सत्यमेव जयते
राष्ट्रीय सीमा शुल्क
अप्रत्यक्ष कर एवं नारकोटिक्स अकादमी
NATIONAL ACADEMY OF CUSTOMS
INDIRECT TAXES & NARCOTICS
भारत
INDIA
विद्या परम् बलम:

HANDBOOK ON
INPUT TAX CREDIT - GST

NATIONAL ACADEMY OF CUSTOMS, INDIRECT TAXES & NARCOTICS PALASAMUDRAM

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Foreword

The implementation of the Goods and Services Tax (GST) has been a transformative milestone in India's taxation landscape, aiming to unify the nation's markets and streamline the indirect tax structure. Central to the effectiveness of GST is the mechanism of Input Tax Credit (ITC), which ensures the seamless flow of credit and prevents the cascading effect of taxes.

Recognizing the pivotal role of ITC in the GST framework, this handbook has been meticulously compiled to serve as a comprehensive guide for both new entrants and seasoned professionals in the GST domain.

I extend my heartfelt appreciation to Mr. B. Shridhar in compiling this handbook and for his efforts in bringing this valuable resource to fruition. It is our hope that this handbook will serve as an indispensable tool, fostering a deeper understanding of ITC and contributing to the effective administration of GST.

Gaigongdin Panmei
Pr. Director General
NACIN Palasamudram

PREFACE

It is my pleasure to present a ready reckoner handbook on the highly significant topic of Input Tax Credit (ITC) in GST.

This handbook is designed to serve as a practical reference for entry-level officers in the GST departments of both central and state jurisdictions, as well as for professionals in the field of taxation.

I would like to extend my compliments to Shri B. Shridhar, Assistant Director of NACIN Palasamudram, for crisp and insightful compilation of this material.

I trust that this handbook will prove to be a valuable resource for both officers and the trade. Should there be any suggestions for further improvement, we would greatly appreciate receiving your feedback at cbu-psm@gov.in.

Ms. Sudha Koka
Pr. Additional Director General
NACIN Palasamudram

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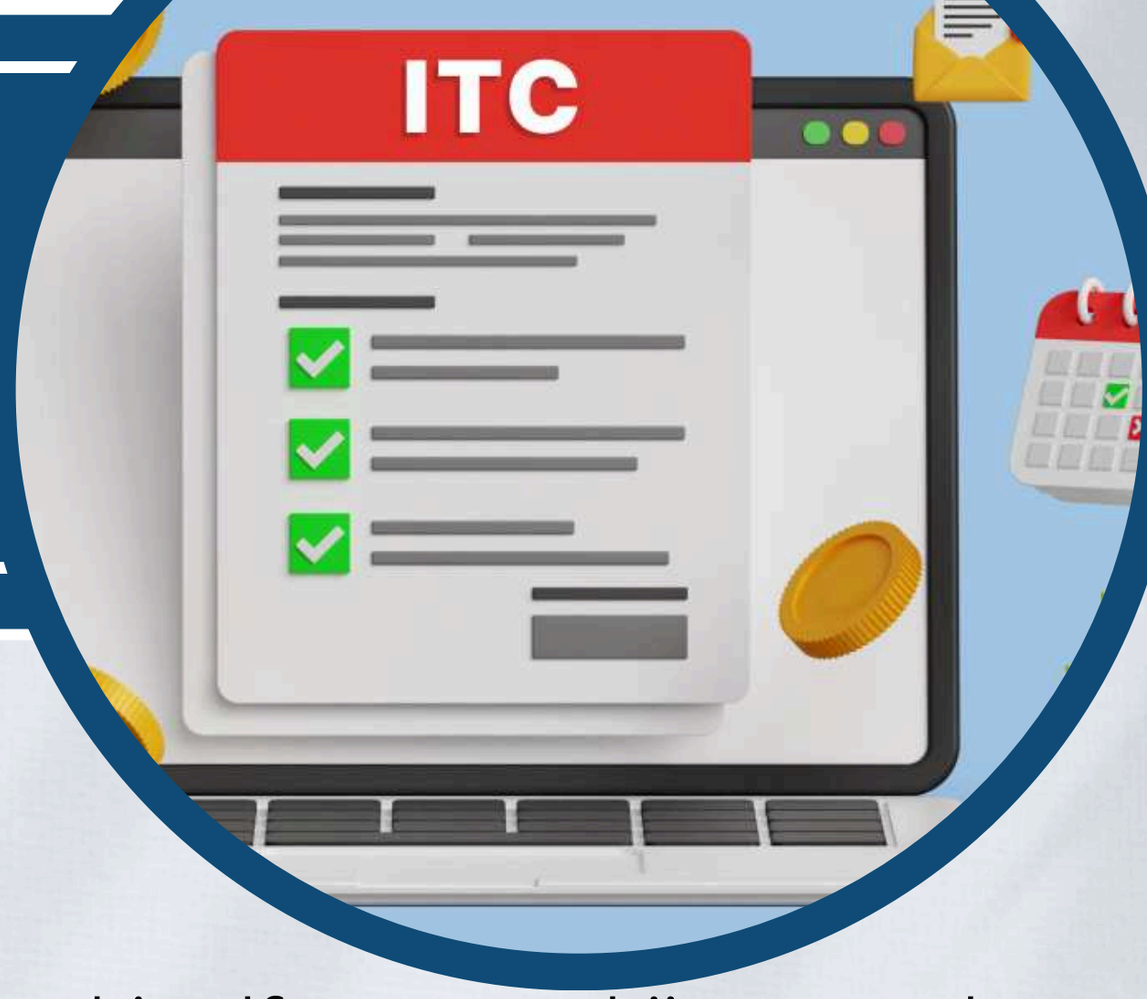

INPUT TAX CREDIT (ITC in short), the word itself, may send jitters to the officers & shivers to the tax payers in India. In simple words, ITC is a credit of taxes already paid on either goods/service by the taxpayer for utilisation in payment of taxes on their final product or service sold by them.
This would decrease the tax burden on the end customer, which would otherwise increase the value of the final product i.e goods/service due to multiple taxes, thereby stopping the cascading effect of taxes on the final value.

Evolution of Credit.

PREPARED BY
JULIANA SILVA

On the indirect taxes front, the most important reform before 1991 was the conversion of the Union Excise Duties into a Modified Value Added Tax (MODVAT) in 1986. The MODVAT was introduced in a limited manner on a few commodities. The facility of providing credit on input taxes under the MODVAT was progressively extended to a large number of commodities.
In the year 2004, the CENVAT Credit system evolved from MODVAT, expanding its scope to include both Goods and Services, thus further reducing the cascading effect of taxes.
CENVAT allowed manufacturers and service providers to claim credit on various inputs, including raw materials, capital goods, and input services, thereby lowering overall tax liabilities.
Input Service Distributors also played a crucial role in optimising CENVAT credits, across different branches or units of a business.
In the year 2017, when GST was introduced in India, we could see the progress made & the experience gained on the front of credit under Indirect Taxation Regime. It was a slow but a steady progression from MODVAT in the year 1986 to introduction of ITC in the year 2017. However, we are not done yet; we are still in the early stages of this transition. We shall see, the various aspects of ITC under GST in subsequent chapters.

2.INPUT TAX CREDIT - OVERVIEW

In the GST regime, credit of tax paid at the time of inward supply is allowed to be set-off against the outward liability of a taxpayer. Chapter V of the Central Goods and Services Act, 2017 (hereinafter referred to as 'the CGST Act') deals with input tax credit (hereinafter referred to as "ITC" or "input tax credit").

2.1 The terms 'input tax credit' and 'input tax' have been defined by sections 2(63) and 2(62) of the CGST Act respectively as under:

2(63): "Input tax credit" means the credit of input tax.

2(62): "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 (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 State Goods and Services Tax Act (SGST); 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 (UGST)

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

2.2 Input tax has also been defined under section 2(g) of the Goods and Services Tax (Compensation to States) Act, 2017 as under:

"Input tax" in relation to a taxable person, means, —
(i) Cess charged on any supply of goods or services or both made to him;
(ii) Cess charged on import of goods and includes the cess payable on reverse charge basis;

2.3 In view of the above provisions, **ITC can be availed** on following types of taxes:

a) Tax charged by the supplier on goods or services under **forward charge mechanism**;
b) Tax paid by the recipient under **reverse charge mechanism (RCM);**
c) Tax paid on **import of services** would also stand included in reverse charge (RCM);
d) Tax charged on the **import of goods** at the time of filing the Bill of Entry.

Please Note: A person under 'composition levy' is not eligible to claim ITC. In fact, the supplier is not allowed to charge taxes separately from the recipient under the composition scheme.

3. CLASSIFICATION OF CREDIT INPUT, INPUT SERVICES AND CAPITAL GOODS

3.1 The goods or services on which tax has been paid can be in the nature of inputs, input services or capital goods. The terms ‘goods’ and ‘services’ have been defined by sections 2(52) and 2(102) of the CGST Act respectively, as under:

2(52): “Goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

2(102): "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, to another form, currency or denomination for which a separate consideration is charged.

[Explanation: For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities;]

To summarize the above, Goods mean every kind of movable property. Services means anything other than goods. However, both goods and services would exclude money and securities. One may also refer **Schedule II of the CGST Act** to determine whether supply of certain activities or transactions constitutes supply of goods or services.

3.2 When we identify something is to be classified as goods, we need to understand whether the same **would be further classifiable as inputs or capital goods**.

The terms ‘capital goods and ‘input’ have been defined by sections 2(19) and 2(59) of the CGST Act respectively, as under:

2(19): "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;**

2(59): "input" means any goods other than capital goods used or intended to be used by a supplier in the **course or furtherance of business**;

3.3 Section 2(60) of the CGST Act defines input services as under:

2(60): "Input Service" means any service used or intended to be used by a supplier in the **course or furtherance of business.**

In the case of capital goods, the taxable person is not eligible to claim credit if they choose to claim depreciation under section 32 of the Income Tax (IT) Act, 1961.. Therefore, it means that the Tax Payer can avail only one of the benefit concurrently either the one extended by CGST Act 2017 as ITC or Depreciation under IT Act, 1961.

4. RELEVANT SECTION/RULES RELATING TO ITC

SL NO	SECTION		RULES	
	NO	DESCRIPTION	NO	DESCRIPTION
1	16	Eligibility and conditions for taking input tax credit	36	Documentary requirements and conditions for claiming input tax credit
2	17	Apportionment of credit and blocked credits	37	Reversal of input tax credit in the case of non-payment of consideration
3	18	Availability of credit in special circumstances	37A	Reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment thereof
4	19	Taking input tax credit in respect of inputs and capital goods sent for job work	38	Claim of credit by a banking company or a financial institution
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7			41	Transfer of credit on sale, merger, amalgamation, lease or transfer of a business
8			41A	Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory
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13			45	Conditions and restrictions in respect of inputs and capital goods sent to the job worker
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5. CONDITIONS & ELIGIBILITY TO AVAIL ITC

Section 16 of CGST Act

Section 16 of the CGST Act outlines, eligibility and conditions for taking input tax credit. Once a registered person fulfils the basic conditions prescribed in section 16, they become eligible to claim input tax Credit. Further, the registered person also needs to check the provisions contained in section 17(5), which restricts the availability of input tax credit.

5.1 Section 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.

16(1) 1. In GST we need to distinguish that,

a. the liability to pay tax is cast upon a taxable person including a person who is liable to be registered even though not actually registered.

b. input tax credit can be availed **only by a registered person** i.e., a person registered under GST.

5.2. The conditions and restrictions for availing input tax credit have been prescribed under Rule 36 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as “the CGST Rules”).

5.3. The phrase “in the course or furtherance” has not been defined anywhere in the Act. However, the same can be used in the context of input tax credit having nexus/ connection with the registered person’s business.

5.4. The word ‘business’ is defined by section 2(17) of the CGST Act which is a inclusive definition.

Business covers any transaction with commercial motive, whether or not there is profit motive in it and whether or not it is with or without any frequency. Also, the definition of business is wide enough to cover any activities which has any ancillary nexus with the business. Thus, the connection with the registered person’s business is an essential criterion for the availment of ITC.

5.5 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. 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;

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;

b. he has received the goods or services or both.

[Explanation. —For the purposes of this clause, 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. 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, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

d. he has furnished the return under section 39

Provided that 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: Provided further that 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 one hundred and eighty 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 paid by him along with interest payable under section 50, in such manner as may be prescribed:
Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him to the supplier of the amount towards the value of supply of goods or services or both along with tax payable thereon.

5.6
16 (4) 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 thirtieth day of 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.

Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.

5.7
16(5) Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take input tax credit in any return under section 39 which is filed up to the thirtieth day of November, 2021.

6. CHAPTER V - RULE 36 - DOCUMENTARY REQUIREMENTS AND CONDITIONS FOR CLAIMING ITC

6.1
36(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,-
(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;

(b) an invoice issued in accordance with the provisions of clause (f) of subsection (3) of section 31, subject to the payment of tax;

(c) a debit note issued by a supplier in accordance with the provisions of section 34;

(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;

(e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

6.2
36(2) Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI 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.]

6.3
36(3) 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, wilful misstatement or suppression of facts.

6.4
36(4) 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.

7.APPORTIONMENT OF CREDIT AND BLOCKED CREDIT

Section 17 of the CGST Act

Section 17 of the CGST Act, 2017 deals with both apportionment and blocking of Input Tax Credit.

7.1 Section 17 of the CGST Act can be divided into two parts.

(i) Sub-sections (1) to (4) of section 17 deal with apportionment of input tax credit and
(ii) sub-section (5) of section 17 deals with blocked credit.

7.2 Section 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.

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.

17 (3) The value of exempt supply under sub-section (2) 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, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

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, except those specified in paragraph 5 of the said Schedule and the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule.

7.3 Credit - Banking and Financial Institutions:

17 (4) 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 shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to fifty percent of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:
Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:
Provided further that the restriction of fifty percent shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

7.4 Section 17(5): “Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely: —

a) Motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (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;

(aa) 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;

(ab) 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—

(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—
(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;

(b) the following supply of goods or services or both—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, 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, life insurance and health insurance:
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;
(ii) membership of a club, health and fitness centre; and
(iii) travel benefits extended to employees on vacation such as leave or home travel concession:

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.

(c) 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;

(d) goods or services or both received by a taxable person for construction of an immovable property **(other than plant or machinery)** on his own account including when such goods or services or both are used in the course or furtherance of business. 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;

(e) goods or services or both on which tax has been paid under section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

(fa) goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility (CSR) referred to in Section 135 of Companies Act, 2013.

(g) goods or services or both used for personal consumption;

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(i) any tax paid in accordance with the provisions of section 74 in respect of any period up to Financial Year 2023-24.

7.5 (6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

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.

8.ORDER OF UTILISATION OF ITC

Section 49 of CGST Act

Let's get to know the order of utilisation of Input Tax Credit which is based on the relevant Sections and Rules under GST;

8.1 Section 49: Payment of tax, interest, penalty and other amounts. —

(1) Every deposit made towards tax, interest, ...

(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.

(3) .....

(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and restrictions within such time as may be prescribed.

(5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of––

(a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;

(b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;

(c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax [Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;];

(d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax:

[Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;]

(e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and

(f) the State tax or Union territory tax shall not be utilised towards payment of central tax.

(6) The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54.

.....

[49A. Utilisation of input tax credit subject to certain conditions. — (1) Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.

8.2 49B. Order of utilisation of input tax credit.— (1) Notwithstanding anything contained in this Chapter and subject to the provisions of clause (e) and clause (f) of subsection (5) of section 49, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the input tax credit on account of integrated tax, central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax.]

8.3 Rule 88A-Order of utilization of input tax credit. -

Input tax credit on account of integrated tax shall first be utilised towards payment of integrated tax, and the amount remaining, if any, may be utilised towards the payment of Central tax and State tax or Union territory tax, as the case may be, in any order:
Provided that the input tax credit on account of Central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.

The newly inserted rule 88A in the CGST Rules allows utilization of input tax credit of Integrated tax towards the payment of Central tax and State tax, or as the case may be, Union territory tax, in any order **subject to the condition that the entire input tax credit on account of Integrated tax is completely exhausted first** before the input tax credit on account of Central tax or State / Union territory tax can be utilized.

9. RULE 42/43 ON MANNER OF DETERMINATION & REVERSAL OF COMMON CREDIT

As far as common credit is concerned Rule 42 and Rule 43 of CGST Act, 2017 provides the manner of determination of ITC on Inputs/Input services & Capital goods and reversal thereof, respectively.

9.1 Rule 42: Inputs or Input services

(1) The input tax credit in respect of inputs or input services, which attract the provisions of sub-section (1) or sub-section(2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-

(a) the total input tax involved on inputs and input services in a tax period, be denoted as "T";

(b) the amount of input tax, out of "T", attributable to inputs and input services intended to be used exclusively for the purposes other than business, be denoted as 'T1';

(c) the amount of input tax, out of "T", attributable to inputs and input services intended to be used exclusively for effecting exempt supplies, be denoted as 'T2';

(d) the amount of input tax, out of "T", in respect of inputs and input services on which credit is not available under sub-section (5) of section 17, be denoted as 'T3';

(e) the amount of input tax credit credited to the electronic credit ledger of registered person, be denoted as 'C1' and calculated as-

C1 = T- (T1+T2+T3);

(f) the amount of input tax credit attributable to inputs and input services intended to be used exclusively for effecting supplies other than exempted but including zero rated supplies, be denoted as 'T4';

1[Explanation: For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the said Act, value of T4 shall be zero during the construction phase because inputs and input services will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.]

(g) 'T 1', 'T 2','T 3' and 'T 4' shall be determined and declared by the registered person 2[****] 3[at summary level in FORM GSTR-3B];

(h) input tax credit left after attribution of input tax credit under clause 4[(f)] shall be called common credit, be denoted as 'C 2' and calculated as-

C 2 = C 1 - T 4 ;

(i) the amount of input tax credit attributable towards exempt supplies, be denoted as 'D 1' and calculated as-

D 1 = (E / F) x C 2

where,
'E' is the aggregate value of exempt supplies during the tax period, and
'F' is the total turnover in the State of the registered person during the tax period:
5[Provided that in case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the value of 'E/F' for a tax period shall be calculated for each project separately, taking value of E and F as under:-
E = aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;
F = aggregate carpet area of the apartments in the project;

Explanation 1 : In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier;

Explanation 2 : Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (i), (ia), (ib), (ic) or (id), against serial number 3 of the Table in the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3,Sub-section (i) dated 28th June, 2017 vide GSR number 690(E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of 'E' in view of Explanation (iv) in paragraph 4 of the notification No. 11/2017-Central Tax (Rate), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR number 690 (E) dated 28th June, 2017, as amended.]

6[Provided further]that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

Explanation : For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 7[and entry 92A] of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

(j) the amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as 'D2'and shall be equal to five per cent. of C2 ; and
(k) the remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting supplies other than exempted supplies but including zero rated supplies and shall be denoted as 'C 3', where,-
C 3 = C 2 - (D 1 +D 2);
8[(l) the amount 'C3', 'D 1' and 'D2 ' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B or through FORM GST DRC-03;]

(m) the amount equal to aggregate of ' D1' and 'D2 ' shall be 9[reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 :]
Provided that 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 'T 1' and 'T 2' respectively, and the remaining amount of credit on such inputs or input services shall be included in 'T 4'.

(2) 10[Except in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the input tax credit] determined under sub-rule (1) shall be calculated finally for the financial year before the due date for furnishing of the return for the month of September following the end of the financial year to which such credit relates, in the manner specified in the said sub-rule and-

(a) where the aggregate of the amounts calculated finally in respect of 'D 1' and 'D 2' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D1 ' and 'D2 ', such excess shall be 11[reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03]in the month not later than the month of September following the end of the financial year to which such credit relates and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or

(b) where the aggregate of the amounts determined under sub-rule (1) in respect of 'D 1 'and 'D 2' exceeds the aggregate of the amounts calculated finally in respect of 'D 1' and 'D 2', such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year to which such credit relates.

12[(3) In case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the input tax determined under sub-rule (1) shall be calculated finally, for each ongoing project or project which commences on or after 1st April, 2019,which did not undergo or did not require transition of input tax credit consequent to change of rates of tax on 1st April, 2019 in accordance with notification No. 11/2017-Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690 (E) dated the 28th June, 2017, as amended for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, in the manner prescribed in the said sub-rule, with the modification that value of E/F shall be calculated taking value of E and F asunder:
E = aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier:
F = aggregate carpet area of the apartments in the project;
and -

(a) where the aggregate of the amounts calculated finally in respect of 'D1 ' and 'D2 ' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D1 'and 'D2 ', such excess shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation of the project takes place and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or

(b) where the aggregate of the amounts determined under sub-rule (1) in respect of 'D 1 ' and 'D 2 'exceeds the aggregate of the amounts calculated finally in respect of 'D 1 'and 'D 2 ', such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.

(4) In case of supply of services covered by clause (b) of paragraph 5 of Schedule II of the Act, the input tax determined under sub-rule (1) shall be calculated finally, for commercial portion in each project, other than residential real estate project (RREP), which underwent transition of input tax credit consequent to change of rates of tax on the 1st April, 2019 in accordance with Notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690 (E) dated the 28th June, 2017, as amended for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, in the following manner.

(a) The aggregate amount of common credit on commercial portion in the project (C 3 aggregate_comm) shall be calculated as under,

C 3 aggregate_comm = [aggregate of amounts of C3 determined under sub- rule (1) for the tax periods starting from 1st July, 2017 to 31st March, 2019, x (A C / A T)] + [aggregate of amounts of C3 determined under sub- rule (1) for the tax periods starting from 1st April, 2019 to the date of completion or first occupation of the project, whichever is earlier]

Where,-

A C = total carpet area of the commercial apartments in the project

A T = total carpet area of all apartments in the project

(b) he amount of final eligible common credit on commercial portion in the project (C 3 final_comm)shall be calculated as under

C 3 final_comm =C 3 aggregate_comm x (E/ F)

Where, -

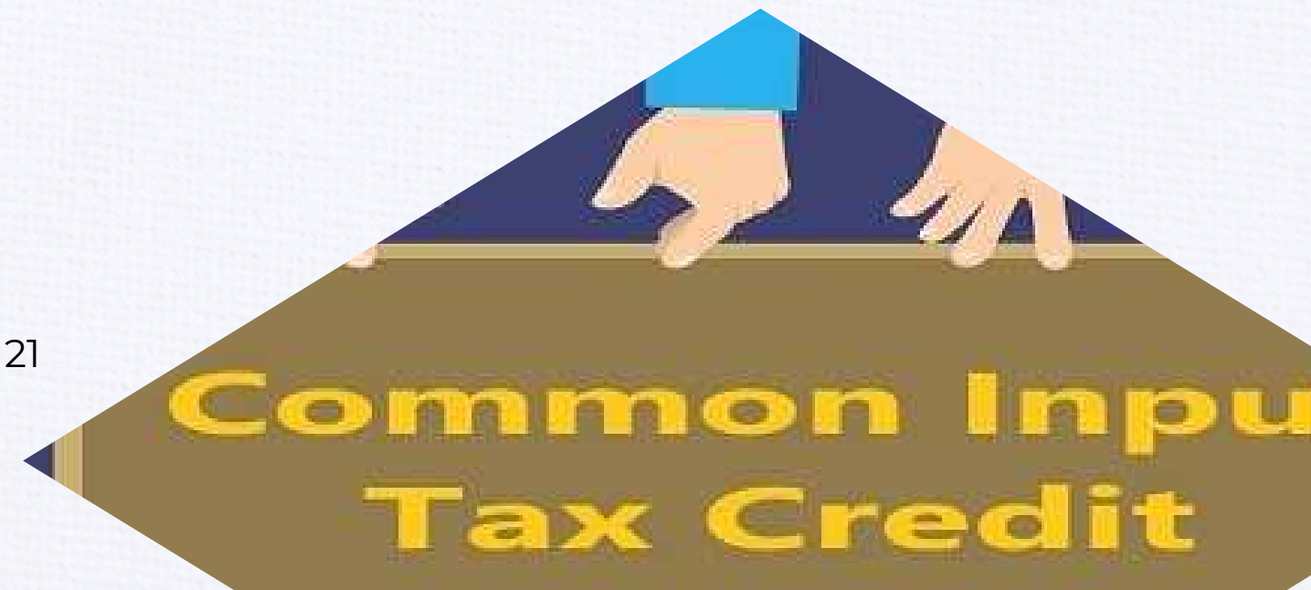
E = total carpet area of commercial apartments which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

F = A C = total carpet area of the commercial apartments in the project
(c) where, C 3 aggregate_comm exceeds C 3 final_comm, such excess shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project and the said person shall be liable to pay interest on the said excess amount at the rate specified in subsection (1) of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment;
(d) where, C 3 final_comm exceeds C 3 aggregate_comm, such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.
(5) Input tax determined under sub- rule (1) shall not be required to be calculated finally on completion or first occupation of an RREP which underwent transition of input tax credit consequent to change of rates of tax on 1st April, 2019 in accordance with notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017, published vide GSR No. 690 (E) dated the 28th June,2017, as amended.
(6) Where any input or input service are used for more than one project, input tax credit with respect to such input or input service shall be assigned to each project on a reasonable basis and credit reversal pertaining to each project shall be carried out as per sub-rule (3).]

9.1 Rule 43: Capital Goods

Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases.

(1) Subject to the provisions of sub-section (3) of section 16, the input tax credit in respect of capital goods, which attract the provisions of sub-sections (1) and (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely,-
(a) the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in 1[****] 2[FORM GSTR-3B] and shall not be credited to his electronic credit ledger;
(b) the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero-rated supplies shall be indicated in 1[****] 2[FORM GSTR-3B] and shall be credited to the electronic credit ledger;



2[Explanation: For the purpose of this clause, it is hereby clarified that in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the said Act, the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies, shall be zero during the construction phase because capital goods will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project, whichever is earlier, and those which are not booked by the said date.]

3[(c) the amount of 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 up to five years from the date of the invoice for such goods:
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 'T ie ', shall be calculated at the rate of five percentage points 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 'T ie' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B .
Explanation. - An item of capital goods declared under clause (a) on its receipt shall not attract the provisions of sub-section (4) of section 18, if it is subsequently covered under this clause.]

4[(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 'T c ', shall be the common credit in respect of such capital goods:
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 'T c ';]
(e) the amount of input tax credit attributable to a tax period on common capital goods during their useful life, be denoted as 'T m' and calculated as-
T m = Tc / 60

5[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.]
(f) 6[****]

(g) the amount of common credit attributable towards exempted supplies, be denoted as ' T e', and calculated as-

T e = (E / F) x T r

where ,

'E' is the aggregate value of exempt supplies, made, during the tax period , and

'F' is the total turnover 7[in the State]of the registered person during the tax period:

7[Provided that in case of supply of services covered by clause (b) of paragraph 5 of the Schedule II of the Act, the value of 'E/F' for a tax period shall be calculated for each project separately, taking value of E and F as under:

E= aggregate carpet area of the apartments, construction of which is exempt from tax plus aggregate carpet area of the apartments, construction of which is not exempt from tax, but are identified by the promoter to be sold after issue of completion certificate or first occupation, whichever is earlier;

F= aggregate carpet area of the apartments in the project;

Explanation 1 : In the tax period in which the issuance of completion certificate or first occupation of the project takes place, value of E shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier.

Explanation 2 : Carpet area of apartments, tax on construction of which is paid or payable at the rates specified for items (i), (ia),(ib), (ic) or (id), against serial number 3 of the Table in notification No. 11/2017-Central Tax (Rate) published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated 28th June, 2017 vide GSR No. 690 (E) dated 28th June, 2017, as amended, shall be taken into account for calculation of value of 'E' in view of Explanation (iv) in paragraph 4 of the notification No. 11/2017-Central Tax (Rate) published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) dated the 28th June, 2017 vide GSR No. 690 (E) dated 28th June, 2017, as amended.]

8[Provided further]that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall be calculated by taking values of 'E' and 'F' of the last tax period for which the details of such turnover are available, previous to the month during which the said value of 'E/F' is to be calculated;

Explanation. - For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 8[and entry 92A] of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;

(h) the amount Te along with the applicable interest shall , during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit.

10[(i)The amount Te shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B .]

11[(2) In case of supply of services covered by clause (b) of paragraph 5 of schedule II of the Act, the amount of common credit attributable towards exempted supplies (Te final)shall be calculated finally for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, for each project separately, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued or first occupation takes place of the project, as under:

Te final = [(E1 + E2 + E3) /F] x Tc final ,

Where,-

E 1 = aggregate carpet area of the apartments, construction of which is exempt from tax

E 2 = aggregate carpet area of the apartments, supply of which is partly exempt and partly taxable, consequent to change of rates of tax on 1st April, 2019, which shall be calculated as under, -

E 2 = [Carpet area of such apartments] x [V 1 / (V 1 +V 2)],-

Where,-

V 1 is the total value of supply of such apartments which was exempt from tax;

and

V 2 is the total value of supply of such apartments which was taxable

E 3 = aggregate carpet area of the apartments, construction of which is not exempt from tax, but have not been booked till the date of issuance of completion certificate or first occupation of the project, whichever is earlier:

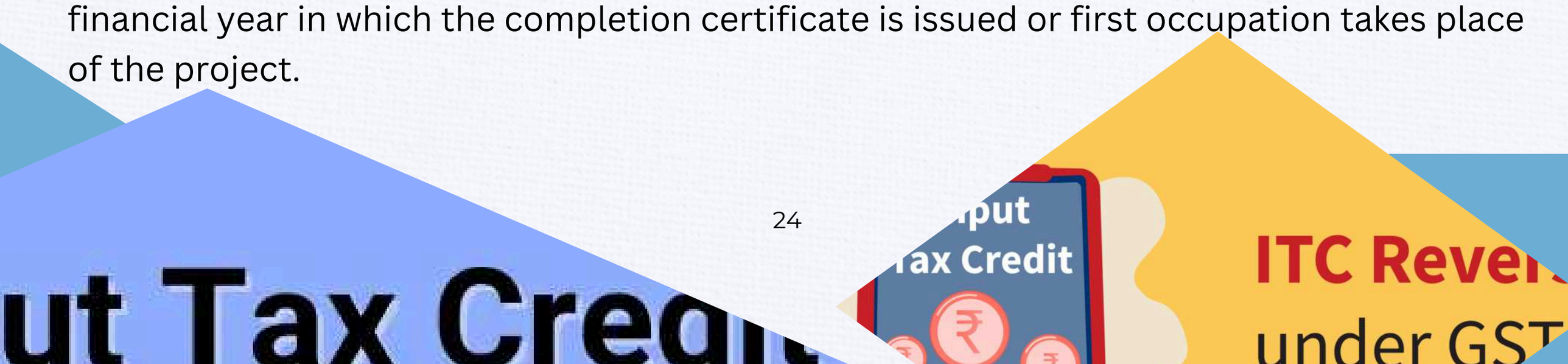
F= aggregate carpet area of the apartments in the project;

Tc final = aggregate of A final in respect of all capital goods used in the project and A final for each capital goods shall be calculated as under,

A final =A x (number of months for which capital goods is used for the project/ 60) and,-

(a) where value of Te final exceeds the aggregate of amounts of Te determined for each tax period under sub-rule (1), such excess shall be reversed by the registered person in FORM GSTR-3B or through FORM GST DRC-03 in the month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1)of section 50 for the period starting from the first day of April of the succeeding financial year till the date of payment; or

(b) where aggregate of amounts of Te determined for each tax period under sub-rule (1) exceeds Te final , such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year in which the completion certificate is issued or first occupation takes place of the project.



Explanation .- For the purpose of calculation of Tc final , part of the month shall be treated as one complete month.
(3) The amount Te final an date dc final shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.
(4) Where any capital goods are used for more than one project, input tax credit with respect to such capital goods shall be assigned to each project on a reasonable basis and credit reversal pertaining to each project shall be carried out as per sub-rule (2).
(5) Where any capital goods used for the project have their useful life remaining on the completion of the project, input tax credit attributable to the remaining life shall be availed in the project in which the capital goods is further used;]

12[13[Explanation 1]:-For the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude: -
(a) 14[****]
(b) 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
(c) 16[****]]
15[(d) 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.]

5[Explanation 2 : For the purposes of rule 42 and this rule,-
(i) the term "apartment" shall have the same meaning as assigned to it in clause (e) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);
(ii) the term "project" shall mean a real estate project or a residential real estate project;
(iii) the term "Real Estate Project (REP)" shall have the same meaning as assigned to it in in clause (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);
(iv) the term "Residential Real Estate Project (RREP)" shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP;
(v) the term "promoter" shall have the same meaning as assigned to it in in clause (zk) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);
(vi) "Residential apartment" shall mean an apartment intended for residential use as declared to the Real Estate Regulatory Authority or to competent authority;
(vii) "Commercial apartment" shall mean an apartment other than a residential apartment;
(viii) the term "competent authority as mentioned in definition of "residential apartment", means the local authority or any authority created or established under any law for the time being in force by the Central Government or State Government or Union Territory Government, which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;

(ix) the term "Real Estate Regulatory Authority" shall mean the Authority established under sub- section (1) of section 20 (1) of the Real Estate (Regulation and Development) Act, 2016 (No.16 of 2016) by the Central Government or State Government;
(x) the term "carpet area" shall have the same meaning assigned to it in in clause (k) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);
(xi) an apartment booked on or before the date of issuance of completion certificate or first occupation of the project shall mean an apartment which meets all the following three conditions, namely-
(a) part of supply of construction of the apartment service has time of supply on or before the said date; and
(b) consideration equal to at least one installment has been credited to the bank account of the registered person on or before the said date; and
(c) an allotment letter or sale agreement or any other similar document evidencing booking of the apartment has been issued on or before the said date.

(xii) The term "ongoing project" shall have the same meaning as assigned to it in notification No. 11/2017- Central Tax (Rate), dated the 28th June, 2017,published vide GSR No. 690(E) dated the 28th June, 2017, as amended;

(xiii) The term "project which commences on or after 1st April, 2019" shall have the same meaning as assigned to it in notification No. 11/2017- Central Tax (Rate),dated the 28th June, 2017, published vide GSR No. 690(E) dated the 28th June, 2017, as amended;]

17[Explanation 3:- For the purpose of rule 42 and this rule, 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.]

REVERSAL OF COMMON CREDITS UNDER GST

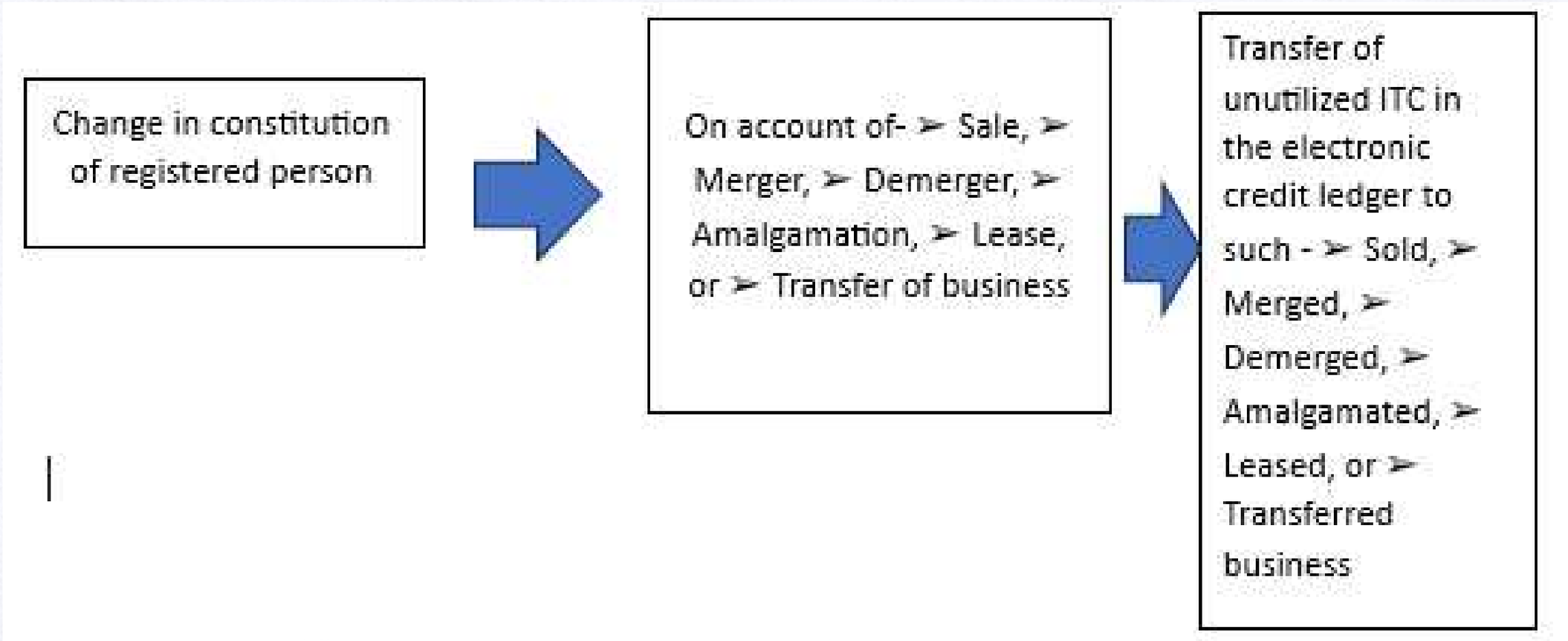
Rule 42 & 43 of CGST Rules,2017

10. ITC MERGER/ACQUISITION/TRANSFER

Input tax credit and change in constitution of a registered person:

10.1 The change in constitution of a registered person due to sale, merger, demerger, amalgamation, lease or transfer or change in the ownership of business including transfer of liabilities provides for the following:

(i) The registered person is allowed to transfer the input tax credit remaining unutilized in the electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business.
(ii) Rule 41 prescribes such credit transfer be made on the common portal in Form GST ITC-02 and in case of demerger, credit to be transferred must be apportioned in the ratio the value of assets of the new units as specified in demerger scheme. Value of the assets has been explained in the said rule to mean the value of the entire assets of the business whether or not input tax credit has been availed on them.
(iii) A practicing Chartered Accountant or Cost Accountant to certify that the arrangement contains a specific provision for the transfer of liabilities.
(iv) Details furnished in Form GST ITC-02 by the transferor would have to be accepted by the transferee on the common portal.
(v) Transferee to duly account for the inputs and capital goods received in books of accounts.
The analysis of above provision in a pictorial form is summarised as follows:
ITC: Change in Constitution of a registered Person



10.2 Transfer of credit on obtaining separate registration for multiple places of business within a State or Union Territory (Rule 41A):

If a registered person wishes to obtain separate registration for multiple places of business, the law provides the mechanism for transfer of unutilised input tax credit lying in the electronic credit ledger to any or all new registrations within 30 days from obtaining such separate registrations. For this purpose, the registered unit needs to submit Form GST ITC-02A on the common portal. Such Form ITC-02A is to be accepted by the newly registered person on the common portal. Upon such acceptance, the input tax credit is transferred to these newly registered persons.

As regards the proportion of the input tax credit to be transferred, it has been provided that the transfer of input tax credit is to be divided in the ratio of the value of assets held by these persons at the time of registration. Such value of assets is to be taken as the value of the entire assets of the business whether or not input tax credit has been availed on them.

10.3 Supply of capital goods on which input tax credit has been taken:

The registered person shall pay an amount equal to the higher of:

o Input tax credit taken on such capital goods as reduced by such prescribed percentage points or

o the tax on the transaction value of such capital goods

11. ITC ON JOB WORK

Input tax credit in respect of inputs and capital goods sent for job-work

The following table provides relevant Sections/Rules relating to Job Work

Section or Rule	Description
Section 16	Eligibility and conditions for taking input tax credit
Section 143	Job work procedure
Rule 55	Transportation of goods without issue of invoice

11.1 Job work:
Definition:
Any treatment or process undertaken by a person on goods belonging to another registered person as defined under Section 2(68).

• Job worker: A person who undertakes any treatment or process on goods belonging to another registered person.
• Principal: A person on whose behalf an agent carries on the business of supply or receipt of goods or services or both.

11.2 The principal can take credit of input tax on inputs or capital goods sent to job-worker subject to fulfilment of the following conditions and restrictions as stipulated in Section 19 and Section 143 read with Rule 45:

 The credit of inputs / capital goods can be taken even if inputs / capital goods were sent directly to job-worker's premises without bringing it to principal's place of business.
 In case of direct supply, the period of 1 year / 3 years shall be reckoned from the date the job worker receives such inputs/ capital goods.
 The inputs / capital goods, after completion of job-work, are to be received back by the principal within 1 year / 3 years respectively, of their being sent out.
 If the inputs / capital goods are not received back within 1 year / 3 years, it shall be deemed that such inputs / capital goods had been supplied by principal to the job worker on the day when the said inputs / capital goods were sent out.
 In case of non-receipt of the inputs / capital goods within the time prescribed, the principal shall issue an invoice for the same and declare such supplies in his return for that particular month in which the time period of one year/ three years has expired.
 To issue a delivery challan for transfer of inputs/ capital goods to the job-worker including where they are sent directly (to maintain paper trail of transaction)
 The details of delivery challans for goods dispatched to job worker or received from job worker or sent from one job worker to another during a specified period shall be

included in Form GST ITC-04 to be furnished on or before 25th day of the month succeeding that that specified period, Specified period here refers to the period of six consecutive months commencing from 1st April and the 1st October in respect of the principal whose aggregate turnover in the immediately preceding financial year exceeds Rs. 5 crores. If the turnover does not exceed Rs. 5 crores, then a financial year is the specified period.

o Delivery challan shall contain details as prescribed in Rule 55 of CGST Rules. All delivery challans issued in respect of inputs sent to a job-worker and those received back are to be reported in Form GSTR-1.

Exception

The time limits, for Inputs /Capital goods which are to be received back within 1 year / 3 years, shall **not apply to moulds and dies, jigs and fixtures, or tools** sent out to a job worker for job work.

12. ITC ON GOODS LOST, STOLEN, DESTROYED, WRITTEN OFF OR DISPOSED OFF BY WAY OF GIFT OR FREE SAMPLES

Section 17(5): Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit **shall not be available** in respect of the following, namely: -

(a) .....

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

13. ITC ON TAX PAID UNDER SECTIONS 74, 129 AND 130

Section 17(5): Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit **shall not be available** in respect of the following, namely: -

(a) .....
.....

(i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

14. ITC BLOCKAGE ON OTHER SUPPLIES

14.1 ITC is not available/blocked in respect of the following:

a. Travel benefits to employees
b. Tax paid under composition scheme
c. Non-resident taxable person

14.2 Section 17(5): Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely: —

....

(b) the following supply of goods or services or both—
(iii) travel benefits extended to employees on vacation such as leave or home travel concession:
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 .....
(e) goods or services or both on which tax has been paid under section 10;
(f) goods or services or both received by a non-resident taxable person except on goods imported by him; .....

15. CREDIT IN SPECIFIC CIRCUMSTANCES

(**a) Registered person to take credit:** Every registered person subject to Section 49 (payment of tax), shall be entitled to take credit of input tax charged on any supply of GST goods or services or both to him which are used or intended to be used in the course or furtherance of his business. The input tax credit is credited to the electronic credit ledger.

Rule 36 of the CGST Rules provides that input tax credit can be taken on the basis of any of the following documents:

(i) Invoice issued under section 31 by Supplier of goods or services or both.

(ii) Debit note issued under section 34 by Supplier of goods or services or both.

(iii) Bill of entry or any similar documents under Customs Act or rules made thereunder for the assessment of integrated tax on imports.

(iv) Invoice prepared in respect of supplies made under reverse charge basis issued under section 31(3)(f).

(v) Invoice or Credit Note issued by ISD for distribution of credit in accordance with Rule 54(1) of the CGST Rules.

Note - Input tax credit can also be taken on the basis of revised tax invoice.

(b) Credit in case registration is cancelled: When 'registered person' is only entitled to take credit, registration is a pre-requisite to claim credit. And if registration once obtained is later cancelled, tax payer has **no further credits from the date of cancellation**. Not only that, as at the date of such cancellation reversal of credits under section 29(5) come into operation.

However, Calcutta high court has held that, ITC cannot be denied due to cancellation of GST registration with retrospective effect: Calcutta HC Citation: 2023 Tax scan (HC) 112

It is interesting to note that credit will have to be allowed when cancelled registration is restored in appeal, claim of credit impaired due to inoperative login credentials (during the period of suspension-cancellation up to restoration in appeal) cannot be denied.

(**c) Credit in case registration is suspended:** Suspension of registration is not cancellation of registration. However, during the period of suspension, there is presumption of stoppage of business. As such, where registration is suspended, credit is not admissible due to the presumption contrary to the requirement in section 16(1) that such 'taxable person' must be a 'registered person' to claim input tax credit.

(**d) Wastage of inputs in the course of production**: Credit in respect of inputs that may have been wasted during the course of production of finished products, does not cease to be 'used or intended to be used' in the course or furtherance of business. With no express concern on wastage, it appears that credit would be available as long as wastage of inputs used in production, is within wastage norms.

(**e) Input-Output nexus:** During, Central Excise regime, credit was allowed on input and input services used for manufacture of excisable goods or for rendering taxable services. The credit under GST law is available on procurements which are "used" or "intended to be used" in the course or furtherance of business. It is important to note the difference between 'used in manufacture' (Cenvat) versus 'used in business' (GST) which is a much broader terminology under GST.

Hence, any procurement though not having any direct or immediate connection with the manufacture of finished products or rendering of outward supplies, would also qualify for input tax credit so long as it is “used or intended to be used” for the purpose of business.

(**f) Required “One-to-one correlation” of credit from unrelated businesses with single GSTIN only for ‘availment’ and not ‘utilization’**: There is a well-accepted principle in any value added tax system to inquire whether the given set of rules requires ‘one-to-one correlation’ for credit admissibility or utilization.
As long as all credits and corresponding output tax liability are contained within one single GSTIN, such cross-utilization is freely permitted. However, absence of one-to-one correlation applies at the point of ‘utilization’ and not at the point of ‘availment’.

(g) GST credit is subject to ‘conditions precedent’ and ‘conditions subsequent’: GST law has laid down certain conditions in sections 16 to 18 of the CGST Act. Some of these conditions are ‘before’ claiming input tax credit, some are ‘after’ claiming credit.

(h) Time limit to avail the input tax credit: A registered person is not entitled to avail input tax credit on tax invoice/ debit notes after the financial year w.e.f. 01.10.2022, earlier it was, due date of furnishing of the return under section 39 for the month of September of the subsequent financial year] or furnishing of the relevant annual return, whichever is earlier. In fact, not only is registration a pre - requisite but filing of return under section 39 is also a requirement.
In other words, input tax credit which is a right (in law) of the taxable person is not fully mature and is not available to the taxable person until all pre-conditions have been fulfilled or performed. Section 16(2) lays down these steps that can be fulfilled immediately or in course of time. After the credit is actually availed (by including in Form GSTR-3B), it will be ready for utilization without any time for utilization or any age for its expiration.
Section 16(4) provides for time limit for taking credit for invoices and debit notes. It would be important to note that the due date for availing credit from debit notes received is based on the date of which the debit note is issued regardless of the year in which the original supply was made. Section 34(3) refers to “shall issue to the recipient, one or more debit notes for supplies made in a financial year”.

(**i) Time limit ‘limitation’ or ‘prescription’:** Although time limit prescribed in section 16(4) or even 18(2) for that matter, has been referred to as ‘limitation’, care must be taken to note the difference between ‘limitation’ and ‘prescription’.
“Limitation is when a right continues but is no longer enforceable after lapse of certain time”. For e.g., input tax credit taken by the exporter in case of zero-rated supplies, the exporter is eligible to claim refund. In the event refund is not filed within 2 years from relevant date, the refund is barred. And this does not mean the credit is liable to be reversed. It will continue and may be utilized to pay any output tax by the same exporter. Here, the 2-year time limit to claim refund (on zero-rated supplies made) is a limitation. Notice that the right (input tax credit) remains but it is no longer enforceable (even though condition of making zero-rated supplies is met) to receive refund.
“Whereas, prescription is when the right itself vanishes after lapse of specified time”. For e.g., ‘right’ to input tax credit (that has clearly satisfied all vesting conditions) itself vanishes by lapse of this time limit specified in section 16(4).

(j) Deemed receipt of goods/services: Section 16 permits a registered person to avail credit only after he has received the said goods or services or both. However, in case of bill to-ship

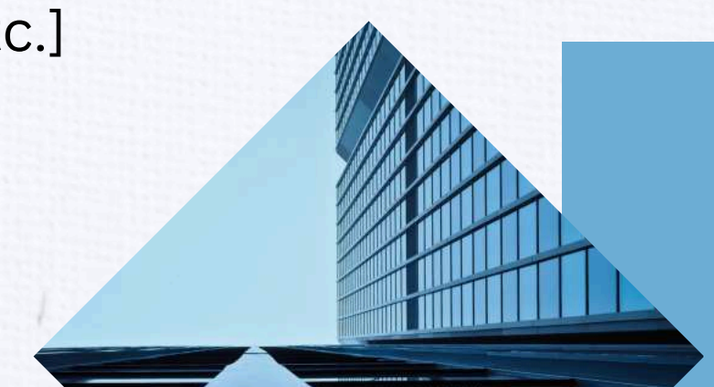
to transactions (including where such goods are sent for job work), by which the registered person instructs his Supplier to ship the goods/services to another person on his behalf, the date of receipt of goods / services by such other person shall be deemed to be the date of receipt of goods/services by the said registered person.

(k) Goods received in instalments: If goods are received in instalments against a single invoice, credit can be availed upon receipt of last instalment of goods.

(l) Receipt of Services: The recipient can claim credit only upon receipt of services except a situation mentioned in Explanation to Section 16(2)(b). Determination of actual receipt of services could be a formidable task especially when the contracting period for provision of service extends beyond a tax period but consideration is received in advance.

(m) Failure to pay to supplier of goods or services or both, the value of supply and tax thereon: Where the Recipient (of goods or services or both) has failed to pay the Supplier within 180 days from date of invoice, input tax credit availed, in proportion to such unpaid amount of the invoice shall be reversed by adding to Recipient's output tax liability along with interest as may be applicable.
And on payment of the value of the invoice, amount of credit reversed may be reclaimed without any time limit as per rule 37(4).
It is to be noted that
(i) credit available must be availed within the time limit in section 16(4) and any delay beyond this time limit will result in available credit being forfeited permanently
(ii) (ii) credit once availed [within the time limit in section 16(4)] but reversed under rule 37(1) may be reclaimed under 37(4) and this time without any time limit to reclaim reversed credit.
(**n) Capital goods on which depreciation is claimed:** Input tax credit will not be allowed on the tax component of the cost of capital goods and plant and machinery if depreciation on such tax component has been claimed under the provisions of the Income Tax Act.

(o) Unmatched credit capped at 'x' per cent': Section 16(2)(c) places a burden on Recipient to claim credit 'after' tax has been deposited with the Government by the supplier. Government has enabled Form GSTR-1 filed by Suppliers to appear in Form GSTR-2A/2B to the Recipient. Though this by itself is no assurance that Supplier has subsequently filed Form GSTR-3B (for the entire turnover reported in Form GSTR-1) but Government considers 'liability to tax admitted in Form GSTR-1' as basic responsibility that must be ensured. Remember, condition precedent in section 16(2)(c) has not been amended regarding this 'matching' process. And if credit appears in Form GSTR-2A/2B (by Supplier filing Form GSTR-1), that will give some assurance to permit credit to Recipient.
Recipient may still claim credit unilaterally without any formal credit matching by claiming bona fide credits in Form GSTR-3B.
Rule 36(4) has been inserted vide Notification No. 49/2019-CT, dated 09.10.2019 and it applies to all returns filed after 09.10.2019, that is, to September returns as well. This sub-rule states that eligible credits appearing in Form-GSTR 2A/2B will be allowed [total credits minus ineligible credits under sections 17(2), 17(5), etc.]



On one hand, condition precedent in section 16(2)(c) continues and on the other hand the Form GSTR-2A/2B based 'quasi matching' exercise is allowed with additional relief as follows:

➢ 20 per cent from 09.10.2019 to 31.12.2019;
➢ 10 per cent from 01.01.2020 to 31.12.2020;
➢ 5 per cent from 01.01.2021 to 31.12.2021; and
➢ NIL from 01.01.2022.

(p) Rule 37A - Reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment thereof New rule 37A has been inserted vide Notification No. 26/2022-CT dated 26.12.2022 to specify the mechanism for reversal of input tax credit already availed by the recipient in Form GSTR-3B.

As per the said rule, where supplier has furnished the details of invoice or debit note in Form GSTR-1 or IFF but return in Form GSTR-3B has not been furnished by the supplier till 30th September of subsequent financial year, the input tax credit availed by the recipient shall be reversed along with interest.

However, if recipient reverses the ITC already availed in Form GSTR-3B on or before 30th November of the succeeding financial year, then the recipient is not required to pay interest on such reversal amount.

If recipient reverses ITC after 30th November, then he is liable to reverse the amount of ITC along with interest as per section 50.

The recipient may re-avail the amount of ITC in Form GSTR-3B after the supplier furnishes the Form GSTR-3B.

(q) Innovative reprieve (2A/2B v. 3B): With the introduction of (i) new GSTR-3B (ii) new section 41 and (iii) rule 37A, taxpayers are to avail credit based on books (supported by valid tax invoice in respect of eligible inward supplies) but 'temporarily park' them in table 4B2 (of new GSTR3B) so that admissible credit is not lost due to operation of section 16(4) pending resolution of the mismatch with respective Supplier.

(r) Burden of proof: Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person Hence, Section 155 makes it incumbent on registered person to satisfy the eligibility conditions and compliances to take credit.

(s) Credits via debit notes: Where any additional tax becomes payable, except in demand under section 74, Suppliers may issue debit notes/supplementary invoice to Recipients under Section 34 (of respective supplies made earlier), who will be entitled to claim credit on those debit notes/supplementary invoices. Supplier shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed. Hence, it appears, the date for reckoning section 16(4), operates from date of debit note and not from the date of underlying invoice for supply.

On one hand, condition precedent in section 16(2)(c) continues and on the other hand the Form GSTR-2A/2B based 'quasi matching' exercise is allowed with additional relief as follows:

➢ 20 per cent from 09.10.2019 to 31.12.2019;
➢ 10 per cent from 01.01.2020 to 31.12.2020;
➢ 5 per cent from 01.01.2021 to 31.12.2021; and
➢ NIL from 01.01.2022.

(p) Rule 37A - Reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment thereof New rule 37A has been inserted vide Notification No. 26/2022-CT dated 26.12.2022 to specify the mechanism for reversal of input tax credit already availed by the recipient in Form GSTR-3B.

As per the said rule, where supplier has furnished the details of invoice or debit note in Form GSTR-1 or IFF but return in Form GSTR-3B has not been furnished by the supplier till 30th September of subsequent financial year, the input tax credit availed by the recipient shall be reversed along with interest.

However, if recipient reverses the ITC already availed in Form GSTR-3B on or before 30th November of the succeeding financial year, then the recipient is not required to pay interest on such reversal amount.

If recipient reverses ITC after 30th November, then he is liable to reverse the amount of ITC along with interest as per section 50.

The recipient may re-avail the amount of ITC in Form GSTR-3B after the supplier furnishes the Form GSTR-3B.

(q) Innovative reprieve (2A/2B v. 3B): With the introduction of (i) new GSTR-3B (ii) new section 41 and (iii) rule 37A, taxpayers are to avail credit based on books (supported by valid tax invoice in respect of eligible inward supplies) but 'temporarily park' them in table 4B2 (of new GSTR3B) so that admissible credit is not lost due to operation of section 16(4) pending resolution of the mismatch with respective Supplier.

(r) Burden of proof: Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person. Hence, Section 155 makes it incumbent on registered person to satisfy the eligibility conditions and compliances to take credit.

(s) Credits via debit notes: Where any additional tax becomes payable, except in demand under section 74, Suppliers may issue debit notes/supplementary invoice to Recipients under Section 34 (of respective supplies made earlier), who will be entitled to claim credit on those debit notes/supplementary invoices. Supplier shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed. Hence, it appears, the date for reckoning section 16(4), operates from date of debit note and not from the date of underlying invoice for supply.

16. EXEMPT SUPPLY

16.1 It is very interesting to note that although an ‘exempt supply’ is defined in section 2(47), section 17(3) read with explanation (2) in Rule 45, for the purposes of input tax credit reversal includes, the following transactions as well:

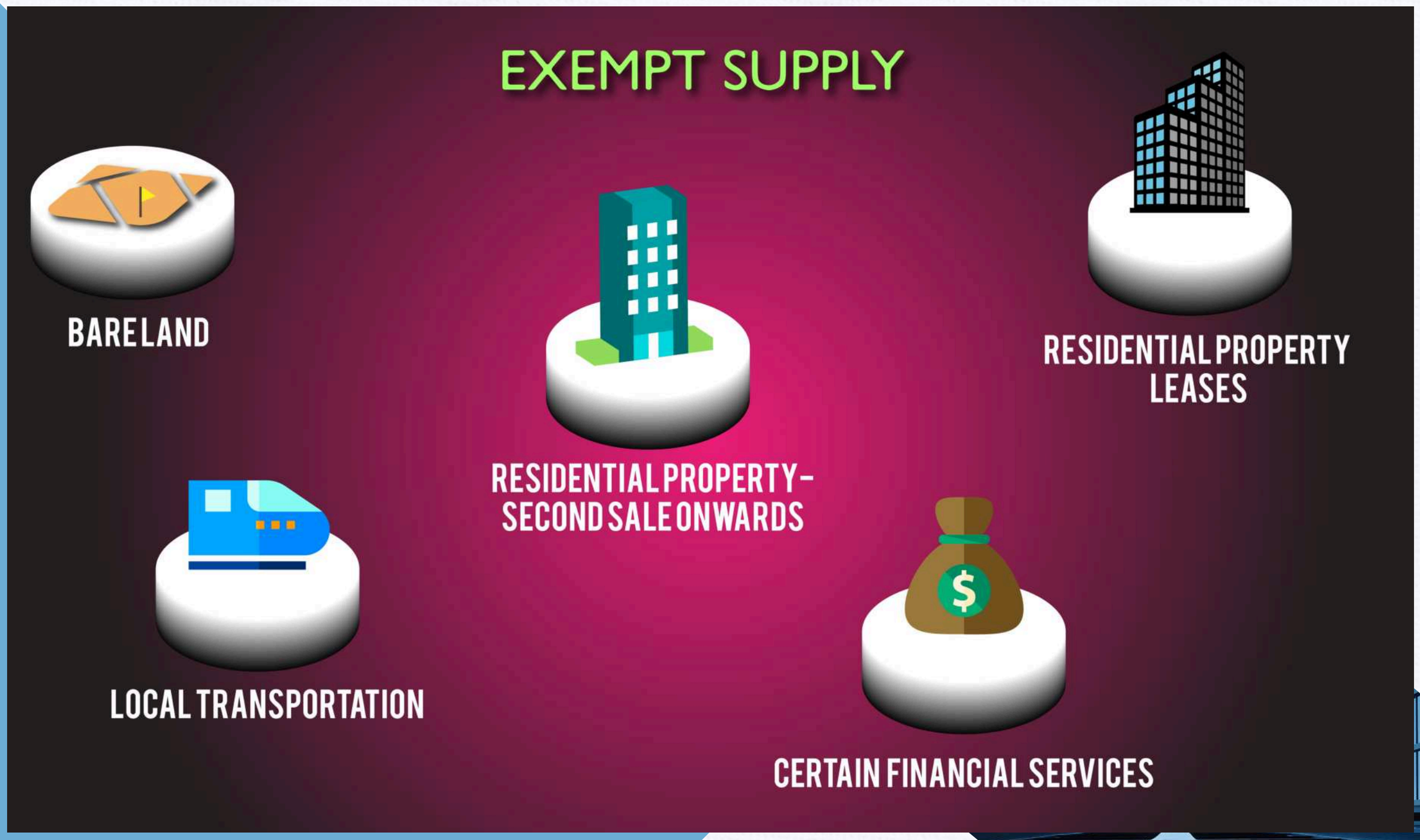
- tax paid under reverse charge,
- transaction in securities,
- sale of land and subject to clause (b) of Paragraph 5 of Schedule II, sale of building.

16.2 The value of supplies in respect of which the outward supplier is not liable to pay tax, but the recipient is made liable to pay tax under sections 9(3) and 5(3) of the CGST and IGST Act respectively, would be regarded as ‘exempt supplies’ for the limited purpose of determining net available input tax credit.

In this context, it would be relevant to note that section 17(3) identifies supplies attracting reverse charge to be an exempt supply in the hands of the Supplier effecting such supplies and not in the hands of the recipient who avails such services liable under reverse charge.

16.3 The Explanation added to Section 17(3) is an important amendment to allow taxpayer to avail full credit even if they are not paying GST, if the activities or transactions are mentioned in Schedule III except sale of land and completed building and sale of warehoused goods to any person before clearance for home consumption.

As such, it is important to note that transactions listed in Schedule III are “NOT SUPPLIES” and hence they are neither ‘exempt supplies’ nor are they ‘non-taxable supplies’



17. REVERSAL OF CREDIT BASED ON ‘CONDITION OF END-USE’

Registered persons are responsible for meeting all requirements to correctly claim input tax credit as per section 155. Now, when goods (inputs or capital goods) are received, credit of input tax paid is eligible subject to accepting and agreeing to meet all the associated conditions. But when these goods are NOT USED as accepted and agreed (at the time of taking credit), for whatever reason, then credit availed ought not to have been availed and becomes liable for reversal.

Now, unlike inputs and input services, end-use of capital goods is more objective because output for each month can be determined. Capital goods are ‘used’ and do not get ‘used up’. When, capital goods are NOT USED in making taxable outward supplies, then they too come in for review of credit.

18. MANNER OF DISTRIBUTION OF CREDIT BY INPUT SERVICE DISTRIBUTOR (ISD)

18.1

Section 20. Manner of distribution of credit by Input Service Distributor. -

(1) Any office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9, for or on behalf of distinct persons referred to in section 25, shall be required to be registered as Input Service Distributor under clause (viii) of section 24 and shall distribute the input tax credit in respect of such invoices.

(2) The Input Service Distributor shall distribute the credit of central tax or integrated tax charged on invoices received by him, including the credit of central or integrated tax in respect of services subject to levy of tax under sub-section (3) or sub-section (4) of section 9 paid by a distinct person registered in the same State as the said Input Service Distributor, in such manner, within such time and subject to such restrictions and conditions as may be prescribed.

(3) The credit of central tax shall be distributed 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, in such manner as may be prescribed.

18.2

Rule 39. Procedure for distribution of input tax credit by Input Service Distributor. -

(1) An Input Service Distributor shall distribute input tax credit in the manner and subject to thefollowingconditions,namely:–

(a) the input tax credit available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in FORM GSTR-6 in accordance with the provisions of Chapter VIII of these rules;

(b)the amount of the credit distributed shall not exceed the amount of credit available fordistribution;

(c) the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;

(d) 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) 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;

(f) the input tax credit that is required to be distributed in accordance with the provisions of clause (d) and (e) to one of the recipients "R1", whether registered or
not, from amongst the total of all the recipients to whom input tax credit is attributable, including the recipients who are engaged in making exempt supply, or are otherwise not registered for any reason, shall be the amount, "C1", to be calculated by applying the following formula-

C1= (t1/ T) x C

where,

"C" is the amount of credit to be distributed,

"t1" is the turnover, as referred to in clause (d) and (e),of person R1during 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 in accordance with the provisions of clause (d) and(e);

(g) the Input Service Distributor shall, in accordance with the provisions of clause (d) and (e), separately distribute the amount of ineligible input tax credit (ineligible under the provisions of sub-section (5) of section 17 or otherwise) and the amount of eligible input tax credit;

(h) the input tax credit on account of central tax, State tax, Union territory tax and integrated tax shall be distributed separately in accordance with the provisions of clause(d)and(e);

(i) the input tax credit on account of integrated tax shall be distributed as input tax credit of integrated tax to every recipient;

(j) the input tax credit on account of central tax and State tax or Union territory tax shall–

(i) in respect of a recipient located in the same State or Union territory in which the Input Service Distributor is located, be distributed as input tax credit of central tax and State tax or Union territory tax respectively;

(ii) in respect of a recipient located in a State or Union territory other than that of the Input Service Distributor, be distributed as integrated tax and the amount to be so distributed shall be equal to the aggregate of the amount of input tax credit of central tax and State tax or Union territory tax that qualifies for distribution to such recipient as referred to in clause (d) and (e);

(k) the Input Service Distributor shall issue an Input Service Distributor invoice, as provided in sub-rule (1) of rule 54, clearly indicating in such invoice that it is issued only for distribution of input tax credit;

(l) the Input Service Distributor shall issue an Input Service Distributor credit note, as provided in sub-rule (1) of rule 54, for reduction of credit in case the input tax credit already distributed gets reduced for any reason;

(m) any additional amount of input tax credit on account of issuance of a debit note to an Input Service Distributor by the supplier shall be distributed in the manner and subject to the conditions specified in clauses (a) to (j) and the amount attributable to any recipient shall be calculated in the manner provided in clause (f) and such credit shall be distributed in the month in which the debit note is included in the return in FORM GSTR-6;

(n) any input tax credit required to be reduced on account of issuance of a credit note to the Input Service Distributor by the supplier shall be apportioned to each recipient in the same ratio in which the input tax credit contained in the original invoice was distributed in terms of clause (f), and the amount so apportioned shall be-

(i) reduced from the amount to be distributed in the month in which the credit note is included in the return in FORM GSTR-6; or

(ii) added to the output tax liability of the recipient where the amount so apportioned is in the negative by virtue of the amount of credit under distribution being less than the amount to be adjusted.]

2[(1A) For the distribution of credit in respect of input services, attributable to one or more distinct persons, subject to levy of tax under sub-section (3) or (4) of section 9, a registered person, having the same PAN and State code as an Input Service Distributor, may issue an invoice or, as the case may be, a credit or debit note as per the provisions of sub-rule(1A) of rule 54 to transfer the credit of such common input services to the Input Service Distributor, and such credit shall be distributed by the said Input Service Distributor in the manner as provided in sub-rule (1).]

(2) If the amount of input tax credit distributed by an Input Service Distributor is reduced later on for any other reason for any of the recipients, including that it was distributed to a wrong recipient by the Input Service Distributor, the process specified in 1[clause (n)] of sub-rule (1) shall apply, mutatis mutandis, for reduction of credit.

(3) Subject to sub-rule (2), the Input Service Distributor shall, on the basis of the Input Service Distributor credit note specified in 1[clause (j)] of sub-rule (1), issue an Input Service Distributor invoice to the recipient entitled to such credit and include the Input Service Distributor credit note and the Input Service Distributor invoice in the return in FORM GSTR-6 for the month in which such credit note and invoice was issued.
1[Explanation. —For the purpose of this rule,–

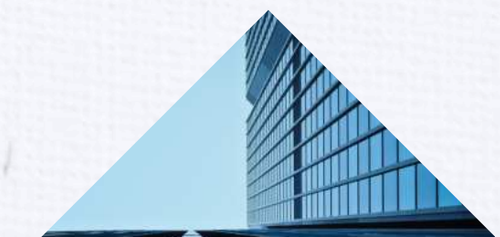
(i) the term "relevant period" shall be—

(a) 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

(b) 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;

(ii) the expression "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;

(iii) the term "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 entries 84 and 92A of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.]



18.3 Distribution of credit by ISD.

A. Different States: As per Rule 39(1)(e) and (f) of the CGST Rules, ISD shall distribute credit of:
• CGST as IGST;
• SGST as IGST and
• IGST as IGST
by issuing prescribed document mentioning the amount of credit distributed to recipient of credit located in different States.

B. Same State: In cases where an entity has different registration within the same State, the ISD shall distribute credit of:
• CGST as CGST
• SGST as SGST and
• IGST as IGST
by issuing prescribed document mentioning the amount of credit distributed to recipient being a business vertical.

18.4 Conditions to distribute credit by ISD-Having same PAN:

The conditions to distribute the credit by ISD to supplier of goods or services or both having same PAN as that of ISD i.e., recipient of credit, are as follows:

(a) Credit to be distributed to recipient under ISD invoice contents/details of which are prescribed under Rule 54 of the CGST Rules. Such document should be issued to each of the recipient of credit
(b) Credit distributed should not exceed the credit available for distribution.
(c) Tax paid on input services used by a particular recipient (registered as supplier), is to be distributed only to that recipient.
(d) Credit of tax paid on input services used by more than one recipient shall be distributed to all of them in the ratio of turnover of the recipient in a State/ Union territory to aggregate turnover of all recipients to whom the input service is attributable and which are operational during the current year.

Note: The period to be considered for computation of aforesaid turnovers is the previous financial year of that recipient. If it does not have any turnover in the previous financial year, then previous quarter of the month to which the credit is being distributed.

18.5 Manner of recovery of credit distributed in excess: Where the Input Service Distributor distributes the credit in contravention of the provisions contained in

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 recipients along with interest, and the provisions of section 73 or 74, as the case may be, shall mutatis mutandis apply for determination of amount to be recovered

18.6 Cross Charge

GST does not provide a specific definition for cross charging. GST Cross Charging happens when the same business having more than two business units makes a supply to one of its units. That's to say, movement of goods or services between two units of same business are "deemed as supply", with both the units having different GST registrations. This allows the supplying business unit to recover the costs, even after being treated as separate entities.

Input Service Distributor

Input Service Distribution (ISD) in GST transactions is a mechanism that allows businesses to distribute the benefit of Input Tax Credit on all input services received by one business unit amongst the other units of a same entity.

The Major differences between Cross Charge and ISD is as given in the table below:

Differences	Input Service Distributor (ISD)	Cross Charge Mechanism
Nature of Transaction	Transfer of ITC on Input Services, received from a third party.	GST is charged on the transaction of goods or services from one business unit to another.
Applicability	ISD as the definition itself indicates, is only for services provided by a third person to different units of a Business entity.	Cross Charge is both on Goods and Services transferred from one unit to another.
Compliance	A unit registered as ISD has to file GSTR 6 and GSTR 6A.	It's only a concept. Both the registered units need to file their GST returns and no specific compliance is required.
Salient Feature	It's only a process for distributing credit for input services	It provides a reimbursement of expenses.

18.7 The Finance Bill, 2025 has made the following changes in respect of ISD

Clause 116 of the Bill seeks to amend section 2 of the Central Goods and Services Tax Act relating to definitions.

It is proposed to amend the definition of “Input Service Distributor” in clause (61) of said section 2 so as to explicitly provide for distribution of input tax credit by the Input Service Distributor in respect of inter-state supplies, on which tax has to be paid on reverse charge basis, by inserting reference to sub-section (3) and sub-section (4) of section 5 of the Integrated Goods and Services Tax Act in the definition of Input Service Distributor.

This amendment shall take effect from 1st day of April, 2025.

Clause 120 of the Bill seeks to amend sub-section (1) of section 20 of the Central Goods and Services Tax Act so as to explicitly provide for distribution of input tax credit by the Input Service Distributor in respect of inter-State supplies, on which tax has to be paid on reverse charge basis, by inserting a reference to sub-section (3) and sub-section (4) of section 5 of the Integrated Goods and Services Tax Act in the said sub-section.

It further seeks to amend sub-section (2) of the said section so as to explicitly provide for distribution of input tax credit by the Input Service Distributor in respect of inter-State supplies, on which tax has to be paid on reverse charge basis, by inserting reference to subsection (3) and sub-section (4) of section 5 of the Integrated Goods and Services Tax Act in the said sub-section.

This amendment shall take effect from 1st day of April, 2025.

19. REVERSE CHARGE MECHANISM (RCM)

19.1 Generally, the supplier of goods or services is liable to pay GST. However, in specified cases like imports and other notified supplies, the liability may be cast on the recipient under the reverse charge mechanism. **Reverse charge means the liability to pay tax is on the recipient of supply of goods or services instead of the supplier of such goods or services in respect of notified categories of supply**.

There are two type of reverse charge scenarios provided in law
.
i) First is dependent on the nature of supply and/or nature of supplier. This scenario is covered by section 9 (3) of the CGST Act, 2017 and section 5 (3) of the IGST Act.

ii) Second scenario is covered by section 9 (4) of the CGST Act and section 5 (4) of the IGST Act where taxable supplies by any unregistered person to a registered person is covered.

19.2 As per the provisions of section 9(3) of CGST Act, 2017/section 5(3)of IGST Act, 2017, the Government may, on the recommendations of the Council, by notification, **specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis** by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

19.3 Similarly, section 9(4) of CGST Act, 2017/section 5(4) of IGST Act, 2017 provides that the tax in respect of the supply of taxable goods or services or both by a supplier, **who is not registered,** to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Accordingly, whenever a registered person procures supplies from an unregistered supplier, he needs to pay GST on reverse charge basis. However, intra-state supplies where the aggregate value of such supplies of goods or services or both received by a registered person from any or all the unregistered suppliers is less than five thousand rupees in a day are exempted.

19.4 Registration- A person who is required to pay tax under reverse charge has to compulsorily register under GST and the **threshold limit of Rs. 20 lakhs (Rs. 10 lakhs for special category states except J & K) is not applicable to him**.

19.5 ITC- A supplier cannot take ITC of GST paid on goods or services used to make supplies on which the recipient is liable to pay tax.

19.6 Time of Supply- The time of supply is the point when the supply is liable to GST. One of the factors relevant for determining time of supply is the person who is liable to pay tax. In reverse charge, the recipient is liable to pay GST. Thus, time of supply for

supplies under reverse charge is different from the supplies which are under forward charge.

In case of supply of goods, time of supply is earliest of: -

(a) date of receipt of goods; or

(b) date of payment as per books of account or date of debit in bank account, whichever is earlier; or

(c) the date immediately following thirty days from the date of issue of invoice or similar other documents.

In case of supply of services, time of supply is earliest of: -

(a) date of payment as per books of account or date of debit in bank account, whichever is earlier; or

(b) the date immediately following sixty days from the date of issue of invoice or similar other documents.

Where it is not possible to determine time of supply using above methods, the time of supply would be the date of entry in the books of account of the recipient.

19.7 Compliances in respect of supplies under reverse charge mechanism:

1. As per section 31 of the CGST Act, 2017 read with Rule 46 of the CGST Rules, 2017, every tax invoice has to mention whether the tax in respect of supply in the invoice is payable on reverse charge. Similarly, this also needs to be mentioned in receipt voucher as well as refund voucher, if tax is payable on reverse charge.
2. Maintenance of accounts by registered persons: Every registered person is required to keep and maintain records of all supplies attracting payment of tax on reverse charge.
3. Any amount payable under reverse charge shall be paid **by debiting the electronic cash ledger**. In other words, reverse charge liability cannot be discharged by using input tax credit. However, after discharging reverse charge liability, credit of the same can be taken by the recipient, if he is otherwise eligible.
4. Invoice level information in respect of all supplies attracting reverse charge, rate wise, are to be furnished separately in the table 4B of GSTR-1.
5. Advance paid for reverse charge supplies is also leviable to GST. The person making advance payment has to pay tax on reverse charge basis.

Rule 47A. Time limit for issuing tax invoice in cases where recipient is required to issue invoice. -

Notwithstanding anything contained in rule 47, where an invoice referred to in rule 46 is required to be issued under clause (f) of sub-section (3) of section 31 by a registered person, who is liable to pay tax under sub-section (3) or sub-section (4) of section 9, he shall issue the said invoice within a period of thirty days from the date of receipt of the said supply of goods or services, or both, as the case may be.

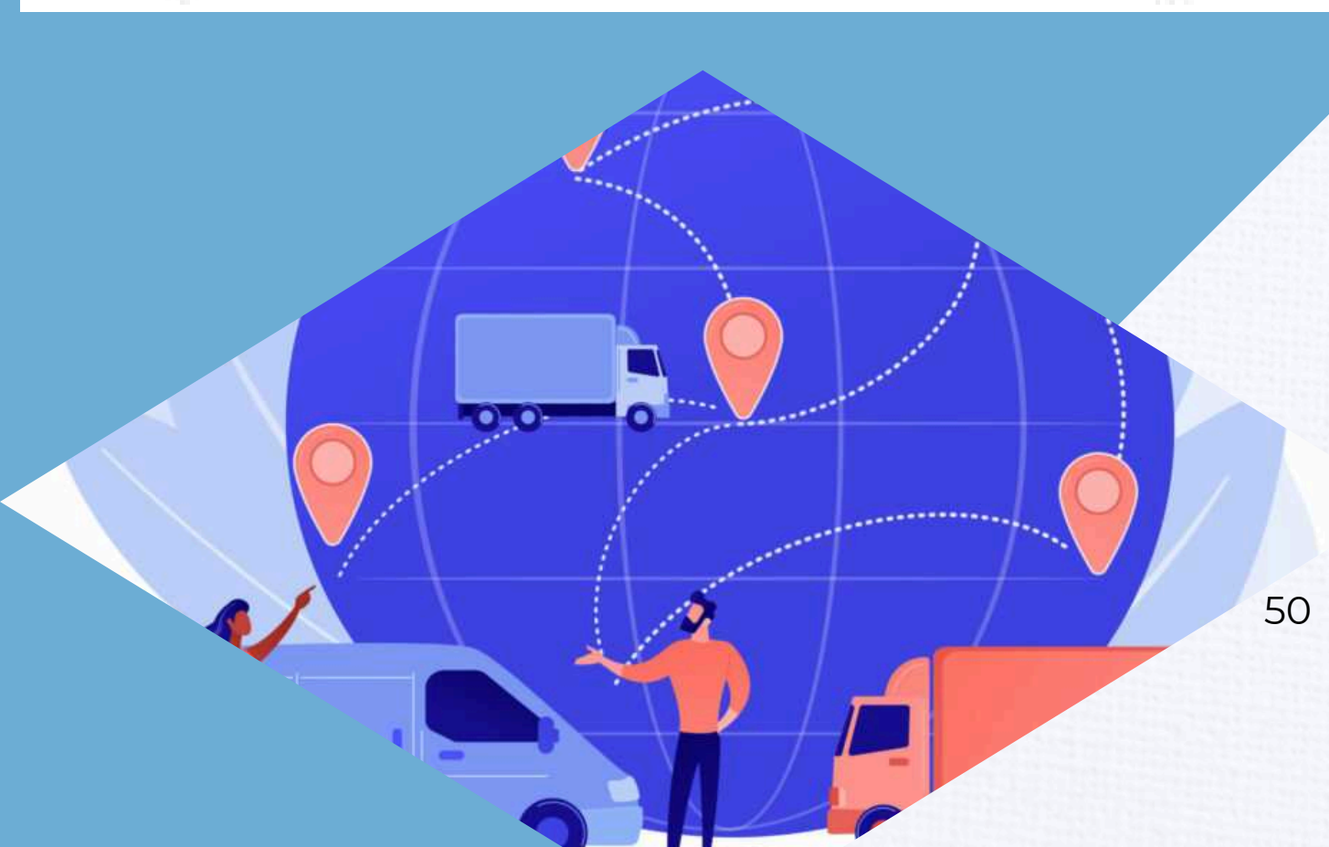
19.8 Supplies of goods under reverse charge mechanism:

Sl. No	Description of supply of goods	Supplier of goods	Recipient of goods
1	Cashew nuts, not shelled or peeled	Agriculturist	Any registered person
2	Bidi wrapper leaves (tendu)	Agriculturist	Any registered person
3	Tobacco leaves	Agriculturist	Any registered person
4	Supply of lottery	State Government, Union Territory or any local authority	Lottery distributor or selling agent
5	Silk yarn	Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn	Any registered person

19.9 Supplies of services under reverse charge mechanism:

Sl. No	Description of supply of goods	Supplier of goods	Recipient of goods
1	GTA Services |	Goods Transport Agency (GTA)	Any factory, society, cooperative society, registered person, body corporate, partnership firm, casual taxable person; located in the taxable territory
2	Legal Services by advocate	An individual advocate, including a senior Advocate or a firm of advocates	Any business entity located in the taxable territory
3	Services supplied by an arbitral tribunal to a business entity	An arbitral tribunal	Any business entity located in the taxable territory
4	Services provided by way of sponsorship to anybody corporate or partnership firm	Any person	Anybody corporate or partnership firm located in the taxable territory

5	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding: - (1) renting of immovable property, and (2) services specified below: - (i) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers	Central Government, State Government, Union territory or local authority	Any business entity located in the taxable territory
6	Services supplied by a director of a company or a body corporate to the said company or the body corporate	A director of a company or a body corporate	The company or a body Corporate located in the taxable territory
7	Services supplied by an insurance agent to any person carrying on insurance business	An insurance agent	Any person carrying on Insurance business, located in the taxable territory
8	Services supplied by a recovery agent to a banking company or a financial institution or a nonbanking financial company	A recovery agent	A banking company or a financial institution or a nonbanking financial company, located in the taxable territory
9	Supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under section 13(1)(a) of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer or the like	Author or music composer, photographer, artist, or the like	Publisher, music company, Producer or the like, located in the taxable territory
10	Renting of Residential Property	Individual	Registered taxable person



20. ITC Under Works Contract

The term “works contract” has been defined under section 2(119) of the CGST Act thus: -

"Works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

The words used in the definition of “works contract” have not been defined anywhere in the GST law. One can thus rely on other laws, dictionary meaning or common parlance meaning for the same. It is to be kept in mind that for the purpose of works contract all the above services should be:

i. Carried out in respect of immovable property.

ii. It should not be pure services but transfer of goods should be involved along with such services.

21. ITC - CONSTRUCTION OF IMMOVABLE PROPERTY AND WORKS CONTRACT

It is to note that, Section 17 (5) (c) & (d) specifies the conditions for utilising ITC relating to Works Contract and Immovable Property.

21.1 Section 17(5): Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely: -

(a) .....

(b) .....

(c) **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;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

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;

....

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 —

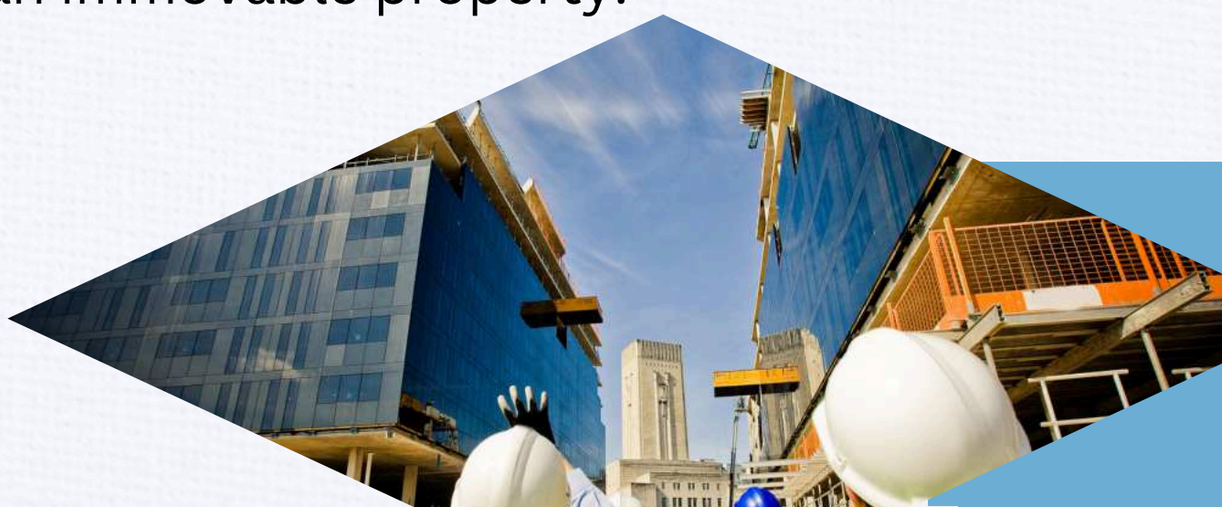
(i) land, building or any other civil structures;
(ii) telecommunication towers; and
(i) pipelines laid outside the factory premises.

21.2 The provisions of section 17(5)(c) and section 17(5)(d) of the CGST Act relate to blocking of ITC in relation to goods or services or both used for construction of **immovable property**. The provisions of both the said subsections are to be read along with the explanations given after section 17(5)(d) and section 17(6). The provisions of both clauses (c) and (d) are inter-linked to each other and are to be read conjointly.

Blocking of ITC is applicable under section 17(5)(c) and 17(5)(d) only when the following conditions are satisfied: -

(i) The property being constructed should have been capitalized in the books of accounts.

(ii) The property being constructed should be an immovable property.



(iii) It should have been used for construction of property other than plant and machinery.

21.3 A summary of the eligibility of ITC as per the provisions of section 17(5)(c) and (d) is given in the Table below:

SL NO	PROPERTY	CONSTRUCTION	BOOKS OF ACCOUNTS	ELIGIBILITY (Yes/No)
1	Immovable	Other than Plant & Machinery	Capitalised	No
2	Movable	P&M or otherwise	Capital or Revenue	Yes
3	Movable or Immovable	P&M	Capital or Revenue	Yes
4	Movable or Immovable	P&M or otherwise	Revenue	Yes

The availability of ITC in case of a works contract service is shown in the following table

Works Contract		
Construction of Immovable Property	Construction of Plant and Machinery	Further supply of works Contract
ITC Not Available	ITC Available	ITC Available

22. TERM - CAPITALISED

Meaning of the term 'Capitalised':

22.1 As per section 17(5)(c) and (d) of the CGST Act, one of the conditions for denial of ITC on activity of repair, renovation, alteration, re-construction, etc. is that such expense should have been capitalised in the books of accounts.

If the expense is part of the revenue account for such activities, then ITC on the same cannot be denied under section 17(5)(c) and (d) of the CGST Act.

The question as to what is to be treated as capitalised has been answered through the definition of 'inputs' and 'capital goods' provided under sections 2(59) and 2(19) of the CGST Act respectively. These definitions have been reproduced hereunder:

"Section 2(59): "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(19): "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;"

From the above, it can be stated that capital goods refer to the goods which have been capitalised 'in the books of accounts' of the relevant person.
22.2 To fortify the stand that capitalization refers to the treatment as per the books of accounts itself, the same has been clarified in Para 62 of the Circular No. 125/44/2019-GST, dated 18-11-2019 as follows:

"It has been represented that on certain occasions, departmental officers do not consider ITC on stores and spares, packing materials, materials purchased for machinery repairs, printing and stationery items, as part of net ITC on the grounds that these are not directly consumed in the manufacturing process and therefore, do not qualify as input. There are also instances where stores and spares charged to revenue are considered as capital goods and therefore the ITC availed on them is not included in net ITC, even though the value of these goods has not been capitalised in his books of account by the applicant. It is clarified that the ITC of the GST paid on inputs, including inward supplies of stores and spares, packing materials etc., shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero rated supplies, and the ITC for such inputs is not restricted under Section 17(5) of the CGST Act. Further, capital goods have been clearly defined in Section 2(19) of the CGST Act as goods whose value has been capitalised in the books of account and which are used or intended to be used in the course or furtherance of business. Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods".

22.3 The above circular provides a clear inference that if any item has not been capitalised in the books account, then the same cannot be capital goods and ITC cannot be restricted under section 17(5) of the CGST Act. Hence, it is important to determine the treatment of invoices pertaining to repair, renovation, alteration, etc. in the books of accounts for determining whether it has been capitalised or not.

23.NATURE OF SUPPLY IN A WORKS CONTRACT

In a works contract both supply of goods and services are involved hence it shall be treated as a composite supply.

23.1 Composite supply has been defined under section 2(30) of the CGST Act as under:

“Composite Supply” means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration. - Where TNT bars are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

23.2 Now arises a question, whether the supply of works contract should be treated as supply of goods or services under GST i.e., what should be treated as a principal supply.

In case of a works contract, dominant nature of a contract is not required to be reviewed. **This is because “Entry no. 6 to Schedule II of the CGST Act, deems a works contract to be a supply of service”**.

Here it is required to note that, the principal supply (i.e., whether goods /service) is to be reviewed only where the specified work is carried out in relation to the transfer of movable property.

23.3 In case of immovable property, Entry 5 (b) of Schedule II shall also apply, which states that:

“5. Supply of services

The following shall be treated as supply of services, namely: -

(a) .....

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.”

24. ITC - PLANT AND MACHINERY

The Clauses (c) and (d) of Section 17 (5) allows ITC on Plant and Machinery.

24.1 It is evident that, there is no restriction on availability of ITC on movable plant and machinery. However, section 17(5) places restriction on items which are in the nature of immovable property. Here an exception has been carved out in respect of plant and machinery which are immovable in nature and thus ITC will be allowed for goods and services which are used for construction of such plant and machinery.

24.2 The term “plant and machinery” has been defined by way of an explanation under section 17(6) of the CGST Act, as below-

“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—

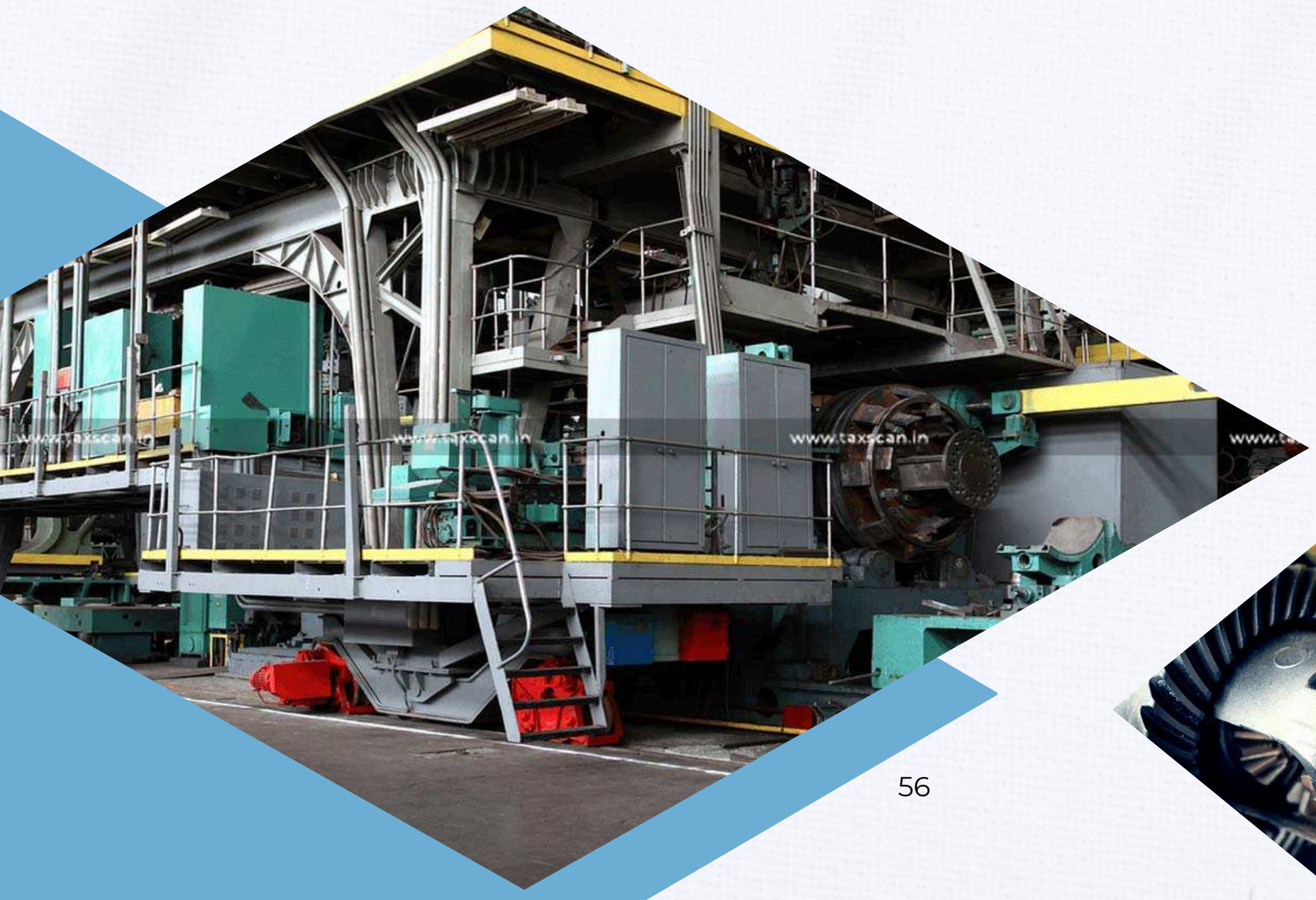
(i) land, building or any other civil structures;

(ii) telecommunication towers; and

(iii) pipelines laid outside the factory premises.”

24.3 From the above, any apparatus, equipment and machinery which is used for making outward supply of goods or services or both qualifies as plant and machinery. But specifically excludes:

Land, building or any other civil structures are excluded from the purview of "plant and machinery”. Telecommunication towers and pipelines laid outside the factory premises are also specifically excluded.



25. ITC - ON OWN ACCOUNT

As per section 17(5)(d) of the CGST Act, ITC **shall not be allowed** when goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

The use of the term “on own account” has been done only in section 17(5)(d). However, even if a works contract service as specified in section 17(5)(c) is used on own account credit of the same **shall not be allowable.** Credit of works contract service is allowed only when used for providing further works contract services.

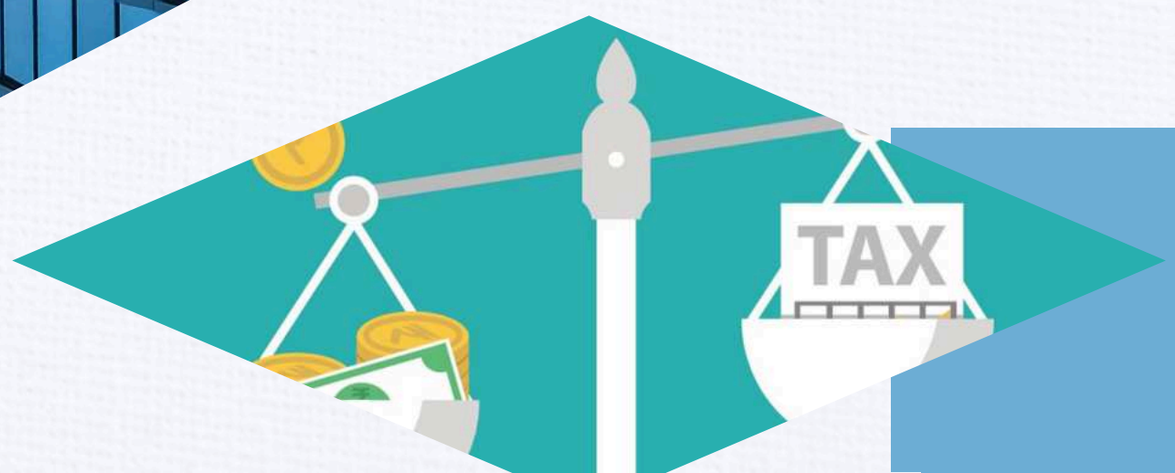
26. ITC ON GOODS OR SERVICES OR BOTH USED FOR PERSONAL CONSUMPTION

Section 17(5): Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit **shall not be available** in respect of the following, namely: -

(a) .....

.....

(g) Goods or services or both used for personal consumption



27. Supreme Court Judgement on clauses (c) & (d) of Subsection (5) of Section 17 of CGST Act

27.1 SUPREME COURT JUDGEMENT

CC CGST Vs SAFARI RETREATS PVT LTD (October 03,2024)

Issue - The issue arising in this case concern clauses (c) and (d) of sub-section (5) of Section 17 of the Central Goods and Services Tax Act, 2017 – There is a challenge to the constitutional validity of these provisions, as well as a prayer for reading them down -The Tax Payer, involved in the construction of a shopping mall, claims to have accumulated input credit of GST exceeding Rs. 34 crores due to goods and services consumed in the construction - The Tax Payers rental income from letting out units in the mall is also subject to CGST - The respondent wishes to utilize the accumulated Input Tax Credit (ITC) against this rental income, but was advised to pay GST on the rent without any deduction for ITC because of the exception in Section 17(5)(d) – Consequently the Tax Payer, filed a writ petition in Orissa High Court seeking a declaration that Section 17 (5) (d) does not apply to construction intended for letting out- Alternatively if the bar is applicable, the tax payer contended that the same is unconstitutional under Article 14 and 19 (1) (g) of the constitution.

On the Writ Petition, the Hon Orissa High Court ruled on April 17, 2019, that Section 17(5)(d) should be read down to align with the intent of ITC to benefit the assessee, allowing the tax payer to claim ITC for GST paid on the construction.

Similar Writ Petitions were filed challenging clauses (c) and (d) of section 17 (5) and also exempting petitioners from the bar imposed by Section 16 (4).

Held - The impugned judgment in Civil Appeal Nos. 2948 and 2949 of 2023 is set aside, and the writ petitions are remanded to the High Court of Orissa to determine whether the shopping mall qualifies as a “plant” under clause (d) of Section 17(5) - The appeals are partly allowed for this purpose - The Court refrains from making a final determination on whether the construction of immovable property by the petitioners constitutes a plant, emphasizing that each case must be assessed on its merits using a functionality test - This issue should be addressed in appropriate proceedings where factual adjudication can occur - Petitioners may pursue suitable proceedings to raise this issue - The writ petitions are rejected but are subject to the interpretation of clause (d) of sub-section (5) of Section 17 of the CGST Act as outlined in this judgment.

Hon. Supreme Court has laid down the functionality test. Hon. Supreme Court has held that whether a building is a plant is a question of fact. SC held that if it is found on facts that a building has been so planned and constructed as to serve an assessee’s special technical requirements, it will qualify to be treated as a plant for the purposes of investment allowance. The word ‘plant’ used in a bracketed portion of Section 17(5)(d) cannot be given the restricted meaning provided in the definition of “plant and machinery”, which excludes land, buildings or any other civil structures. Therefore, in a given case, a building can also be treated as a plant, which is excluded from the purview of the exception carved out by Section 17(5)(d) as it will be covered by the expression “plant or machinery”. We have discussed the provisions of the CGST

Act earlier. To give a plain interpretation to clause (d) of Section 17(5), the word “plant” will have to be interpreted by taking recourse to the functionality test.

SC also noted that, one of the submissions of the ASG is that, as the Union legislature cannot levy tax on land and buildings, the chain is broken once a building comes into existence by using goods and services. As discussed earlier, Schedule II of the CGST Act recognises the activity of renting or leasing buildings as a supply of service. Even the activity of the construction of a building intended for sale is a supply of service if the total consideration is accepted before the completion certificate is granted. Therefore, if a building qualifies to be a plant, ITC can be availed against the supply of services in the form of renting or leasing the building or premises, provided the other terms and conditions of the CGST Act and Rules framed thereunder are fulfilled. Therefore, the argument regarding breaking the chain cannot be accepted in its entirety. However, if the construction of a building by the recipient of service is for his own use, the chain will break, and therefore, ITC would not be available.

SC further held that, one of the arguments of ASG was that if different meanings were given to the words “plant and machinery” and “plant or machinery”, it could result in discriminatory treatment. Clause (c) of Section 17(5) operates in a completely different field, as it applies only to works contract services supplied for the construction of immovable property. Clause (d) deals with services received by a taxable person for the construction of an immovable property on his own account. As clauses (c) and (d) operate in substantially different areas, the argument of ASG relying on discrimination cannot be accepted.

Under the CGST Act, as observed earlier, renting or leasing immovable property is deemed to be a supply of service, and it can be taxed as output supply. Therefore, if the building in which the premises are situated qualifies for the definition of plant, ITC can be allowed on goods and services used in setting up the immovable property, which is a plant.

In the main appeal, which is the subject matter of this group, the High Court has not decided whether the mall in question will satisfy the functionality test of being a plant. The reason is that the High Court has done the exercise of reading down the provision. Each mall is different. Therefore, in each case, fact-finding enquiry is contemplated. Thus, in the facts of the case, we will have to send the case back to the High Court to decide whether, on facts, the mall in question satisfies the functionality test so that it can be termed as a plant within the meaning of bracketed portion in Section 17(5)(d). The same applies to warehouses or other buildings except hotels and cinema theatres. A developer may construct a mall predominantly to sell the premises therein after obtaining an occupation certificate. Therefore, it will be out of the purview of clause 5(b) of Schedule II. Each case will have to be tested on merits as the question whether an immovable property or a building is a plant is a factual question to be decided.

Essentially, the challenge to constitutional validity is that, in the present case, the provisions do not meet the test of reasonable classification, which is a part of Article 14 of the Constitution of India. To satisfy the test, there must be an intelligible

differentia forming the basis of the classification, and the differentia should have a rational nexus with the object of legislation. The Union of India rightly contends that immovable property and immovable goods for the purpose of GST constitute a class by themselves. Clauses (c) and (d) of Section 17(5) apply only to this class of cases. The right of ITC is conferred only by the Statute. Therefore, unless there is a statutory provision, ITC cannot be enforced. It is a creation of a statute, and thus, no one can claim ITC as a matter of right unless it is expressly provided in the statute. It cannot be disputed that the legislature can always carve out exceptions to the entitlement of ITC under Section 16 of the CGST Act.

Therefore, the cases covered by clauses (c) and (d) of Section 17(5) are entirely distinct from the other cases. This appears to be done to ensure the object of not encroaching upon the State's legislative powers under Entry 49 of List II. Therefore, it is not possible to accept the submission that the difference is not intelligible and has no nexus to the object sought to be achieved. Moreover, to decide why transactions covered by clauses (c) and (d) are separately classified, the Court will have to go into complex questions involving fiscal adjustments of diverse elements. The Court has no experience or expertise to embark upon the said exercise.

We fail to understand the argument that the classification is underinclusive and creates discrimination. In this case, equals are not being treated as unequals. The test of vice of discrimination in taxing law is less rigorous. Ultimately, the legislature was dealing with a complex economic problem. By no stretch of the imagination, clauses (c) and (d) of Section 17(5) can be said to be discriminatory. No amount of verbose and lengthy arguments will help the assessees prove the discrimination. In the circumstances, it is not possible for us to accept the plea of clauses (c) and (d) of Section 17(5) being unconstitutional;

Though, violation of Articles 19(1)(g) and 300A has been alleged, it is not elaborated by the assessees how such a violation is made out;

While dealing with a taxing statute, it can always be said that, ideally, a particular provision ought not to have been incorporated or ought to have been incorporated with a modification. Even if this can be said, per se, the particular provision does not become unconstitutional. The Court cannot impose its views on the legislature;

The words “thirtieth day of November” were substituted with effect from 1st October 2022 for the words “due date of furnishing of the return under Section 39 for the month of September”. We fail to understand how sub-section (4) of Section 16 becomes discriminatory when the legislature says that a registered person shall not be entitled to take ITC in respect of any invoice or debit note for the supply of goods or services or both after the thirtieth day of November following the end of the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier. It is not shown how the provision is arbitrary and discriminatory. The fact that the provisions could have been drafted in a better manner or more articulately is not sufficient to attract arbitrariness;

As we are upholding the constitutional validity of clauses (c) and (d) of Section 17(5), and as held earlier, its plain interpretation does not lead to any ambiguity, the question of reading down the provisions does not arise;

27.2 ANALYSIS;-

In legal terms, "reading down" refers to a judicial process where a court interprets or narrows the scope of a law to make it constitutionally valid or to avoid it being unjust, overly broad, or conflicting with higher legal principles. Instead of declaring the entire law invalid, the court constrains its meaning so it aligns with the constitution or legal standards.

Main Points in Hon SC's decision:-

i) Functionality Test- Whether the construction of immovable property constitutes a Plant

ii) That, a building can also be treated as a plant and will be covered by the expression "Plant or Machinery". To interpret clause (d) of Section 17 (5), the word 'Plant' will have to be interpreted by taking recourse to the functionality test.

iii) That, clause (c) & (d) of Section 17 (5) operates in a completely different field and hence different meaning given to words 'Plant and Machinery' and 'Plant or Machinery' are not discriminatory.

iv) If building qualifies the definition of Plant, ITC can be allowed

v) HC (which allowed ITC to the taxpayer) in its decision has done reading down of the provision but the case is sent back to examine whether the mall in question satisfies the functionality test

vi) Test of reasonable classification, which is a part of Article 14 of Constitution of India and the contention of Union of India that Immovable Property & Immovable goods constitutes a Class by themselves for the purpose of GST is correct and right of ITC is conferred only by the statute.

vii) Argument of classification is underinclusive & discriminatory is not proved. Hence Section 17(5) is not unconstitutional.

viii) Violation of Articles 19 (1) (g) and 300 (A) is not elaborated

ix) That, Section16 (4) is neither arbitrary nor discriminatory.

The Honourable Supreme Court has upheld the constitutional validity of Sections 16 and Section 17 of GST Act. It is also pertinent to note that, SC has directed the HC concerned to look into the matter of functionality test i.e whether a building satisfies the test of a 'plant' keeping in mind the guidelines issued by it in this order. The same applies to warehouses or other buildings except hotels and cinema theatres. This issue should be addressed in appropriate proceedings where factual adjudication can occur - Petitioners may pursue suitable proceedings to raise this issue. The writ petitions are rejected but are subject to the interpretation of clause (d) of sub-section (5) of Section 17 of the CGST Act as outlined in this judgment.

27.3 After the above Judgement/Interpretation of Hon. Supreme Court, the government intends to make the following change in Section 17, which will be notified in due course, once the Finance Bill 2025 gets the presidential assent.

Section 17 (5) (d) reads
(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Clause 119 of the Finance Bill, 2025 seeks to amend clause (d) of sub-section (5) of section 17 of the Central Goods and Services Tax Act so as to substitute the expression “plant or machinery” with the expression “plant and machinery” to remove any ambiguity in interpretation for the purpose of availment of input tax credit in such cases.

It further seeks to insert an Explanation to clarify that the said amendment is made notwithstanding anything to the contrary contained in any judgment, decree or order of any court or any other authority.

This amendment shall take effect retrospectively from 1st day of July, 2017.

This may lead to significant interpretation and further litigation regarding what constitutes a PLANT!

28. Compilation of Important CBIC circulars related to Input Tax Credit (ITC) under GST from July 1, 2017, to March 15, 2025 stacked chronologically

2017

1.Circular No. 26/2017-GST (29-12-2017): Clarification on furnishing Bond/Letter of Undertaking for exports without payment of IGST.

2018

2.Circular No. 38/12/2018-GST (26-03-2018): Clarification on Job Work & ITC under GST.

3.Circular No. 48/22/2018-GST (14-06-2018): Clarifications on SEZ and ITC-related issues.

4.Circular No. 71/45/2018-GST (26-10-2018): Clarification on Recovery of ITC wrongly distributed by ISD

5.Circular No. 79/53/2018-GST (31-12-2018): Clarification on ITC -Calculation of refund amount of Accumulated ITC on account of IDS

2019

6.Circular No. 98/17/2019-GST (23-04-2019): Order of utilisation of ITC as per Rule 88A of CGST Rules.

7.Circular No. 123/42/2019-GST (11-11-2019): Clarification on restrictions in availment of ITC in terms of sub-rule (4) of rule 36 of the CGST Rules.

8.Circular No. 105/24/2019-GST (28-06-2019): Clarification on eligibility of ITC on Secondary or post discount Sale

2020

9.Circular No. 142/12/2020-GST (09-10-2020): Clarifications on ITC eligibility and application of Rule 36(4).

10.Circular No. 143/13/2020-GST (10-11-2020): Guidance on ITC adjustments under QRMP Scheme.

2021

11.Circular No. 167/23/2021-GST (17-12-2021): Clarification regarding applicability of ITC on ECOM

12.Circular No. 160/16/2021 (20-09-2021): Clarifications on GST-ITC related issues

2022

13. Circular No. 183/15/2022-GST (27-12-2022): Clarification on differences in ITC availed in GSTR-3B vs GSTR-2A for FY 2017-18 and FY 2018-19.

14. Circular No. 182/14/2022-GST (10-11-2022): Clarification on differences in ITC availed in GSTR-3B vs GSTR-2A for FY 2017-18 and FY 2018-19.

15. Circular No. 184/16/2022-GST (27-12-2022): Clarification on the entitlement of input tax credit where the place of supply is determined in terms of the proviso to sub-section (8) of section 12 of the Integrated Goods and Services Tax Act, 2017

2023

16.Circular No. 193/23/2023-GST (17-07-2023): Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period 01.04.2019 to 31.12.2021

17.Circular No. 195/07/2023-GST (17-07-2023): Clarification on availability of ITC in respect of warranty replacement of parts and repair services during warranty period

2024

18. 214/08/2024-GST, dt: 26-06-2024: Clarification on the requirement of reversal of input tax credit in respect of the portion of the premium for life insurance policies which is not included in taxable value.

19. 216/10/2024-GST, dt: 26-06-2024: Clarification in respect of GST liability and input tax credit (ITC) availability in cases involving Warranty/ Extended Warranty, in furtherance to Circular No. 195/07/2023-GST dated 17.07.2023

20. Circular No. 217/11/2024-GST (26-06-2024): Entitlement of ITC by the insurance companies on the expenses incurred for repair of motor vehicles in case of reimbursement mode of insurance claim settlement.

21. Circular No. 219/13/2024-GST (26-06-2024): Clarification on availability of input tax credit on ducts and manholes used in network of optical fiber cables (OFCs) in terms of section 17(5) of the CGST Act, 2017

22. Circular No. 231/25/2024-GST (11-09-2024): Clarification on availability of input tax credit in respect of demo vehicles.

23. Circular No. 237/31/2024-GST (15-10-2024): Clarifying issues regarding implementation of provisions of sub-sections (5) and (6) of section 16 of CGST Act.

24. Circular No. 240/34/2024-GST (31-12-2024): Clarification in respect of input tax credit availed by electronic commerce operators where services specified under Section 9(5) of Central Goods and Services Tax Act, 2017 are supplied through their platform
Circular No. 241/35/2024-GST (31-12-2024): Clarification on availability of input tax credit as per clause (b) of sub-section (2) of section 16 of the CGST Act.

2025

Nil

For a comprehensive list, it is advisable to refer to official CBIC or GST Council resources.

Disclaimer

The contents given in this book are for CGST Tax officer's awareness and educational purpose only and the readers may refer to the legal text for understanding the details and the legal implications


THANK
YOU