

# GST

## INPUT TAX CREDIT

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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.*

# INPUT SERVICE

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

- **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- SECTION 16(2)

- 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
  - Filing of GSTR-1 by the supplier – FA 2021 w.e.f. 01.01.2022.
  - ITC not restricted in GSTR-2B – FA 2022
  - Amendment by FA 2021 to Section 16 of CGST Act inserting clause (aa) **w.e.f. 01.01.2022**

# SECTION 16(2)(aa) & SECTION 36(4)

- Form GSTR-1 to be filed for furnishing of details of outward supply in terms of Rule 59.
- Furnishing of GSTR-1 by the supplier becomes a condition for entitlement of Input Tax Credit.
  - Due diligence on suppliers
  - Continuous verification and follow-up by recipients required to ensure that GSTR-1 is filed by the supplier
  - *ITC becomes complicated.*

# PAYMENT OF TAX BY SUPPLIER

- Conditions in Section 16(2) requiring the buyer to verify whether the supplier has paid the tax to the Government account has been challenged before the Delhi High Court in the case of ***Bharti Telemedia Ltd. Vs. Union of India***.
- The Madras High court in the case of ***Sri Vinayaga Agencies Vs. The Assistant Commissioner (CT), Chennai and another (2013) 60 VST 283*** held that the department is not empowered under Section 19(16) of the TNVAT act, to revoke the input tax credit availed on the plea that the selling dealer has not paid the tax when the petitioner-dealer has paid tax to the selling dealer and claimed Input tax credit by way of self-assessment.

# PAYMENT OF TAX BY SUPPLIER

- ***Arise India Ltd. Vs. Commissioner of Trade Taxes [TS-314-HC-2017(Del)-VAT]***
  - Section 9(2)(g) of the DVAT Act does not make any distinction between bonafide purchasing dealer and others.
  - The provisions should be read down whereby dealer or class of dealer shall not include a purchasing dealer who has bonafide entered into purchase transaction with validly registered selling dealer who had issued tax invoices .

# PAYMENT OF TAX BY SUPPLIER

- The Bombay High Court on the other hand in the case of ***Mahalaxmi Cotton Ginning Pressing and Oil Industries Vs. State of Maharashtra (2012) 51 VST 1*** had upheld similar provisions of the MVAT Act.
- *lex non cogit ad impossibilia*



# COMPARING GSTR 3B AND GSTR 2A - LEGALITY

- Number of Companies have received notices comparing 3B and 2A
- Notices call for reversal with interest and in some case even penalty
- Mere letters without a section 73 Show Cause Notice
- Summons from DGGSTI on these aspects
- ***Can filing of GSTR 1 be a condition for availment of ITC by the recipient?***
  - *For the period prior to 01.01.2022*
  - *For the period after 01.01.2022*

# COMPARING GSTR 3B AND GSTR 2A - LEGALITY

- Except for GSTR-1 and GSTR-3B, the filing of GSTR-1A, GSTR-2, GSTR-2A and GSTR-3 were all kept in abeyance;
- Matching mechanism as contemplated in GST did not take off
- Payment of GST by the taxpayers is by way of GSTR-3B and not by way of GSTR -1.
- GSTR -2A is an auto-populated form and at present, it is only a facilitation measure given to recipient of supply to check whether the corresponding supplier is depositing the taxes collected from him with Government.

# COMPARING GSTR 3B AND GSTR 2A - LEGALITY

- Non-reflection of invoices in GSTR-2A does not impact the ability of recipient tax payer to avail ITC on self-assessment basis, as the taxpayer has adhered to all the conditions listed down in Section 16 of the CGST Act, 2017.
- Section 42 deals with 'Matching, Reversal and Reclaim of Input Tax Credit' and Section 43 deals with 'Matching, Reversal and Reclaim of Reduction in Output Tax Liability' and both these provisions have not been operationalized.
- Filing of Form GSTR-2 and Form GSTR-3 remain suspended and therefore, neither Section 42(10) nor Section 43(10) would be applicable.
- No liability to pay interest under Section 50(3) CGST Act, 2017.

# INPUT TAX CREDIT

- ***Union of India Vs. Bharti Airtel Ltd. (2021) 54 GSTL 257 (SC)***
  - The registered person is obliged to do self-assessment of ITC, reckon its eligibility to ITC and of output tax liability including the balance amount lying in cash or credit ledger primarily on the basis of his office record and books of account required to be statutorily preserved and updated from time to time.
  - This he could do so even without the common electric portal as was being done in the past till recently pre-GST regime.
  - The common portal is only a facilitator to feed or retrieve such information and need not be the primary source for doing self-assessment.
  - The primary source is in the form of agreements, invoices/ challans, receipts of the goods and services and books of accounts which are maintained by the assessee either manually or electronically.

# ITC – OTHER ISSUES

- Cancellation of supplier registration
- Cancellation with retrospective effect
- Goods supplied and received
- In the context of VAT the Madras High Court in the case of ***Infinity Wholesale Ltd. Vs. ACCT (2015) 82 VST 457*** has held that retrospective cancellation of suppliers registration cannot affect buyers credit
- ***In M/s. JKM Graphics Solutions Private Limited & Others Vs. Commercial Tax Officer (2017) 99 VST 343*** it has been held that ITC availed by the Petitioner could not have been proposed to be reversed or reversed on the ground that the selling dealer has not filed returns or paid taxes.

# A NEW VERSION OF GST WITHOUT BENEFIT OF ITC

SERVICE	RATE OF TAX
Restaurant Service	5% without ITC
Construction of residential apartments	5% without ITC
Hospital rooms where the rent is more than Rs.5000/-	5% without ITC
Transportation of passengers by rail in First Class or AC	5% without ITC on goods
Transport of passengers by air conditioned contract carriage other than motor cab	5% without ITC
Transport of passengers by air in economy class	5% without ITC on goods
Transport of passengers by motor vehicle where cost of fuel is included	5% without ITC
Transportation of goods in a vessel / rail	5% without ITC on goods

# THANK YOU

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