.
Greater than ₹ 5 crore	Half yearly basis	25 th October & 25 th April

d) The responsibility for keeping proper accounts for the inputs or capital goods **lies with the principal.**

Contents of Challan

The challan should contain details specified in rule 55 relating to invoices namely,

- Date and number of delivery challan,
- Name, address and GSTIN of the consignor and consignee,
- HSN code and
- Description of goods, quantity, taxable value, tax rate and tax amount,
- Place of supply and signature.

**What if inputs or capital goods are not returned within time prescribed u/s 143?**

It shall be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital goods were sent out and the said supply shall be declared in FORM GSTR-1 and the principal shall be liable to pay the tax along with applicable interest

MANNER OF DISTRIBUTION OF CREDIT BY INPUT SERVICE DISTRIBUTOR (ISD) [SECTIONS 20 & 21]**Role and relevance of ISD**

- a) The concept of ISD is a facility made available to business having a large share of common expenditure and where billing/payment is done from a centralized location.
- b) The mechanism is meant to simplify the credit taking process for entities and
- c) The facility is meant to strengthen the seamless flow of credit under GST
- d) ISD mechanism enables proportionate distribution of credit of input services amongst all the consuming units

Definition of ISD

“ISD” means an office of the supplier of goods or services or both which receives tax invoices issued u/s 31 towards the receipt of “**input services**” and issues a prescribed document for distributing credit of CGST, SGST, IGST or UTGST paid on the said services to a supplier of taxable goods or services or both having the same PAN as that of the **said office**.

ISD mechanism is meant only for distributing the credit on COMMON INVOICES pertaining to INPUT SERVICES and not goods (inputs or capital goods).

Separate Registration of ISD

- a) **Compulsorily** required to obtain a **separate registration** as an ISD even though it may be separately registered
- b) **No threshold limit** for registration for an ISD.
- c) Different offices a company like marketing division, security division etc. **may apply for separate ISD registration**.

Manner of distribution of credit by an ISD [Section 20 read with rule 39 of CGST Rules]

The ISD shall distribute the credit of CGST as CGST / IGST and IGST as IGST / CGST, by way of issue of a document containing the amount of input tax credit being distributed in manner prescribed u/r 39.



INPUT TAX CREDIT

Conditions to be fulfilled by ISD to distribute the credit

- The credit can be distributed to the recipients of credit against a document containing such details as may be prescribed u/r 39
- The amount of credit distributed does not exceed the credit available with it for distribution.
- Relevant credit connected to an input service must be distributed **only** to the **particular recipient** to whom that **input service is attributable**.

Input service is attributable to more than one recipient

Relevant ITC is distributed to **such recipients** in the **ratio of**

$$\frac{\text{“Turnover of the recipient” in a State / Union Territory}}{\text{“Aggregate turnover” of ALL recipients}}$$

to whom the input service is **attributable** and which are **operational** during the current year during the said **“relevant period”**.

Input service is attributable to ALL units

Distributed to **all the recipients** in the ratio of turnover as described in above.

Both ineligible and eligible ITC are distributed separately.

Proportionate distribution of credit to more than one recipient/all the recipients

The turnover **“during the relevant period”** is to be considered, both for **“turnover of the recipient in a State / UT”** as well as for **“aggregate turnover”** of all recipients.

How to determine “Relevant Period”?

Situations	Relevant Period
All recipients of credit had “turnover in their State” / UT during the financial year preceding the year during which credit is to be distributed	Previous financial year
Some / all the recipients did not have turnover in their State / UT during the previous financial year	Last quarter for which details of turnover of all the recipients is available prior to month for which credit is to be distributed

**Other points to be remembered**

- a) **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.
- b) **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 of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.
- c) The credit attributable to a recipient is distributed even if such recipient is unregistered or is making exempt supplies.
- d) Where both taxable and non-taxable goods are supplied, the “turnover” excludes central excise duty, State excise duty and VAT.

Formula for distribution of credit

$$C1 = (t1 \div T) * C$$

Where:

“C” is the credit to be distributed,

“t1” is the turnover of the recipient during the relevant period, and

“T” is the aggregate of the turnover, during the relevant period, of **all recipients** to whom the input service is attributable.

Example: ABC Ltd, a confectionary manufacturer, has paid bills of an advertising company amounting to ₹ 24 lakh for advertising campaigns for two varieties of cakes, which are manufactured at separate locations in Pune and Bangalore. The company had a total turnover of ₹ 112 crores in the previous financial year. The turnover of the Pune unit was ₹ 5 crores, and the turnover of the Bangalore unit was ₹ 10 crores. The aggregate turnover here is taken as ₹ 15 crores, as advertising was for cakes, which are manufactured at these two units only.

The ITC is to be distributed between Pune and Bangalore units in the ratio 1:2.

Therefore, Pune unit will be given ITC of ₹ 8 lakhs, and Bangalore unit will be given ITC of ₹ 16 lakhs from the advertising bills.



DISTRIBUTION OF TAX CREDITS [Rule 39]

a) **Recipient & ISD located in the same State/UT**

ITC of CGST, SGST/UTGST in respect of each is distributed as CGST and SGST/UTGST respectively.

b) **Recipient & ISD located in the different State/UT**

ITC of CGST and SGST/UTGST is distributed as IGST (total of ITC of CGST and SGST/UTGST which were to be distributed to such recipient).

c) ITC on account of IGST is distributed as IGST

Example: The Corporate office of ABC Ltd., is at Bangalore, with its business locations of selling and servicing of goods at Bangalore, Chennai, Mumbai and Kolkata. Software license and maintenance is used at all the locations, but invoice for these services (indicating CGST and SGST) are received at Corporate Office. Since the software is used at all the four locations, the ITC of entire services cannot be claimed at Bangalore. The same has to be distributed to all the four locations. For that reason, the Bangalore Corporate office has to act as ISD to distribute the credit.

If the corporate office of ABC Ltd, an ISD situated in Bangalore, receives invoices indicating ₹ 4 lakh of CGST, ₹ 4 lakh of SGST and ₹ 7 lakh of IGST, it can distribute the ITC of CGST, SGST as well as IGST of ₹ 15 lakh amongst its locations at Bangalore, Chennai, Mumbai and Kolkata through an ISD invoice containing the amount of credit distributed.

Illustration:

XYZ Ltd, having its head Office at Mumbai, is registered as ISD. It has three units in different cities situated in different States namely 'Mumbai', 'Jabalpur' and 'Delhi' which are operational in the current year.

M/s XYZ Ltd furnishes the following information for the month of July 2017:

- (i) CGST paid on services used only for Mumbai Unit: ₹ 3,00,000/-
- (ii) IGST, CGST & SGST paid on services used for all units: ₹ 12,00,000/-

Total turnover of the units for the previous financial year are as follows: -

Unit	Turnover
Total T/O of three units	10,00,00,000
T/O of Mumbai unit	5,00,00,000
T/O of Jabalpur unit	3,00,00,000

Determine the credit to be distributed by XYZ Ltd. to each of its 3 units.



Procedural aspects of distribution of credit [Rule 39 of CGST Rules]

- 1 ISD has to issue an ISD invoice, as prescribed in rule 54(1) of the CGST Rules, for distributing ITC. It should be clearly indicated in such invoice that it is issued only for distribution of ITC.
- 2 ISD needs to issue a ISD credit note, as prescribed in rule 54(1) of the CGST Rules, for reduction in credit if the distributed credit gets reduced for any reason
- 3 ITC available for distribution in a month is to be distributed in the same month.
- 4 **Contents of ISD Invoice & Credit Note**
 - a) Name, address and GSTIN of the ISD and recipient of credit;
 - b) Consecutive serial number up to 16 characters, **[Not required for banks/FIs/NBFC]**
 - c) Date of issue;
 - d) Amount of the credit distributed;
 - e) Signature of the ISD or his authorized representative
- 5 **Filing of Returns by ISD**
 - a) File GSTR-6 **monthly** within **13 days** after the end of the **month**.
 - b) Details in the returns are made available to the respective recipients in their **GSTR 2A**.
 - c) The recipients may include these in its GSTR-2 and take credit.
 - d) An ISD is **not** required to file **annual return**
- 6 **Invoice and payments of tax**
 - a) It cannot accept any invoices on which tax is to be discharged under **reverse charge mechanism**. This is because the ISD mechanism is **only** to facilitate distribution of credit of taxes paid.
 - b) It cannot itself discharge any tax liability (as person liable to pay tax) and remit tax to Government account.
 - c) If ISD wants to take reverse charge supplies, then in that case ISD has to separately register as normal taxpayer.
- 7 **Issue of Debit Notes to ISD**

Additional ITC on account of issue of a debit note to the ISD is distributed by the ISD, in accordance with the provisions discussed above, in the **month in which such debit note is included in GSTR-6**.
- 8 **Issue of Credit Notes to ISD**
 - a) ITC to be **reduced** is apportioned amongst the **relevant recipients** in the **same ratio** in which the **original credit was distributed**
 - b) Such apportioned credit is reduced from the credit to be distributed in the month **in which the credit note is included in GSTR-6**.



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- c) **What if Apportioned credit > distributable credits** - Added to the output tax liability of the recipient.

Note: This process is also followed in case of reduction of credit already distributed for any other reason e.g., when the credit is distributed to a wrong recipient.

Manner of recovery of credit distributed in excess [Section 21]

- a) If the ISD has distributed excess credit to any recipient, the excess will be recovered from the recipient with interest as if it was tax not paid by initiating action under section 73 or 74.
- b) Penalties may be applicable depending on the circumstances
- c) **Excess credit distributed can be recovered along with interest only from the recipient and not from ISD.**

Clarification regarding availment of ITC in respect of common input services procured from a third party but attributable to both HO and BOs or exclusively to one or more BOs [Circular No. 199/11/2023 GST dated 17/07/2023]

Issue	Clarification
<p>Whether HO can avail the ITC in respect of common input services procured from a third party but attributable:</p> <p>(i) to both HO and BOs or</p> <p>(ii) exclusively to one or more BOs,</p> <p>issue tax invoices u/s 31 to the said BOs for the said input services and the BOs can then avail the ITC for the same or whether is it mandatory for the HO to follow the Input Service Distributor (ISD) mechanism for distribution of ITC in respect of such common input services?</p>	<p>It is clarified that in such a case, as per the present provisions of the law, it is not mandatory for the HO to distribute such ITC by ISD mechanism. HO has an option to:</p> <p>(i) distribute ITC in respect of such common input services by following ISD mechanism, or</p> <p>(ii) issue tax invoices u/s 31 to the concerned BOs in respect of common input services procured from a third party by HO but attributable to the said BOs and the BOs can then avail ITC on the same subject Section 16 and 17. ISD mechanism can be opted only if the said input services are attributable to the said BO or have actually been provided to the said BO. In case ISD mechanism is opted, HO is required to get itself registered mandatorily as an ISD. Similarly, the HO can issue tax invoices u/s 31 to the concerned BOs, only if the common input services have actually been provided to the concerned BOs.</p>

**Forms prescribed in connection with the Input Tax Credit**

Forms	Deals with
GST ITC 01	Declaration for claim of ITC u/s 18(1)
GST ITC 02	Declaration for transfer of ITC in case of sale, merger, demerger, amalgamation, lease or transfer of a business u/s 18(3)
GST ITC 02A	Declaration for transfer of ITC pursuant to registration u/s 25(2)
GST ITC 03	Declaration for intimation of ITC reversal/ payment of tax on inputs held in stock, inputs contained in semi-finished and finished goods held in stock and capital goods u/s 18(4)
GST ITC 04	Details of goods/capital goods sent to job worker and received back

**KEY ANALYSIS OF ADVANCE RULING****CCEx. v Stelko Strips Ltd. 2010 (255) ELT 397 (P&H)**

Decision: The ITC could be taken on the strength of private challans as the same were not found fake and there was proper certification that duty has been paid.

CCus. & CEx. v Sachin Malhotra 2015 (37) STR 684 (Uttarakhand)

Rent-a-cab	Hiring of Cab
Under rent-a-cab scheme, the hirer is endowed with the freedom to take the vehicle wherever he wishes, and he is only obliged to keep the holder of the license informed of his movements from time to time.	When a person chooses to hire a car, which is offered on the strength of a permit issued by the Motor Vehicles Department, then the owner of the vehicle, who may or may not be the driver, will offer his service while retaining the control and possession of the vehicle with him-. The customer is merely enabled to make use of the vehicle by travelling in the vehicle. In the case of a passenger, he is expected to pay the metered charges, which is usually collected on the basis of the number of kms. travelled.

Commr. of C. Ex., & S.T., LTU v Rane TRW Steering Systems Ltd. 2015 (039) STR 13 (Mad)

Facts of the case: Assessee had availed credit of GST paid on housekeeping and gardening services. However, Revenue disallowed the credit and also imposed penalty on the ground that the assessee was not eligible to avail credit of GST on these services.

Decision: The High Court noted that principle laid down in the case of CCE v Millipore India Pvt Ltd. 2012 (26) STR 514 (Kar). In this case, the Karnataka High Court held that landscaping of factory or garden certainly would fall within the concept of modernization, renovation, repair, etc., of the office premises. The environmental law expects the employer to keep the factory without contravening any of those laws.

That apart, now the concept of corporate social responsibility is also relevant. It is to discharge a statutory obligation, when the employer spends money to maintain their factory premises in an eco-friendly manner, certainly, the tax paid on such services would form part of the costs of the final products. Therefore, housekeeping and gardening services would fall within the ambit of input services and the assessee is entitled to claim the benefit of input tax credit on the same

**Sri Desikanathar Textiles Pvt. Ltd. vs Union of India 2022 (62) GSTL 449 (Mad.)**

Input Tax Credit – Transitional Credit – Mistake while filing of Form GST TRAN-1 – Revision of Form GST TRAN-1 – Provisions of CGST Act, 2017 do not provide for lapsing of credit, which could not be successfully transitioned under new regime while filing form correctly in TRAN-1 – Assessee having indefeasible right to utilize such credit – Several communication indicating that assessee was in continuous touch with Authorities to ensure that transition of credit was successful – Direction given to Authorities to allow input tax credit, after verification by competent officer that such credit could be transitioned but for wrong declaration in Form TRAN-1 – **If credit available to be transitioned, it cannot be denied. Authorities either to allow assessee to file either a revised TRAN-1 or directly make credit entry in assessee’s electronic cash register. Rule 117 of CGST Rules, 2017 read with section 140 of the CGST Act, 2017 along with Article 226 of Constitution of India.**

No GST ITC on Input Services Using Products’ Promotional Scheme: TN AAAR in case of GRB Dairy Foods (2022)

Facts of the Case: The appellant, M/s GRB Dairy Foods Pvt. Ltd is involved in the business of making and supplying ghee, masalas, instant mixes, and sweets. With the goal of expanding the market share, the appellant has incorporated a sales promotional offer buy and fly, to expand the product sales. According to the scheme the petitioner furnishes the rewards such as Dubai Trip, Gold Voucher, Television, and Air Cooler for those retailers whose target will be achieved.

GRB Dairy Foods submitted that it procured the reward items “in the course of its business” and it has a direct nexus with the business carried on by the company. “Marketing and business expansion is an indispensable activity of every company’s operation

Ruling of TN AAR:

The AAR Bench factored in a 2018 ruling given by the Maharashtra Bench in the case of Biostadt India (2019 (22) GST L 551 (AAR – GST)), where ITC was held to be not available on procurement of gold coins offered under a sales promotion scheme to its customers. **“the credit of taxes paid on goods/services for personal consumption is explicitly restricted. The (reward) goods and services are used by the retailers and hence are for personal consumption. Thus, the applicant company is ineligible to take Input Tax Credit on the inward supply of these goods and services,”** held the AAR Bench.

“The appellant submitted that AAR completely ignored the fact that there was a contractual obligation that was based on a scheme that was circulated to the trade-in in advance.” After coming to the contractual obligation, the provided promotional materials cannot be treated as a gift. The AAR sees that the promotional materials were said to be the gifts that were provided voluntarily and thus will come beneath the provisions of section 17(5)(h) and therefore credit has to be restricted.



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Ruling of AAAR:

AAAR sees that the petitioner furnished the rewards through the method of goods and indeed foreign tours via furnishing valid air tickets and that is the cause they coined the reward policy as buying and fly. Hence what they furnished in the policy were the goods and services. The provisions of clause (h) said that the ITC will not be available for the goods lost, stolen, demolished, written off, or disposed of via gift or free samples. Hence this clause is only subjected to goods.

AAAR ruled that under the provision of the CGST act more precisely section 17(5) of the act, the gifts or rewards provided excluding the acknowledgement despite they are provided for the sales promotion do not entitle as inputs for the objectives of Credit, since no GST is furnished upon its disposal. Hence, we mentioned that the ITC on the inputs and the input services engaged in the goods and services used towards the goal of the reward is not available for the petitioner and as per that the ruling provided via the Advance Ruling Authority of Tamil Nadu needs no interruption and the appeal is dismissed.

GST ITC not allowable to BMW on demo car or vehicle: The Haryana Appellate Authority of Advance Ruling (AAAR) (2022)

Facts of the Case: BMW has sought an advance ruling on the issue of whether the unit of BMW is entitled to avail the Input Tax Credit (ITC) of IGST and Compensation Cess paid on receipt of cars (on stock transfer basis) for use in relation to business activities and onwards supply to dealers after use for a limited period of time.

Ruling of the AAR: The Authority of Advance Ruling (AAR) ruled that in the motor vehicle industry, demonstration vehicles are an indispensable tool for the promotion of sales by providing trial runs to customers. These demo cars are used for demonstration purposes for prospective customers, and after a specific period of time, they are sold off for their book value, paying the applicable taxes at that point of time.

Contentions of the AAR: The AAR observed that the specific provisions regarding the admissibility of the input tax credit on motor vehicles for transportation of persons up to a seating capacity of not more than 13 persons are contained in Section 17(5) of the CGST Act 2017.

Grounds of Appeal to the AAAR:

- 1) The appellant has challenged the order of the AAR and stated that the ruling was vague or cryptic. BMW was entitled to take ITC as the vehicles were further used for specified taxable supply u/s 17(5)(a)(i)(A) of CGST Act.
- 2) The appellant further added that vehicles were always intended to be further supplied by the appellant after specified use. No time limit has been prescribed under the CGST Act for further supply of vehicles. The appellant added that the authorities has failed to adhere to the provisions of Section 98(6) of the CGST Act.



Ruling of the AAAR:

The AAAR observed that if the argument of the party is allowed, then in that case, all motor vehicles, irrespective of the nature of supply, will be eligible for ITC across the industries. It will no longer be a restrictive clause for car dealers, but will be an open-clause for all the trade and industry to avail of the ITC on all the vehicles purchased by them. This has never been the intent of Parliament.

The AAAR ruled that in the very first demonstration run, demo cars lose the character of the new motor vehicle, and demo vehicles are sold akin to second-hand goods, which are different from new vehicles and accordingly treated differently under GST law, so the demo car is not an input.

“The BMW vehicles received by the Appellant under stock transfer have never been received with the intent to simply ‘further supply of such motor vehicles/’sell as such’. The Input Tax Credit on these vehicles, therefore, cannot be allowed,” the AAAR added.