

# GST

## CREDIT MECHANISM

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# BACKGROUND

- Multiple levies in pre-GST era.
- Aspect theory.
- Origin based taxes.
- Cascading effect of taxes.
- Central indirect tax levies and State indirect tax levies.
- Concept of supply.
- Wider coverage in GST.
- Input tax credit is the critical element.
- *Seamless credit Vs. Seemingly less credit*

# INPUT

- **Input** means **any goods other than capital goods** *used or intended to be used by a supplier in the course or furtherance of business.*
- Used or intended to be used
- *In the course or furtherance of*
- *Business*

# CAPITAL GOODS

- Capital Goods means goods the value of which is capitalized 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.
- If depreciation is claimed on the tax component of the cost of capital goods and the plant and machinery under the provisions of the IT Act, 1961 by the registered person, ITC on the said tax component shall not be allowed.
- *If GST credit is sought to be claimed then depreciation cannot be claimed on the tax portion.*
- *Capital Expenditure Vs. Revenue Expenditure?*
- *Cost benefit exercise.*

# INPUT SERVICE

- **Input service** means **any service** used or intended to be used by a supplier in the course or furtherance of business.

# ITC

- Nexus to business
- Scope much wider than cenvat credit and VAT credit
- What is 'furtherance of business'?
- Possible litigation similar to business expenditure in income tax law.
- The Supreme Court in ***CIT Vs. Walchand (1967) 65 ITR 381***, observed that *in applying the test of commercial expediency for determining whether an expenditure was wholly and exclusively laid out for the purpose of the business, reasonableness of the expenditure has to be adjudged from the point of view of the businessman and not of the revenue.*
- The Supreme Court in the case of ***CIT Vs. Dhanraj Giri (1973) 91 ITR 544***, observed that it is not open to the Department to decide what type of expenditure the assessee should incur and in what circumstances

# ITC-PAST Vs. PRESENT

- Interesting decisions from the past
  - Chemicals – *CCE Vs. Ballarpur Industries Ltd. (1984) 43 ELT 804 (SC)*
  - Inputs used for generation of power – *Meaning of includes – Ramala Sahkari Chinni Mills Ltd. Vs. CCE (2016) 7 SCC 585*
  - Items used for testing - *Flex Engineering Ltd Vs. CCE (2012) 276 ELT 153 (SC)*

# ITC FOR MANUFACTURERS

PRE-GST	POST GST
Only for persons liable to excise duty and not claiming SSI benefit.	All registered manufacturers.
Only on inputs used in connection with manufacture.	On inputs used or intended to be used in the course or furtherance of business.
Only on capital goods which fall within specific chapter headings and over a period of 2 years.	All goods that are capitalized and used or intended to be used in the course or furtherance of business.
On input services subject to some ineligible items.	On input services subject to some ineligible items.
No ITC on purchases from traders.	ITC on all purchases from registered suppliers.



# ITC FOR TRADERS

PRE-GST	POST GST
Only for persons liable to VAT and restricted in scope.	All registered traders.
Only on inputs purchased for sale.	On inputs used or intended to be used in the course or furtherance of business.
Only on capital goods which were defined differently in different States and over a deferred period.	All goods that are capitalized and used or intended to be used in the course or furtherance of business.
No ITC on service tax.	ITC available on services used or intended to be used in the course or furtherance of business.
No ITC on goods used for business except in few States.	ITC on all purchases from registered suppliers.

# ITC FOR SERVICE PROVIDERS

PRE-GST	POST GST
Only for persons liable to Service Tax and restricted in scope.	All registered suppliers.
No ITC on goods purchased from traders.	On inputs used or intended to be used in the course or furtherance of business.
Only on capital goods which will within specific chapter headings and over a period of 2 years.	All goods that are capitalized and used or intended to be used in the course or furtherance of business.
No ITC on goods used for business.	ITC on all purchases from registered suppliers.
Test was 'use' in providing output services.	Test is 'use' or 'intent to use' in the course or furtherance of business.

# NON-AVAILABILITY OF ITC

- Motor vehicles and other conveyances
- Food and Beverages, Outdoor catering
- WCT Services when *supplied for construction* of an immovable property (other than plant and machinery) except where it is *an input service for further supply of WCT service*.
- Goods or services or both *received* by a taxable person for *construction* of an immovable property (other than plant and machinery) on his *own account* including when such goods or services or both *are used in the course or furtherance of business*.
- Beauty Treatment
- Cosmetic and Plastic Surgery
- Club Membership/ Health and Fitness
- Goods lost, stolen, destroyed, written-off or disposed off by way of gift or free samples.
- Gifts to employees where value exceeds Rs. 50,000

# INPUT TAX CREDIT

- Input Tax Credit contingent upon
  - Possession of tax invoice / debit note or such other prescribed document
  - **Receipt of goods or services or both.**
  - **Tax charged in respect of supply and has been actually paid to the credit of the Government either in cash or through utilization of admissible input tax credit**
  - Furnishing of return
- Payment within 180 days.
- Matching concept
- *Plethora of returns – Due to complexity and technology challenges, multiple extension of due dates.*

# ITC – NEW PROCEDURE

- New Section 43A – Yet to be notified
- Details of supply invoices to be uploaded
- Procedure for availment and verification to be prescribed
- If details are verified, tax specified shall be deemed to have been paid
- Joint and several liability on supplier and recipient in case details furnished but return is not filed.
- Recovery procedure to be prescribed

# OPEN ISSUES

- What is the meaning of 'fails to pay'?
- Refund claim and notices for ineligible ITC.
- Failure of supplier to file GSTR-1.
- Is invoice upload / acceptance a better system?
- Whether interest can be levied for excess availment of input tax credit?
- Retrospective amendment - cess

VALUATION

# VALUATION – PRE-GST LAWS

TAX LAW	VALUATION PROVISIONS
Central Excise	<ul style="list-style-type: none"><li>• Transaction value</li><li>• Price at which goods are sold for delivery</li><li>• Price must be the sole consideration</li><li>• Seller and buyer must not be related.</li><li>• Well designed Valuation Rules for different scenarios.</li></ul>
VAT	<ul style="list-style-type: none"><li>• Sale price</li><li>• Price as a consideration</li><li>• No reference to related party transactions</li><li>• No reference to sole consideration</li><li>• No complex valuation rules</li></ul>



# VALUATION

TAX LAW	VALUATION PROVISIONS
Customs	<ul style="list-style-type: none"><li>• Based on WTO Valuation Rules</li><li>• Transaction value</li><li>• Sequential method of valuation</li><li>• Adoption of transaction value of identical goods or similar goods where transaction value conditions are not met.</li><li>• SVB for related party transactions</li></ul>
Service Tax	<ul style="list-style-type: none"><li>• Gross amount charged for service provided or to be provided.</li></ul>

# GST - CONSIDERATION

- In relation to supply of goods and / or services **includes**
  - Payment made or to be made whether in money or otherwise
  - *in respect of or in response to or for the inducement of supply of goods or services,*
  - *whether by the recipient or by any other person*
  - *but shall not include any subsidy given by the Central Government or State Government.*
  - *Monetary value of any act or forbearance, whether or not voluntary, in respect of or in response to or for the inducement of supply of goods or services, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or State Government.*
  - Deposit whether refundable or not in respect of supply shall not be payment unless the deposit is applied as consideration for supply.

# VALUE OF TAXABLE SUPPLY – SECTION 15(1)

- Transaction value
  - price actually paid or payable for the said supply of goods or services or both
  - supplier and the recipient are not related
  - price is the sole consideration for the supply.
- *Whatever is not there in the VAT and Service Tax Law now find place in GST.*
- *Concept of sole consideration*
  - *CCE Vs. Fiat India Pvt. Ltd. (2012) 283 ELT 161 (SC)*
  - *CCE Vs. IFGL Refractories Ltd. (2005) 186 ELT 529 (SC)*

# RELATED PERSON

- Persons shall be deemed to be related person if only
  - they are officers or directors of one another's business.
  - they are legally recognized partners in business
  - they are employer and employee
  - ***any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them.***
  - one of them directly or indirectly controls the other.
  - both of them are directly or indirectly controlled by a third person.
  - together they directly or indirectly control a third person.
  - they are members of the same family.
- Person includes legal person
- Sole agents, sole distributors, sole concessionaires shall be deemed to be related.

# RELATED PERSON

- Definition borrowed from 'Customs Law' and percentage increased from 5% to 25%.
- Customs law requires such a definition since it is based on WTO Valuation.
- **Most of the business transactions may fall within the ambit of 'related party transaction'.**
- Definition even more wider than Excise Law.
- *Solution through Valuation Rules which accepts value specified in the invoice as open market value so long as the recipient is entitled to full input tax credit.*

# VALUE OF TAXABLE SUPPLY – SECTION 15(2)

- The value of supply shall include
  - Taxes, duties, etc. other than GST and compensation cess if charged separately.
  - Amounts that the supplier is liable to pay in relation to the supply but has been incurred by the recipient of supply and not included in the price
  - *Incidental expenses such as commission and packing charged by supplier on recipient **including anything done at the time of or before delivery of the goods or as the case may be supply of the services***
  - *Interest or late fee or penalty for delayed payment of any consideration*
  - Subsidies directly linked to the price excluding subsidies provided by the Central and State Governments

# VALUE OF TAXABLE SUPPLY – SECTION 15(3) - EXCLUSIONS

- Discount before or at the time of supply.
- Discount after supply provided
  - discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
  - Input tax credit has been reversed by the recipient of the supply as is attributable to the discount on the basis of document issued by the supplier

DIFFERENT RATES



# GOODS OR SERVICES

- The charging provisions provide for a levy at a rate to be notified by the Government on the recommendations of the Council
- **Distinction between goods and services have been brought out through rates**
- Exemption, zero rating, 0.125%, 3%, 5%, 12%, 18% and 28% are the rates applicable to goods
- Exemption, zero rating, 5%, 12%, 18%, 28% are the rates applicable for services
- *There is no tariff like in excise or customs*
- *There is no schedule of goods as part of the Act*
- *Rate is notified through notifications*
- *The rate notifications have been amended multiple times*

# GOODS OR SERVICES

- 'Goods' means
  - *every kind of movable property*
  - *other than money and securities*
  - *but includes actionable claim, growing crops and things attached to or forming part of the land which are agreed to be severed before supply or under contract of supply*
- 'Services' means
  - *anything other than goods, money and securities*
  - *but includes activities relating to the use of money or its conversion by cash or by any other mode from one form, currency or denomination for which a separate consideration is charged.*
- Can services be 'anything other than goods'?

# GOODS OR SERVICES

- The place of supply provisions for goods is governed by Section 10 and Section 11 of the IGST Act
- The place of supply provisions for services is governed by Section 12 and Section 13 of the IGST Act
- Section 12 is applicable where the location of the supplier and recipient is in India
- Section 13 is applicable where the location of the supplier or location of recipient is outside India

# OVERVIEW OF DIFFERENT RATES

GOODS / SERVICES	RATES
Unpacked wheat, rice, flour, etc.	Nil
<b>Packaged wheat, rice, flour, etc.</b>	<b>5%</b>
Rough diamonds, rough precious stones	0.25%
<b>Gold, silver jewellery, diamonds, etc.</b>	<b>3%</b>
Unbranded namkeens, bhujia other than those put up in unit containers	5%
<b>Branded namkeens, bhujia put up in unit containers.</b>	<b>12%</b>
Permanent transfer of IPR ( except software )	12%
<b>Permanent transfer of IPR of software</b>	<b>18%</b>
Temporary or permanent transfer of IPR related service (except software)	12%
<b>Software services</b>	<b>18%</b>
Cinema where ticket is Rs.100 or less	18%
<b>Cinema where ticket is more than Rs.100</b>	<b>28%</b>
<b>Restaurant in hotels having declared tariff of Rs.7,500 or more</b>	<b>18%</b>
All other hotels, restaurants, canteens, railway platforms, trains, etc.	5%

# COMPLEX LAW

- Concept of rate Notifications and non-rate Notifications.
- Excise legacy
- 127 CGST Notifications
- **70 CGST rate related Notifications**
- **Matching SGST Notifications ?**
- **14 IGST Notifications**
- **74 IGST rate related Notifications**
- **Corrigendum to Notifications**
- 14 amendments to CGST Rules in 2017
- 10 amendments to CGST Rules in 2018
- Circulars
- Corrigendum to Circulars
- Press Releases from Ministry of Finance
- Tweets
- Advance Rulings
- **46 amendments through CGST Amendment Act, 2018 and IGST Amendment Act, 2018**

# GST – THE REFORM ASPECT – GAINS FOR THE INDUSTRY

- Path breaking tax reform
- Harmonization of taxes
- Elimination of cascading effect
- Widening of scope of ITC
- Uniform rate across the country
- Elimination of unwanted business structures
- Better supply chain management
- Goods can be supplied from any part of the country
- Equitable taxation
- Vendor verification by buyers
- Transparency

# GST – GAINS FOR THE CONSUMER

- Massive reduction in indirect taxes on goods
- GST Awareness
- Product / Service pricing
- Consumer oriented services at a lower rate
- Anti-profiteering provisions
- **No inflation on account of GST**
- One indirect tax levy

# GST – GAINS FOR THE GOVERNMENT

- New assesseees
- Widening of tax base
- Data mining
- Revenue collected from multiple assesseees
- E-way bill and trail
- Impact of demonetisation
- Consumer awareness
- Many States have shown increase in revenue
- Compensation based on 14% revenue growth rate



**THANK YOU**