

INPUT TAX CREDIT UNDER GST

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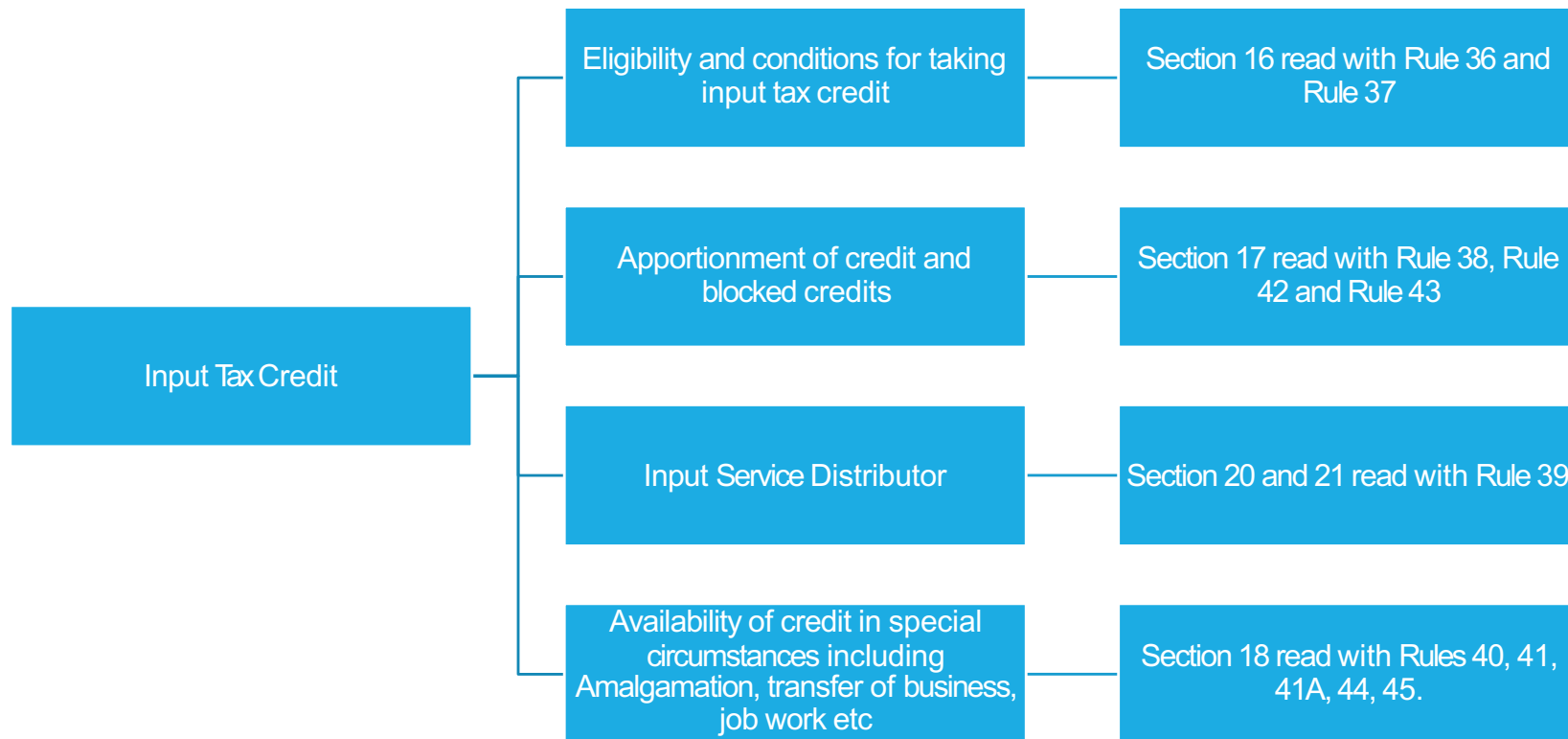
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INPUT TAX CREDIT

Meaning of Input Tax Credit

- ▶ Input Tax credit is the **amount of tax charged** on receipt of goods or services or both **which is not expensed /capitalised** but debited in the financial statements as current asset and **used to discharge** output liability of tax **except tax payable RCM**. However, ITC can not be used for the discharge of payment of interest, penalty, fee or any other sum due under **GST Acts**. ITC **can be availed** in the month in which tax invoices are received, even if payment for tax invoice(s) is not made at the time of its receipt.

Scheme of Act



Sequence of Adjustment – Rule 88A

Levy	Sequence of Adjustment
IGST	IGST, CGST or SGST
CGST	CGST, IGST
SGST	SGST, IGST

- CGST and SGST of other states cannot be claimed as Input Tax Credit

Important Definitions

“**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 **IGST** 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 IGST Act;
- d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective SGST Act; or
- e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the respective Union Territory Goods and Services Tax Act,- **Section 2(62)**

but **does not include** the tax paid **under the composition levy**;

▶ “Input tax credit” means the credit of input tax - **Section 2 (63)**

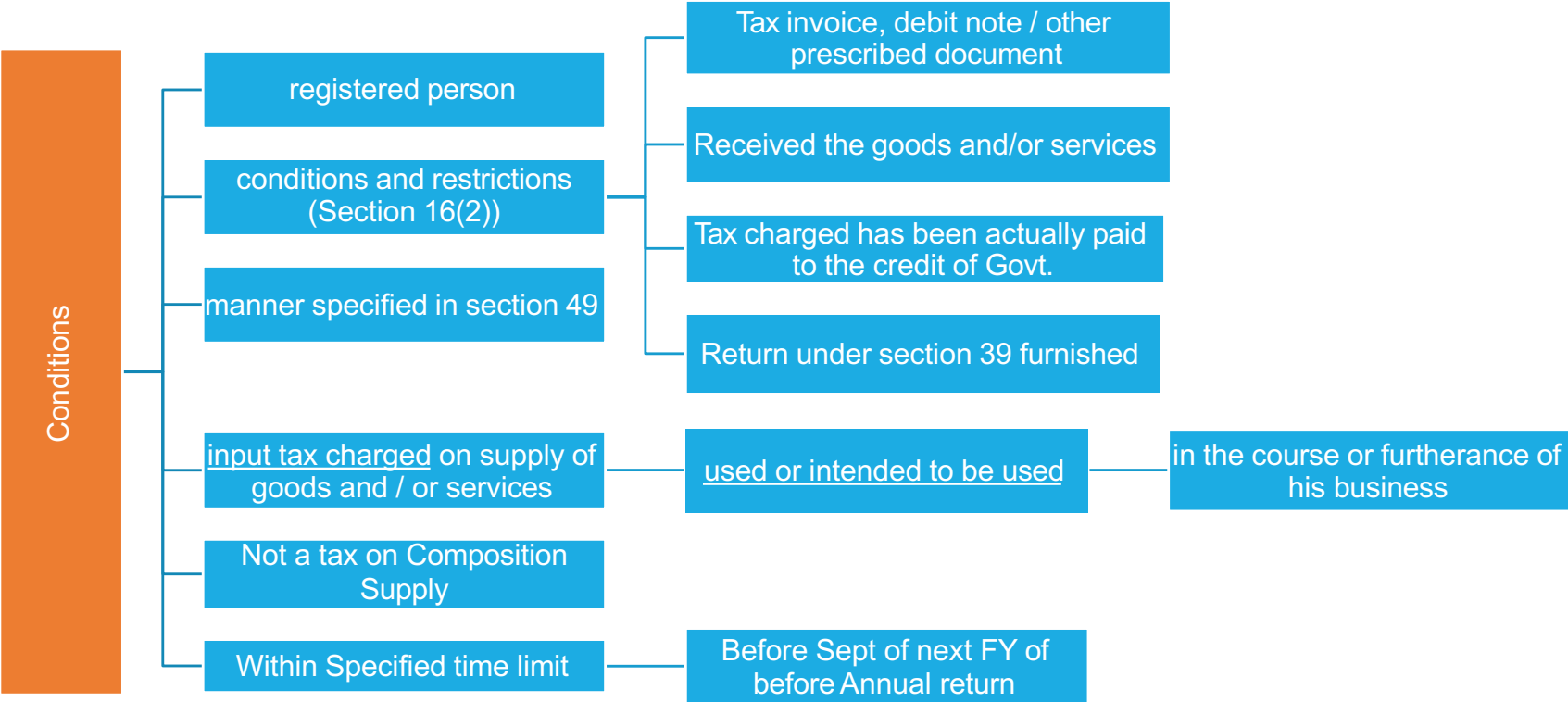
Important Definitions

“**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 in the **used or intended to be used course or furtherance of business- Section 2(19)**

“**Input**” means **any goods other than capital goods** used or intended to be used by a supplier in the course or furtherance of business -**Section 2(59)**

“**Input service**” means **any service** used or intended to be used by a supplier in the course or furtherance of business - **Section 2(60)**

Conditions for availing ITC



CONDITIONS AND ELIGIBILITY OF ITC

16. (1) **Every registered person** shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of **input tax charged** on any supply of goods or services or both to him which are **used or intended to be used** in the **course or furtherance of his business** and the said amount shall be credited to the electronic credit ledger of such person.

- **In the month of purchase** even though **value of supply and tax thereon has not been discharged** by the recipient.
- **One to one correlation is not required** in the past, but presently ITC not linked with taxable event rather linked with business.
- **Business** has been defined in section 2(17) of CGST Act and **includes supply or acquisition of goods including capital goods and services in connection with commencement or closure of business.**
- **Credit can be used if supplies are used in establishing an office** from where no revenue is generated.
- **ITC is available on Research and development activities** or starting another independent line of business and **also on Corporate Social Responsibility(CSR) expenses.**

CONDITIONS AND ELIGIBILITY OF ITC

Section 16(2) : - Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless

a	<i>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;</i>	<ul style="list-style-type: none">•Rule 36 prescribe duty paying document including Bill of Entry, ISD Invoice etc.•Must be issued by registered person i.e., registered u/s 25 but does not include a person having a Unique Identity Number
aa	<p><i><u>Inserted with effect from 01.01.2022</u></i> <i>The details of the <u>invoice</u> or debit note referred to in clause (a) has been <u>furnished by the supplier</u> 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 <u>section 37</u>.</i></p>	<ul style="list-style-type: none">• Inserted with effect from 01.01.2022 vide Finance Act 2021- N. No. 39/2021-CT(21.12.2021)

CONDITIONS AND ELIGIBILITY OF ITC

Section 16(2) : - **Notwithstanding anything contained in this section**, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless

b	<p>He has received the goods or services or both.</p> <ul style="list-style-type: none">• No credit to recipient on payment of advance to the supplier of goods or services or both• Detailed accounting and stock records to be maintained by the recipient• In terms of section 155 onus is on the person who is claiming the credit. However, this provision is difficult to comply with in case of services
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CONDITIONS AND ELIGIBILITY OF ITC

Explanation to sub clause (b) —

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.***

ba **Inserted with effect from 01.10.2022**
*The details of input tax credit in respect of the said supply communicated to such registered person under **section 38** has not been restricted*

c ***subject to the provisions of section 41(Availment of ITC) , the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and***

•Inserted with effect from 01.10.2022 vide Section 100 of the FA,2022. Section 38 substituted vide Section 104 of the FA, 2022 to provide for communication of details of inward supplies and ITC to the recipient by an auto-generated statement. Said statement shall contain details of inward supplies in r/o which credit may be available and details of supplies in r/o which such credit can not be availed.

CONDITIONS AND ELIGIBILITY OF ITC

d he has furnished the return under section 39 :

First proviso: Where the goods against an invoice are **received in lots or instalments**, the registered person shall be entitled to **take credit upon receipt of the last lot or instalment:**

Second Proviso: Where a recipient **fails to pay** to the supplier of goods or services or both, **other than the supplies on which tax is payable on reverse charge basis**, the **amount towards the value of supply along with tax payable thereon** within a **period of 180 days from the date of issue of invoice** by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, **along with interest thereon**, in such manner **as prescribed under Rule 37**

CONDITIONS AND ELIGIBILITY OF ITC

Notes:

- **180 days** to be calculated **from the date of invoice** and not from the date of supply of goods or services
- It is a **self-disciplined mechanism** and has no check and balances on the portal
- **Rate of interest :-** 18% - N. No. 13/2017-CT/ N. No. 06/2017-IT (both 28.06.2017) –As amended vide Section 116/119 of the FA, 2022
- **Period of interest:-** From the date of availing credit on such supplies till the date when the amount added to output tax liability is paid- Rule 37(3)

CONDITIONS AND ELIGIBILITY OF ITC

Notes :

- **“Fails to pay to the supplier”** - Whether payment can be made in kind or by making book entry or only by cash /banking/electronic mode.

CONDITIONS AND ELIGIBILITY OF ITC

Not applicable

(a) in case of **RCM**

(b) in case of transactions **between two distinct persons under the same PAN number**

Third Proviso: Re-entitlement to avail ITC reversed earlier- The recipient shall be entitled to avail of input tax on payment made by him of the amount towards the value of supply or goods or services or both along with tax payable thereon

CONDITIONS AND ELIGIBILITY OF ITC

16(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.

16(4) **Time limit for availment of Credit**

A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after **the 30th November** following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Rule 36(4) : Restriction on availment of credit – **Position with effect from 01.01.2022**

(4) No ITC shall be availed by a registered person in respect of invoices/debit notes the details of which are required to be furnished under Section 37(1) unless following cumulative conditions are satisfied:

(a) The details of such invoices/debit notes have been **furnished** by the supplier in FORM GSTR-1/using the invoice furnishing facility; a

(b) The details of such invoices/debit notes have been **communicated** to the registered person in FORM GSTR-2B

Rule 36(4) - Position from 09.10.2019 to 31.12.2021

Inserted W.E.F. 09.10.2019

For 09.10.2019 to 31.12.2019 - 20% of the eligible credit available in r/o invoices/debit notes the details of which have been uploaded by the supplier

For 01.01.2020 to 31.12.2020 - 10% of the eligible credit available in r/o invoices/debit notes the details of which have been uploaded by the supplier

For 01.01.2021 to 31.12.2021 - 05% of the eligible credit available in r/o invoices/debit notes the details of which have been uploaded by the supplier

Impact of Rule 36(4) on taxpayers:

- ❖ Earlier, all taxpayers claimed ITC on a self-declaration basis under tax heads CGST, SGST and IGST. There was no compulsion to reconcile the ITC figure with the GSTR-2B until then.
- ❖ With effect from 01.01.2022 there shall be no provisional ITC amount.
- ❖ **SC: Bharti Airtell Ltd & Others**

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

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 ninety-nine per cent. of such tax liability, in cases where the value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds fifty lakh rupees.

Exceptions –First proviso

Rule 86B shall not apply in each of the following independent cases:

- (a) Payment of more than Rs. 1 Lakh as income tax in each of the last two financial years or
- (b) Receipt of refund of more than Rs. 1 Lakh in the preceding financial year on account of unutilised ITC in respect of zero-rated supplies made without payment of tax ; or
- (c) Receipt of refund of more than Rs. 1 Lakh in the preceding financial year on account of unutilised ITC in respect of inverted tax structure; or

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

(d) Payment of more than 1 per cent of output tax liability in cash in current F.Y. applied cumulatively upto the said month or

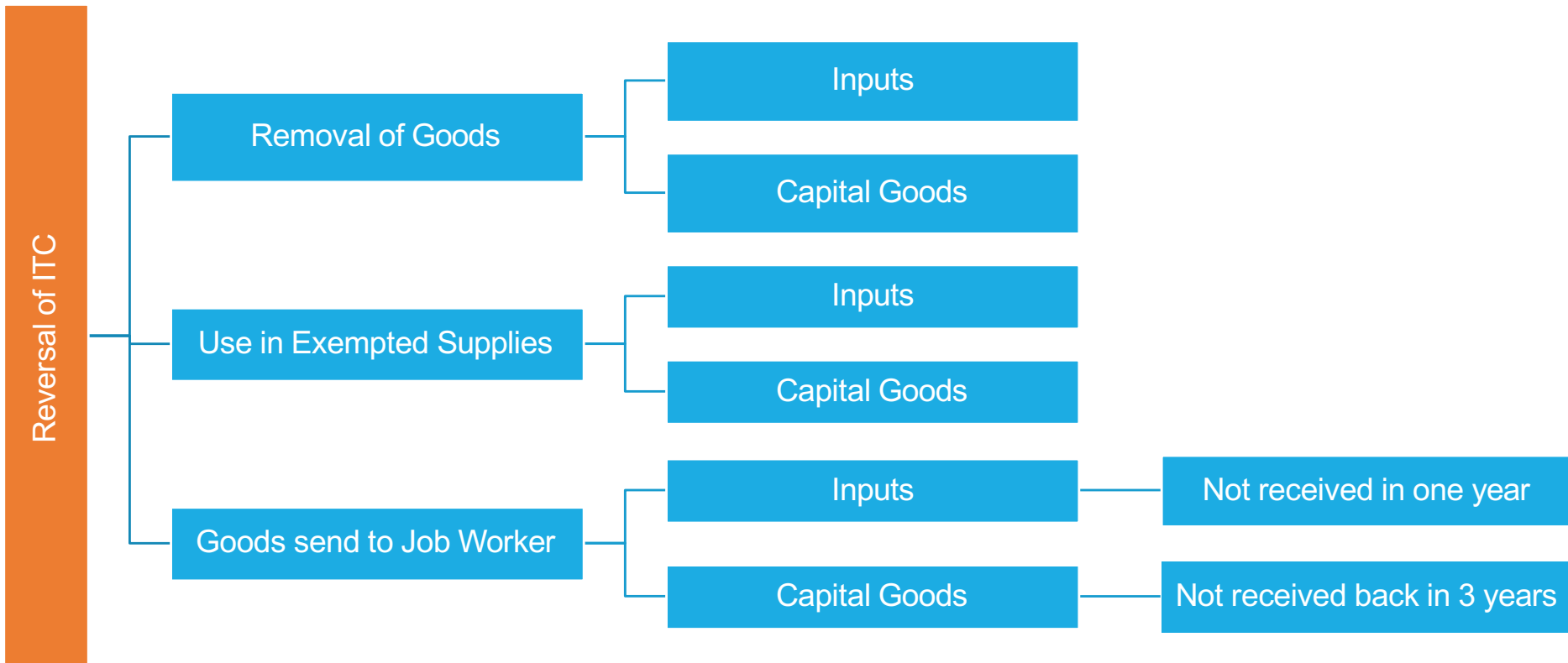
(e) Following specified registered persons:

- (i) Government Department; or
- (ii) A Public Sector Undertaking; or
- (iii) A local authority; or
- (iv) A statutory body

Power to remove the restriction of 1% cash payment –Second proviso

The Commissioner or an officer authorised by him in this behalf may remove the said restriction after necessary verifications and safeguards

Apportionment of Credits



APPORTIONMENT OF ITC AND BLOCKED CREDITS

Sec.	Provision	Notes
17(1)	Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes , the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.	<ul style="list-style-type: none"> • Section 2(47) “exempt supply” means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under Section 6 of the IGST Act, and includes non-taxable supply _ Not Applicable Refer 17(3)
17(2)	Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.	<ul style="list-style-type: none"> • Provisions of Section 17(1)/17(2) shall be apply in respect of common supplies only and not in r/o supplies which are used exclusively in making taxable supplies as well as supplies used exclusively in making exempt supplies only

APPORTIONMENT OF ITC AND BLOCKED CREDITS

Section	Provision
17(3)	<p>For the purposes of Section 17(2) the value of exempt supply shall be such as may be prescribed and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and sale of completed building.</p> <p>Explanation. — For the purposes of this sub-section, the expression “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III, excepting Sale of land and sale of completed building</p>
17(4)	<p>A banking company/a financial institution including a NBFC, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either to avail proportionate ITC as per Section 17(2) or avail of, every month, an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse.</p> <p>First proviso: The option of availing ITC by a banking company/a F.I., once exercised shall not be withdrawn during the remaining part of the financial year</p> <p>Second Proviso: Non-applicability of restriction of 50% of the eligible ITC</p> <p>To the tax paid on supplies made by one registered person to another registered person having the same PAN. For example, tax paid by Haryana Branch of PNB on supplies received from Delhi Branch of PNB.</p>

Apportionment of Credits

Terms used in Rule	Particulars
T	Total Input Tax of Input and Input Services
T1	ITC for Non Business
T2	ITC for Exempt Supply
T3	ITC of Blocked Credits (Inputs Only)
$C1 = T - (T1 + T2 + T3)$	Valid ITC in ECL
T4	ITC for Taxable Supply
$C2 = C1 - T4$	Common ITC
E	Value of Exempt Supplies
F	Aggregate Turnover
$D1 = E / F * C2$	Value of ITC for Exempt Supply (From Common ITC)
$D2 = C2 * 5\%$	Value of ITC for Non Business Purpose (From Common ITC)
$C3 = C2 - (D1 + D2)$	Eligible ITC from Common ITC
$T4 + C3$	Total Eligible ITC for Use

APPORTIONMENT OF ITC AND BLOCKED ITC

Section	Provision
17(5)	Notwithstanding anything contained in section 16(1) [Entitlement to avail ITC on any supply used or intended to be used in the course or furtherance of business] and section 18(1) [Availment of credit in special circumstances] input tax credit shall not be available in respect of the following, namely:-
17(5)(a)	<u>Substituted with effect from 01.02.2019- CGST(Amendment) Act, 2018</u> motor vehicles for transportation of persons having approved <u>seating capacity of not more than thirteen persons</u> (including the driver), except when they are used for making the following taxable supplies, namely:- (A) Further supply of such motor vehicles; or (B) Transportation of passengers; or (C) Imparting training on driving such motor vehicles;

APPORTIONMENT OF ITC AND BLOCKED ITC

Section	Provision
17(5)(aa)	<p><u>Substituted with effect from 01.02.2019- CGST(Amendment) Act, 2018</u> vessels and aircraft except when they are used—</p> <p>(i) for making the following taxable supplies, namely:-</p> <ul style="list-style-type: none">(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; <p>(ii) for transportation of goods;</p>

APPORTIONMENT OF ITC AND BLOCKED ITC

Section	Provision
17(5)(ab)	<p>Substituted with effect from 01.02.2019- CGST(Amendment) Act, 2018 services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa): Provided that the input tax credit in respect of such services shall be available-</p> <ul style="list-style-type: none">(i) Where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;(ii) Where received by a taxable person engaged-<ul style="list-style-type: none">(I) in the manufacture of such motor vehicles, vessels or aircraft; or(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

APPORTIONMENT OF ITC AND BLOCKED ITC

Section	Provision
17(5)(b)	<p><u>Substituted with effect from 01.02.2019- CGST(Amendment) Act, 2018</u></p> <p>the following supply of goods or services or both-</p> <p>(i) (a) food and beverages, (b) outdoor catering, (c) beauty treatment, (d) health services, (e) cosmetic and plastic surgery, (f) leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, (g) life insurance and (h) health insurance:</p> <p>Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;</p> <p>(ii) membership of a club, health and fitness centre; and</p> <p>(iii) travel benefits extended to employees on vacation such as leave or home travel concession:</p> <p>Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.</p>

APPORTIONMENT OF ITC AND BLOCKED ITC

Section	Provision
17(5)(c)	<p><u>With effect from 01.07.2017</u> works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service; - Safari Realtors Orissa High Court</p>
17(5)(d)	<p><u>With effect from 01.07.2017</u> goods or services or both received by a taxable person for construction of an immovable property (<u>other than plant or machinery</u>) on his own account including when such goods or services or both are used in the course or furtherance of business. Explanation.—For the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;</p>
	<p>Explanation. — For the purposes of this Chapter and Chapter VI, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes — (i) land, building or any other civil structures; (ii) telecommunication towers; and (iii) pipelines laid outside the factory premises.</p>
	<p>The ITC on building repairs, maintenance, upkeep would depend upon accounting treatment given to expenses. If <u>expenditure treated as a revenue expenditure, ITC would be allowed</u> and if capitalized, no ITC would be allowed.</p>

APPORTIONMENT OF ITC AND BLOCKED ITC

Section	Provision	Notes
17(5)(e)	<u>With effect from 01.07.2017</u> goods or services or both on which tax has been paid under composition levy under section 10	Supplies made under Composition Scheme
17(5)(f)	<u>With effect from 01.07.2017</u> goods or services or both received by a non-resident taxable person except on goods imported by him;	
17(5)(g)	<u>With effect from 01.07.2017</u> goods or services or both used for personal consumption ;	
17(5)(f)	<u>With effect from 01.07.2017</u> goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and	•Gift means gratuitous and voluntary payments without any obligation
17(5)(i)	<u>With effect from 01.07.2017</u> any tax paid in accordance with the provisions of sections 74, 129 and 130.	
17(6)	<u>With effect from 01.07.2017</u> The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.	

Availability of credit in special circumstances

– Section 18 of CGST Act, 2017

Credit of Stocks on the date of Registration -

Sections 18 (1) 18 (2) read with Rule 40

Sections 18 (1) and 18 (2)

18 (1) Subject to such conditions and restrictions as may be prescribed—

(a) New Registration within 30 days from the date of liability

A person who has **applied for registration within thirty days** from the date on which he becomes liable to registration **and has been granted such registration** shall be entitled to take credit of input tax in respect of **inputs** held in stock and inputs contained in semi-finished or finished goods held in stock **on the day immediately preceding the date from which he becomes liable to pay tax** under the provisions of the CGST Act;

(b) Voluntary Registration under section 25(3)

A person who takes registration under sub-section (3) of section 25 (Voluntary Registration) shall be entitled to take credit of input tax in respect of **inputs** held in stock and inputs contained in semi-finished or finished goods held in stock on the day **immediately preceding the date of grant of registration**;

Sections

18 (1) and (2)

(c) Shift to regular rates from composition levy

where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax **in respect of inputs** held in stock, inputs contained in semi-finished or finished goods held in stock and **on capital goods** on the day **immediately preceding the date from which he becomes liable to pay tax** under section 9.

Proviso to 18(1)(c) read with Rule 40(1)(a)

The **credit on capital goods shall be reduced by five percentage points** per quarter of a year or a part thereof from the date of invoice/such other duty paying documents on which the capital goods were received by taxable person

(d) Where exempt supply becomes taxable supply

where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of **inputs** held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply **and on capital goods exclusively used for such exempt supply** on the day **immediately preceding the date from which such supply becomes taxable.**

Proviso to 18(1)(d) read with Rule 40(1)(a)

The credit on capital goods shall be reduced by five percentage points per quarter of a year or a part thereof from the date of invoice/such other duty paying documents on which the capital goods were received by taxable person

18(2) No credit after the expiry of one year from the date of tax invoice

A registered person shall not be entitled to take input tax credit under sub-section (1) in respect of any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply.

Rule 40 - Manner of claiming credit in special circumstances

The ITC claimed in accordance with the provisions of section 18(1) on the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or the credit claimed on capital goods in accordance with the provisions of Sections 18(1) (c) and 18(1)(d), shall be subject to the following conditions -

- **a)** the input tax credit on capital goods, in terms of clauses **(c) and (d)** of sub-section (1) of section 18, shall be claimed **after reducing the tax paid on such capital goods by five percentage points per quarter of a year or part thereof** from the date of invoice or such other documents on which the capital goods were received by the taxable person.
- **(b)** the registered person shall **within a period of thirty days from the date of his becoming eligible to avail of input tax credit** under sub-section (1) of section 18 **shall make a declaration, electronically, on the Common Portal in FORM GST ITC-01** to the effect that he is eligible to avail of input tax credit as aforesaid;
- **(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);

Rule 40 - Manner of claiming credit in special circumstances

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 supplies made by the registered person becomes taxable**, in the case of a claim under Section 18 (1) (d).

(d) The details furnished in the declaration under clause (b) shall be duly **certified by a practicing Chartered Account or a cost accountant** if the aggregate value of the claim on account of central tax, State tax, Union Territory Tax and integrated **tax exceeds Rs. 2 lakh**.

(e) The ITC claimed in accordance with clauses (c) and (d) of sub-section (1) of section 18 shall be verified with the corresponding details furnished by the corresponding supplier in **FORM GSTR-1** or as the case may be, in **FORM GSTR-4**, on the Common Portal.

Transfer of Credit –

Sale, Amalgamation, Merger, Demerger etc.

(Availability of credit in special circumstances)

Section 18 (3) read with and Rule 41

Section 18 (3)

Change in the constitution of a registered person on account of sale, merger etc.

Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business **with the specific provisions for transfer of liabilities**, the said registered person shall be allowed to transfer the **ITC which remains unutilized** in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or **transferred business in manner given under Rule 41**

Rule 41 - Transfer of credit on sale, merger, amalgamation, lease or transfer of a business

(1) A registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in **FORM GST ITC-02**, electronically on the Common Portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee:

However, **in the case of demerger, the ITC shall 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.

(2) The transferor shall also submit a copy of a certificate issued by a practicing chartered account or cost accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for transfer of liabilities.

(3) 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.

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

*Reversal of Credit –
Opt to Composition Scheme, Output becomes exempt
And Cancellation of Registration
(Availability of credit in special circumstances)
Section 18 (4) read with Rule 44*

Section 18 (4)

Reversal of ITC where opt to pay tax under Composition Levy or Supplies becomes Exempt

Where any registered person who has availed of input tax credit opts to pay tax under section 10 or, where the goods or services or both supplied by him become wholly exempt, he shall **pay an amount, by way of debit in the electronic credit ledger** or electronic cash ledger, equivalent to the credit of input tax in respect of **inputs** held in stock and inputs contained in semi-finished or finished goods held in stock **and on capital goods, reduced by such percentage points** as may be prescribed, on the day **immediately preceding the date of exercising of such option** or, as the case may be, **the date of such exemption:**

However, after payment of such amount, the **balance of input tax credit, if any**, lying in his electronic credit ledger **shall lapse.**

Rule 44-Manner of reversal of credit under special circumstances

- 1) The amount of ITC, relating to inputs held in stock, inputs contained in semi-finished and finished goods held in stock, and capital goods held in stock shall, for the purposes of section 18(4) be **determined in the following manner** namely,-
 - a) For **inputs** held in stock, and inputs contained in semi-finished and finished goods held in stock, the input tax credit shall be **calculated proportionately on the basis of corresponding invoices** on which credit had been availed by the registered taxable person on such inputs;
 - b) For capital goods held in stock, the ITC involved in the remaining useful life in months shall be computed **on pro-rata basis, taking the useful life as five years**;

Illustration :

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

Input tax credit taken on such capital goods=C

Input tax credit attributable to remaining useful life=C multiplied by 5/60

Rule 44-Manner of reversal of credit under special circumstances

- 2) The amount, as specified in sub-rule (1) shall be determined separately for input tax of credit central tax, State tax, Union territory tax, integrated tax.
- 3) Where the tax invoices related to the inputs in stock are not available, the registered person shall estimate the amount under sub-rule (1) based on the prevailing market price of goods on the effective date of occurrence of any of the events specified in section 18 (4)
- 4) The amount determined under Rule 44(1) shall form part of the output tax liability of the registered person and the details of the amount shall be furnished in FORM GST ITC-03, where such amount relates to any event specified in section 18 (4)
- 5) The details furnished in accordance with Rule 44(3) shall be duly certified by a practicing Chartered Accountant or cost accountant.

***Reversal of Credit –
Sale of Capital Goods and Plant & Machinery
Section 18 (6) of CGST Act, 2017 and
Rules 40 (2) & 44(6) of CGST Rules, 2017***

Supply of Capital Goods or Plant & Machinery

Rule 40 (2) : The amount of credit in the case of supply of capital goods or plant and machinery, for the purposes of sub-section (6) of section 18, shall be calculated by reducing the input tax on the said goods at the rate of five percentage points for every quarter or part thereof from the date of the issue of the invoice for such goods

Rule 44 :

- 1) The amount of input tax credit, relating to inputs held in stock, inputs contained in semi-finished and finished goods held in stock, and capital goods held in stock shall, for the purposes of section 18(4), be determined in the following manner namely,-
 - a)
 - b) For capital goods held in stock, the input tax credit involved in the remaining useful life in months shall be computed on pro-rata basis, taking the useful life as five years;

Illustration :

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

Input tax credit taken on such capital goods=C

Input tax credit attributable to remaining useful life=C multiplied by 5/60

Rule 44- Reversal of credit

- 2) The amount, as specified in sub-rule (1) shall be determined **separately** for input tax of credit **central tax, State tax, Union territory tax, integrated tax.**
- 6) The amount of input tax credit for the purposes of sub-section (6) of section 18 relating to capital goods shall be determined in the same manner as specified in clause (b) of sub-rule (1) and the amount shall be determined separately for input tax credit of central tax, State tax, Union territory tax and integrated tax:

Provided that where the amount so determined is more than the tax determined on the transaction value of the capital goods, the amount determined shall form part of the output tax liability and the same shall be furnished in **FORM GSTR-1.**

Relevant Provisions related to Job work

Issues	Relevant Section	Relevant Rules
Credit on goods sent to Job Worker	Section 19 & 143 of CGST Act, 2017	Rule 45 of CGST Rules, 2017
Taking input tax credit in respect of inputs and capital goods sent for job work	Section 19 of CGST Act, 2017	Rule 45 of CGST Rules, 2017

Relevant Provisions related to Job work

Section 19

(1) The **principal** shall be allowed **input tax credit on inputs sent to a job-worker** for job-work

(2) Notwithstanding anything contained in clause **(b) of sub-section (2) of section 16**, the principal shall be entitled to take credit of input tax on inputs even if the **inputs are directly sent to a job worker** for job-work without being first brought to his place of business.

(3) Where the **inputs** sent for job work **are not received back** by the principal after completion of job-work or otherwise **or are not supplied from the place of business of the job worker** in accordance with clause (a) or clause (b) of sub-section (1) of section 143 within 1 year of being sent out, it shall be deemed that **such inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out:**

Provided that where the **inputs are sent directly to a job worker**, the period of **one year shall be counted from the date of receipt of inputs by the job worker.**

Relevant Provisions related to Job work

Section 19

- (4) The **principal** shall be allowed **input tax credit on capital goods** sent to a job worker for job work.
- (5) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the principal shall be entitled to take credit of input tax on capital goods even if the **capital goods are directly sent to a job worker** for job-work without being first brought to his place of business
- (6) Where the capital goods sent for job work are **not received back** by the principal **within a period of three years of being sent out**, it shall be deemed that such capital goods had been **supplied by the principal to the job worker on the day when the said capital goods were sent out**:
Provided that where the capital **goods are sent directly to a job worker, the period of three years shall be counted from the date of receipt of capital goods by the job worker.**
- (7) Time limit of one year and three years for receiving back inputs and capital goods respectively shall not apply to moulds and dies, jigs and fixtures.

Explanation.— “Principal” means a registered person who sends any inputs or capital goods to a job worker for job work without payment of tax

Rule 45 - Conditions and restrictions in respect of inputs and capital goods sent to the Job worker

- 1) The inputs, semi-finished goods or capital goods shall be **sent to the job worker under the cover of a Challan** issued by the principal, including where such goods are sent directly to a job-worker.
- 2) The **Challan issued** by the principal to the job worker shall **contain the details specified in rule 55**:
- 3) The **details of challans** in respect of goods dispatched to a job worker or received from a job worker during a specified period [**Refer Note***] shall be included in **FORM GST ITC-04** furnished for that period on or before the twenty-fifth 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
* **Note:** Meaning of term “specified period” :
 - (a) The period of six consecutive months commencing on 1st April and 1st October in r/o a principal whose aggregate during the immediately preceding F.Y. exceeds Rs. 5 crore
 - (b) A Financial year in r/o a principal whose aggregate during the immediately preceding F.Y. does not exceed Rs. 5 crore
- 4) Where the inputs or capital goods are not returned to the principal within the stipulated time of 1 year or 3 years respectively, 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.**

Explanation.

- (1) “**capital goods**” shall include “**plant and machinery**” as defined in the Explanation to section 17;
- (2) For determining the value of an exempt supply as referred to in sub-section (3) of section 17:-
 - a) the value of land and building shall be taken as the same as adopted for the purpose of paying stamp duty; and
 - b) the value of security shall be taken as one per cent. of the sale value of such security.

*Manner of distribution of credit by
Input Service Distributor (ISD)
Section 20 read with Rule 39*

Section 20

1) The Input Service Distributor **shall distribute the credit of central tax as central tax or integrated tax and integrated tax as integrated tax or central tax**, by way of issue of a document containing the amount of input tax credit being distributed in the manner given in Rule 39

Note : Similar provisions are there in SGST Act also.

2) The Input Service Distributor may distribute the credit subject to the following conditions, namely:—

- a) the credit can be distributed to the recipients of credit **against a document containing such details as given in Rule 54(1)**;
- b) the amount of the credit distributed **shall not exceed the amount of credit available for distribution**;
- c) the credit of tax paid on input services **attributable to a recipient of credit shall be distributed only to that recipient**;

Section 20

- d) **Proportionate distribution of ITC to more than one recipient** : The credit of tax paid on input services attributable to **more than one recipient of credit** shall be distributed amongst such recipients to whom the input service is attributable and such distribution **shall be pro rata on the basis of the turnover in a State** or turnover in a Union territory of such recipient, during the relevant period, **to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period;**

- e) **Proportionate distribution of ITC to all the recipients** : The credit of tax paid on input services **attributable to all recipients** of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of **all recipients and which are operational** in the current year, during the said relevant period

Meanings of specified terms –Explanation to Section 20

(a) Meaning of term "Relevant Period" Relevant period shall be—

(i) if the recipients of credit have turnover in their States or Union territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or

(ii) if some or all recipients of the credit do not have any turnover in their States or Union territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed;

(b) Meaning of term "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;

(c) Meaning of the term 'turnover' : 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 entry 51 and 54 of List II of the said Schedule

Manner of recovery of credit distributed in excess- Section 21

- ▶ *Excess credit to be recovered from the recipient(s) along with interest*
- ▶ Where the ISD distributes the credit in contravention of the provisions of Section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipient(s) along with interest. In such situation, provisions of Section 73 or section 74 shall apply for the determination of amount to be recovered.

SETTLED POSITIONS IN ERSTWHILE LAWS

- ▶ Input tax credit is **indefeasible** - Collector Of Central Excise, Pune Versus **Dai Ichi Karkaria Ltd** – 1999 (112) E.L.T. 353 (S.C.)
- ▶ **No demand** can be made for recovery of Cenvat Credit **that was validly earned by the assessee** - **Eicher Motors Ltd VS Union of India** - 1999(106)ELT3(SC)
- ▶ Credit of ITC is **not an absolute right** but a **conditional one** and subject to fulfilment of conditions- **ALD Automotive Pvt. Ltd. V. Commercial Tax Officer** 2019 (13) SCC 255.

Important judicial pronouncements

1. ITC on fake invoices - Anticipatory bail rejected both by HC & SC

P.V. Ramana Reddy v Union of India & Ors. - 2019 (5) TMI 1528 - SUPREME COURT (27.05.2019)

ITC can not be disallowed on the ground that seller has not paid tax to the Government, when the purchaser is able to prove that seller has collected tax and issued invoices to him

M/s D.Y. Beathel Enterprises v The State Tax Officer (Data Cell), (Investigation Wing) Commercial Tax Buildings, Tirunelveli. -2021 (3) TMI 1020 - MADRAS HIGH COURT (24.02.2021)

Sri Ranganathar Valves Private Ltd. v The Assistant Commissioner (CT)(FAC) – 2020-VIL_528-MAD (04.09.2020)

Note: This judgment has been given under Tamil Nadu VAT Act. However, it can be applied to GST Acts also.

The drastic power under Rule 86A for blocking of ITC should be used sparingly and only on subjective weighty grounds and reasons

M/s S.S. Industries v Union of India- 2020-TIOL-2228-HC-AHM-GST(24.12.2020)

Transitional ISD credit allowed to be Transitioned

Colgate Palmolive (I) Limited v Union of India [2022-VIL-611-BOM] (29.08.2022)

Hero Motorcorp Ltd v Union of India- 2022-VIL-719-DEL (10.10.2022)

Input tax credit of tax paid on the upfront lease rent of immovable property is Admissible

M/s. Kamarajar Port Limited- 2022(8)TMI 920, AAR, Tamil Nadu (29.07.2022)

ITC on canteen charges on the food supplied to employees and contractual workers is admissible

M/s. Troikaa Pharmaceuticals Limited- 2022(9) TMI 200- AAR, Gujarat(10.08.2022)

Input tax credit can be availed by a second-hand goods dealer in respect of input services and capital goods

M/s Attica Gold Private Limited – 2022-VIL-288-AAR (27.10.2022)

**WHETHER ITC IS A
VESTED RIGHT OR
CONCESSION**

- Godrej and Boyce Mfg. Co. Pvt. Ltd. and Others versus Commissioner of Sales Tax and Others, (1992) 3 SCC 624: We fail to understand how a valid grievance can be made in respect of such deduction when the very extension of the benefit of setoff is itself a boon or a concession.
- Jayam and Company versus Assistant Commissioner and Another, (2016) 15 SCC 125:- It is a trite law that whenever concession is given by statute or notification, etc. the conditions thereof are to be strictly complied with in order to avail such concession. Thus, it is not the right of the “dealers” to get the benefit of ITC but it is a concession granted by virtue of Section 19.

Whether
Input Tax Credit
is a vested
Right



- [Karnataka Value Added Tax Act, 2013 in State of Karnataka versus M.K. Agro Tech.\(P\) Ltd., \(2017\) 16 SCC 210:-](#) Keeping in view this objective, the legislature has intended to give tax credit to some extent. However, how much tax credit is to be given and under what circumstances, is the domain of the legislature and the courts are not to tinker with the same.
- [Ald Automotive Pvt Ltd vs The Commercial Tax Officer And Ors ... on 12 October, 2018:-](#) The input credit is in nature of benefit/ concession extended to dealer under the statutory scheme. The concession can be received by the beneficiary only as per the scheme of the Statute

Whether Input Tax Credit is a vested Right



- Eicher Motors Ltd. And Anr vs Union Of India And Ors. Etc on 28 January, 1999 (SC) :- Thus the assessee became entitled to take the credit of the input instantaneously once the input is received in the factory on the basis of the existing Scheme.”
- Collector Of Central Excise, Pune ... vs Dai Ichi Karkaria Ltd. Etc. Etc on 11 August, 1999 (SC):- It is clear from these Rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgement thereof.

Whether
Input Tax Credit
is a vested
Right



Thank You