



# Critical Issues in Input Tax Credit



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**[GMJ](https://www.youtube.com/GMJ)**



WHAT IS



• GOODS &amp; SERVICES TAX •

FAQ : It is a **destination based tax** on **consumption of goods and services**. It is proposed to be levied at all stages right from manufacture up to final consumption with **credit of taxes paid at previous stages available as setoff**. In a nutshell, only value addition will be taxed and burden of tax is to be borne by the final consumer.

# Capital Goods Sec 2(19)

- **means**
  - goods, the value of which is capitalised
  - in the books of accounts of the person claiming the credit and
  - which are used or intended to be used
  - in the course or furtherance of business

**Services Capitalised**  
**Software?**



## Input means

Sec 2(59)

**any goods other than capital goods**

used or intended to be used by a supplier

in the course or furtherance of business

## Input service means - Sec 2(60)

**any service**

used or intended to be used by a supplier

in the course or furtherance of business

# Eligibility and Condition for ITC – 16(1)

- A Ltd. Is into the business of supply of service. A Ltd. Crossed turnover of Rs. 20 Lakhs on 1<sup>st</sup> December, 2019 but registered on 15<sup>th</sup> March, 2020. During the period 1<sup>st</sup> December to 14<sup>th</sup> March procured various goods and services, can company claim ITC of the same?
- Every registered taxable person
- subject to such conditions and restrictions and in the manner specified in section 49
- entitled to take **credit of input tax** charged on any supply of goods or services 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

# Agarwal Coal Corporation Pvt. Ltd. – AAR MP

- The Applicant is into the business of sale of coal and supply of Service of Coal handling and distribution service.
- The applicant avail various services at port at the time of import of Coal.
- ITC on the above is available.

# ITC wrongly availed

During the year 2018-19, -

Inter-state purchases: Rs. 1,00,000

ITC on above: Rs. 18,000 (IGST)

ITC wrongly availed as Rs. 9,000 (CGST) and Rs. 9,000 (SGST)

The above error was identified while filing GSTR 9. How can the same be rectified?

The ITC wrongly availed under the head CGST and SGST shall have to be reversed with interest.

The correct ITC of IGST can not be claimed while filing GSTR 9, since the last date for availment of ITC for FY 2018-19 was 20<sup>th</sup> October, 2019.

# When is ITC available 16(2) GMJ

Possession of a tax invoice, etc., issued by a **supplier registered** under GST



**Received** the goods and/or services

Bill to  
Shipped to  
Goods  
& **Services**

The tax charged in respect of such supply has been **actually paid** to the credit of the appropriate Government,

How to  
Know?


Advance paid  
Air Ticket  
Insurance  
Policy

**Furnished** the return under section 39



# Documents Required for Claiming ITC – Rule 36

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- Invoice issued as per Section 31 
- In case of reverse charge only after the payment of Tax
- Debit Note
- Bill of Entry or any other document as specified under Customs Act, 1962
- ISD Invoice or ISD Credit Note or any other document by an ISD.
- ITC is availed only if all particulars is furnished in FORM GSTR-2 by such person

RCM of 18-19  
paid now ITC  
available?



# ITC Shall not be available

- Any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, willful misstatement or suppression of facts. [Rule 36(3)]

10% w.e.f. 1<sup>st</sup> January, 2020

- ITC to be **availed** by a registered person in respect of **invoices or debit notes**, the details of which have not been uploaded by the supplier under sub-section (1) of section 37, **shall not exceed 20 % of the eligible credit available** in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37. [Rule 36(4)] inserted by notification 49/2019 CT Dtd. 9<sup>th</sup> October, 2019.

# Circular No. 123/42/2019-GST **GMJ**

**DT. 11<sup>th</sup> Nov, 2019**

- Full ITC in respect of Import and ISD
- The restriction of 36(4) will be applicable only on the invoices, etc. on which credit is availed after 09.10.2019.
- The restriction imposed is not supplier wise
- The calculation would be based on only those invoices which are otherwise eligible for ITC
- The taxpayer may have to ascertain the same from his auto populated **FORM GSTR 2A as available on the due date of filing of FORM GSTR-1 under sub-section (1) of section 37.**

# Calculation of Restrictions



Sr. No	Particulars		Before 09.10.19	09.10.19 to 31.12.19	On or after 01.01.20
1	Total ITC as per Books		55,00,000	55,00,000	55,00,000
2	Eligible ITC as per Books		50,00,000	50,00,000	50,00,000
3	Ineligible ITC as per Books	(1-2)	5,00,000	5,00,000	5,00,000
4	Total ITC as per GSTR-2A		35,00,000	35,00,000	35,00,000
5	Eligible ITC as per GSTR-2A		30,00,000	30,00,000	30,00,000
6	Ineligible ITC as per GSTR-2A	(4-5)	5,00,000	5,00,000	5,00,000
7	20% / 10% of the Eligible ITC as per Form GSTR-2A [Rule 36(4)]	(5*20%) (5*10%)	NA	6,00,000	3,00,000
8	Maximum Permissible ITC [As per Rule 36(4)]	(5+7)	NA	36,00,000	33,00,000
9	ITC allowable		50,00,000	36,00,000	33,00,000
10	Additional Cash Outflow / Impact [As per Rule 36(4)]			14,00,000	17,00,000

# When can Balance ITC be claimed?

- Can claim **proportionate ITC** in any of the succeeding months as and when details of some invoices are uploaded by the suppliers.
- The details of which are not uploaded remains under ~~20~~ 10 per cent of the eligible ITC, the details of which are uploaded by the suppliers.

# When can Balance ITC be claimed?

Particulars	Formula	Amount
Balance ITC invoices Uploaded by the suppliers in the month of February		11,00,000
Fresh ITC Can be claimed in January	Amount of fresh invoices uploaded/1.1	<b>10,00,000</b>
Balance ITC invoices Uploaded by the suppliers in the month of March		9,00,000
<b>Fresh ITC Can be claimed in February</b>	<b>Amount of fresh invoices uploaded/1.1</b>	<b>8,18,182</b>
Maximum allowed (17,00,000-10,00,000)		<b>7,00,000</b>

# Restriction on Availment of ITC

- It is Important to Reconcile GSTR 2-A with the Books of Accounts before filing of GSTR 3-B.
- If More than 20% (10% w.e.f. 01.01.2020) ITC is claimed, department may seek interest, Penalty on the same.
- Refund Applications also be rejected on the said grounds.
- Some Suppliers may file Quarterly GSTR-1.
- To be calculated separately for CGST, SGST/UTGST and IGST

Gujrat HC admitted the writ challenging validity of Rule 36(4) in case of Society for Tax Analysis and Research

# Credit note as per BOA or GSTR 2A?

Particulars	Value
Credit note appearing in BOA	Rs. 10 Lakhs
Credit note appearing in GSTR 2A	Rs. 5 Lakhs

ITC Reversal of Credit Note is to be done as per BOA or GSTR 2A?

Rule 36(4) restricts the availment of ITC of invoices or debit notes, the details of which have been not uploaded by the supplier. This sub rule shall not apply in case of reversal of ITC for invoices against which credit note has been issued by the supplier.

Therefore, the amount of ITC reversal w.r.t. Credit Notes shall be determined based on the amount of Credit Note as per Books of Accounts.



# Restrictions of availment of ITC


- What is the latest position of eligibility of Rule 36(4)?
  - Restriction of availing ITC shall apply cumulatively for the period February, March, April, May, June, July and August 2020.
  - GSTR-3B of September 2020 shall be filed after making cumulative adjustment of the ITC as per the above condition.

# Rule 36(4)

**GMJ**

Return Period	GSTR 2A	ITC as per books	GSTR 3B	Excess/ (Short) Aailed
Feb, 2020	100	115	115	15
March, 2020	140	170	170	30
April, 2020	130	140	140	10
May, 2020	90	90	90	0
June, 2020	120	110	110	-10
July, 2020	130	140	140	10
August, 2020	100	145	145	45
<b>Sub-Total</b>	<b>810</b>	<b>910</b>	<b>910</b>	<b>100</b>
September, 2020	125	155	25	(125)
<b>Total</b>	<b>935</b>		<b>935</b>	<b>-</b>

# Reversal of ITC in case of non payment

- Payment not made to supplier of goods/service/both within 180 days from the date of issue of invoice:  
**Reverse the credit along with interest** (Interest Shall be Applicable from the Date of availing Credit)
  - If Part payment is made and part not made beyond 180 days only the **proportionate** credit in respect of payment not made has to be reversed
  - In Case of **Supplies without Consideration** as specified in Schedule I - **Payment to Supplier is deemed to be made**  **No relaxation in the said provision for COVID-19**
  - Value of supplies on account of any amount added in accordance with the provisions of **section 15(2)(b)** **shall be deemed to have been paid**

# Dies and Mould provided by OEM

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## Contract for Supply of Moulds and Dies by Component Manufacturer



Original equipment manufacturer (OEM)

Free



Moulds

Free



Component Manufacturer

**Circular No. 47/21/2018-GST**

The As per Rule 37, consideration shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16

For section 15(2)(b) of CGST Act 2017, the amortized cost of such moulds/dies shall be added to the value of the components.

# Time limit for availing ITC - Sec 16(4)

Date of Debit Note: 24/08/2019    Date of invoice linked to debit note: 19/02/2019

Waiver/  
Reduction  
of Late  
fees?

Last date of availing ITC of Debit note

Current Scenario:  
**20/10/2019**

Proposed Change:  
**20/10/2020**

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 due date of furnishing of the return** under section 39 for the month of September following the end of financial year to which such invoice or ~~invoice relating to such~~ debit note pertains or furnishing of the relevant annual return, whichever is earlier.

# Time Limit for claiming ITC

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No Time Limit for Re-Credit

ITC of any invoice pertaining to a F. Y. (18-19) cannot be taken after



Due date of return for the month of September, 19 (Waiver /Reduction of Late Fees)

Cash basis –  
Purchase in March  
paid in December –  
ITC available?

Filing of the relevant  
annual return of 18-19

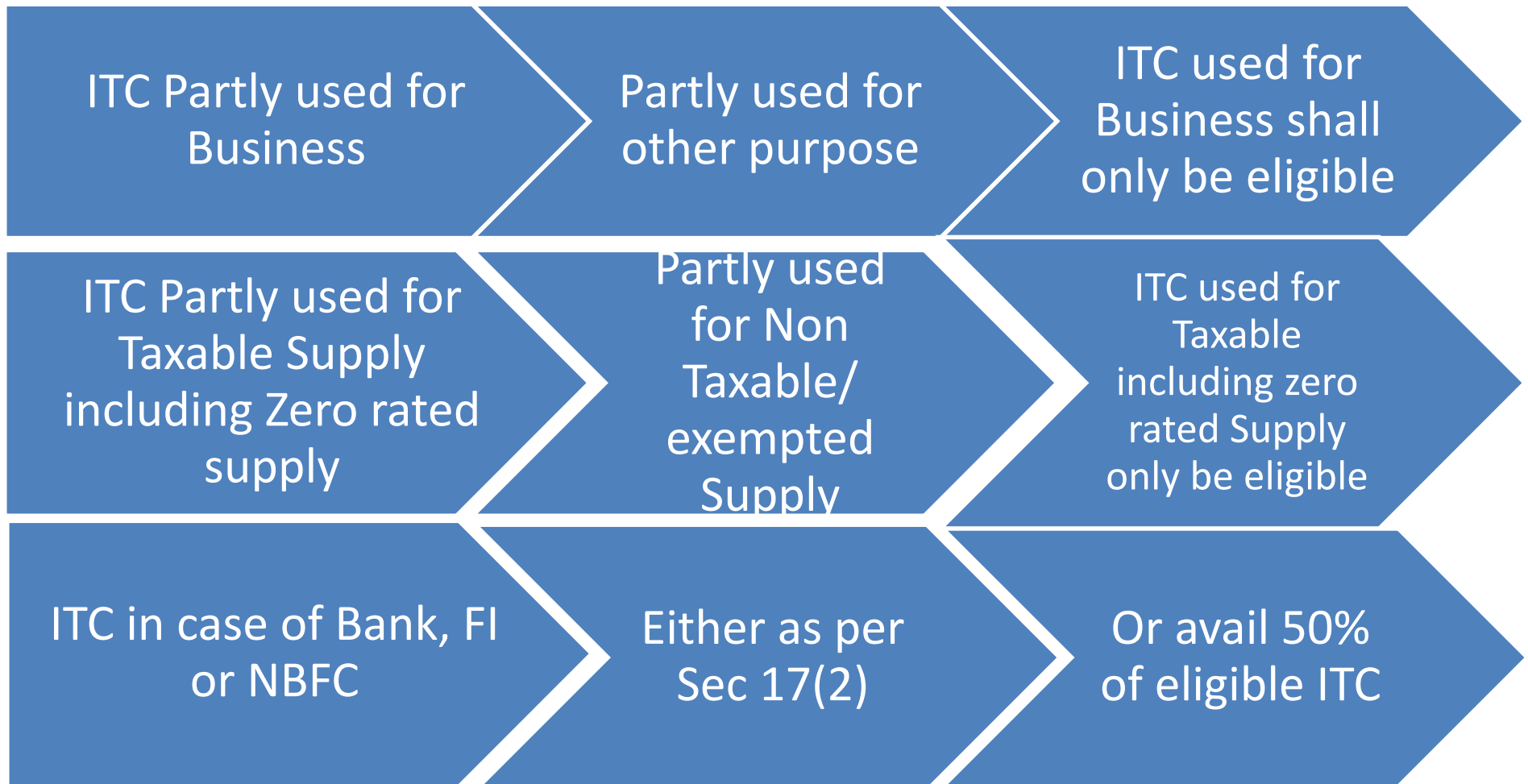
Earliest of

# **GSTR 3B of September 2020**

- Amendments/Addition of invoices pertaining to FY 2019-20
- Debit notes & Credit notes pertaining to FY 2019-20
- ITC availment for the period pertaining to FY 2019 -20
- Reconciliation of GSTR-2A with GSTR-3B for the period from Feb 2020 to Aug 2020

# Reversal of ITC [17(1)(2)(3)&(4)]

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- Exempted supplies include recipient liable pay under RCM, transaction in securities, land, building



# Credit not allowed 17(5)(a)&(aa)

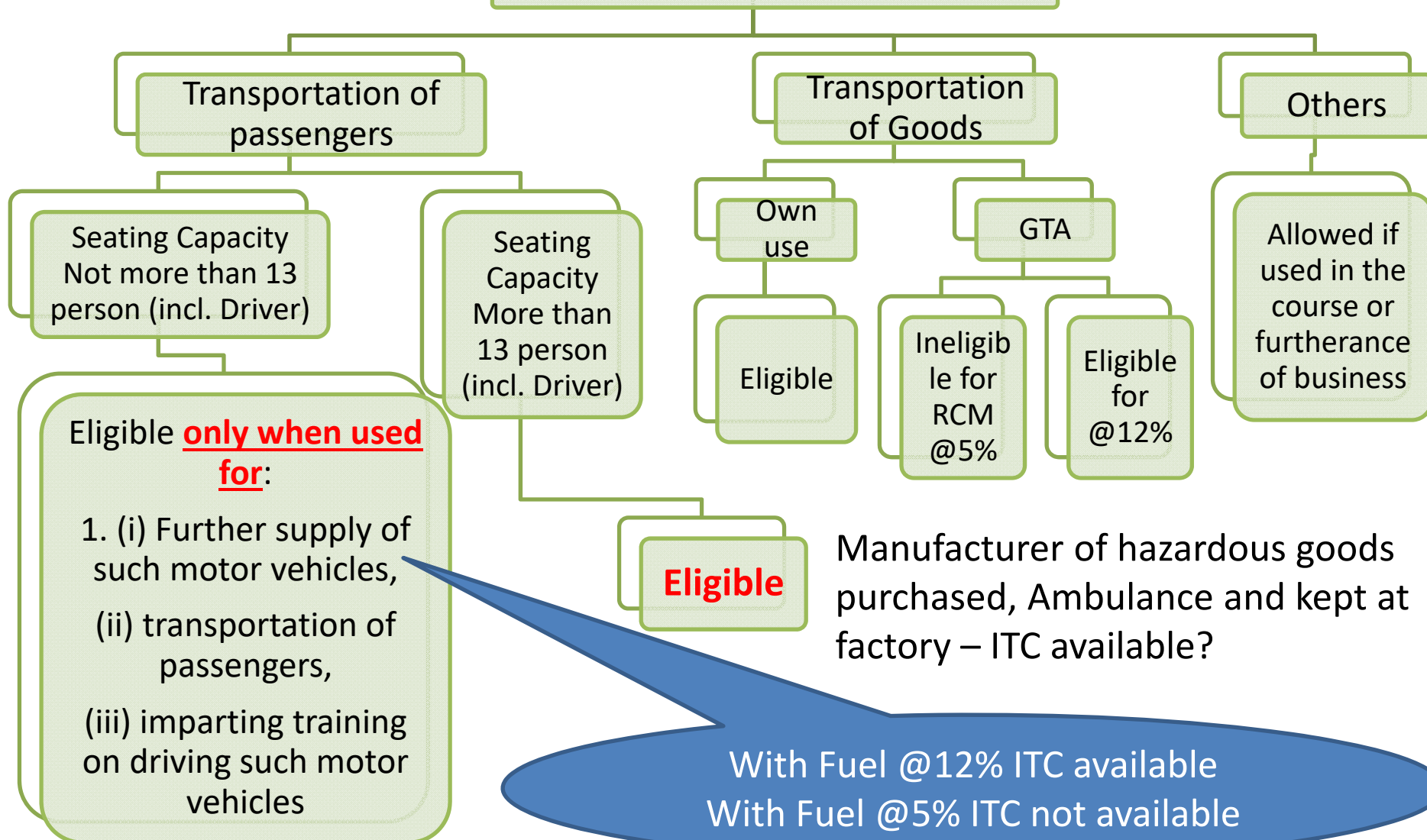
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~~In relation~~

- ITC shall not be available in respect of
- motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons (including the driver), vessels and aircraft except when they are used for making the following taxable supplies, namely
  - further supply of such vehicles or conveyances
  - transportation of passengers
  - imparting training on driving such motor vehicles, navigating such vessels or flying such aircraft
  - Vessels and aircraft used for transportation of **Goods**



## ITC on motor vehicles



# Further supply of Motor vehicle



- **Madhya Pradesh AAR in the case of Narsingh Transport**
- Whether the Applicant can claim ITC of cars purchased to be provided on Lease to various other entities?
- In case of further supply of motor vehicle ITC is available. The term “Further Supply” is not defined in the act and thus one has to go with the definition of “Supply”. The term ‘Further’ prefixed to ‘supply’ is merely in the form of adverb and does not differentiate it from ‘Supply’ by any stretch of definition. The term Supply as defined in the GST Act includes “All forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease, or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.”
- The outward leasing of motor vehicles by the applicant to other companies is further supply of motor vehicles. Section 17(5)(a)(A) clearly states further supply of motor vehicles as an exception to blocked credits and hence ITC of the cars purchased to be provided on lease is available.

# ITC of Motor Vehicles

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**ITC of Motor Vehicle for Transportation of Money by Banking Co. or Financial Institution**

**Money =  
Neither Goods  
Nor Services**

**Up to  
31.01.2019**

**W.e.f 01.02.2019**

**Ineligible as  
per sec 17(5)**

**Eligible as per  
sec 17(5)**



# 17(5) – ITC of Dumper, Work Trucks, **GMJ** Other Special Purpose Motor Vehicles



**Up to 31<sup>st</sup> Jan, 19**

**Input Tax  
Credit**

**Ineligible as per  
Section 17(5)(a)**

**W.e.f 1<sup>st</sup> Feb, 19**

**Input Tax  
Credit**

**Eligible**



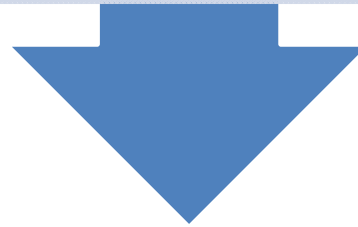
- Repair and maintenance, servicing, general insurance relating to motor vehicles, vessels or aircraft shall not be available except where
  - Motor vehicles, vessels or aircraft are used for the purpose specified
  - Above services are received by a taxable person engaged in the manufacture of such motor vehicles, vessels or aircraft; or in the supply of general insurance services in respect of such motor vehicles, vessel or aircraft insured by him

# Credit not allowed 17(5)(b)

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Allowed only for outward supply of same category or as element of composite/mixed supply If obligatory for employer to provide its employee under any law for the time being in force

food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, life insurance, health insurance, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or (aa) except when used for the purpose specified therein.



**Membership of**

club, health and fitness centre



**Travel benefits**

travel benefits extended to employees on vacation such as leave or home travel concession

# ITC of Buses and car taken on contract

- **Haryana AAR in case of YKK India Pvt. Ltd.**
- The applicant has its Factories and other Premises of Production located in a remote area with very minimal public transportation facilities which hinder transportation of the employees to the factories. In order to ensure a steady production and to carry on a running business, the applicant enters into contract with the contractual service providers for hiring busses as well as cars. The contractor services are covered in HSN 996413 viz. Non-scheduled local bus and coach charter services, attracting GST at the rate of 18%.
- **Question:** Whether the applicant is eligible to take input tax credit on the GST charged by the contractor for the service of providing buses/cars on hire for transportation of his employees and whether the restriction on “rent-a-cab” service specified in Section 17(5)(b)(iii) is applicable in this case?



- There are certain exceptions prescribed under section 17(5) of the CGST Act 2017. Section 17(5)(b)(iii) restricts credit on rent a cab services except where the government notifies the service is obligatory for an employer to provide to its employees under any law for the time being in force. The phrase 'rent a cab' is not defined in the GST Act. In such a case, where the phrase is not defined, the meaning of the phrase should be construed in the terms of its commercial or trade understanding or according to its popular meaning. Rigid interpretation in scientific and technical terms should be avoided.
- Any commercial vehicle is hired for transportation of passengers; it would be covered by the phrase 'rent a cab'. The contentions of the applicant that hiring of buses that can carry large number of passengers and hence cannot be covered under the term "rent a cab" was found untenable as the definition of cab does not restrict any such thing. Also the contention, the terms 'hire' and 'rent' are different in nature was found without any merits as both words are synonyms and are used interchangeably in this case.
- Transportation services provided by the applicant to its employees cannot be construed as obligatory by the government and are provided by the applicant of his own notion to ensure the smooth functioning of his factories.
- Accordingly, the restriction on "rent-a-cab" service specified in Section 17(5)(b)(iii) is applicable in this case and the applicant is not eligible to take ITC.

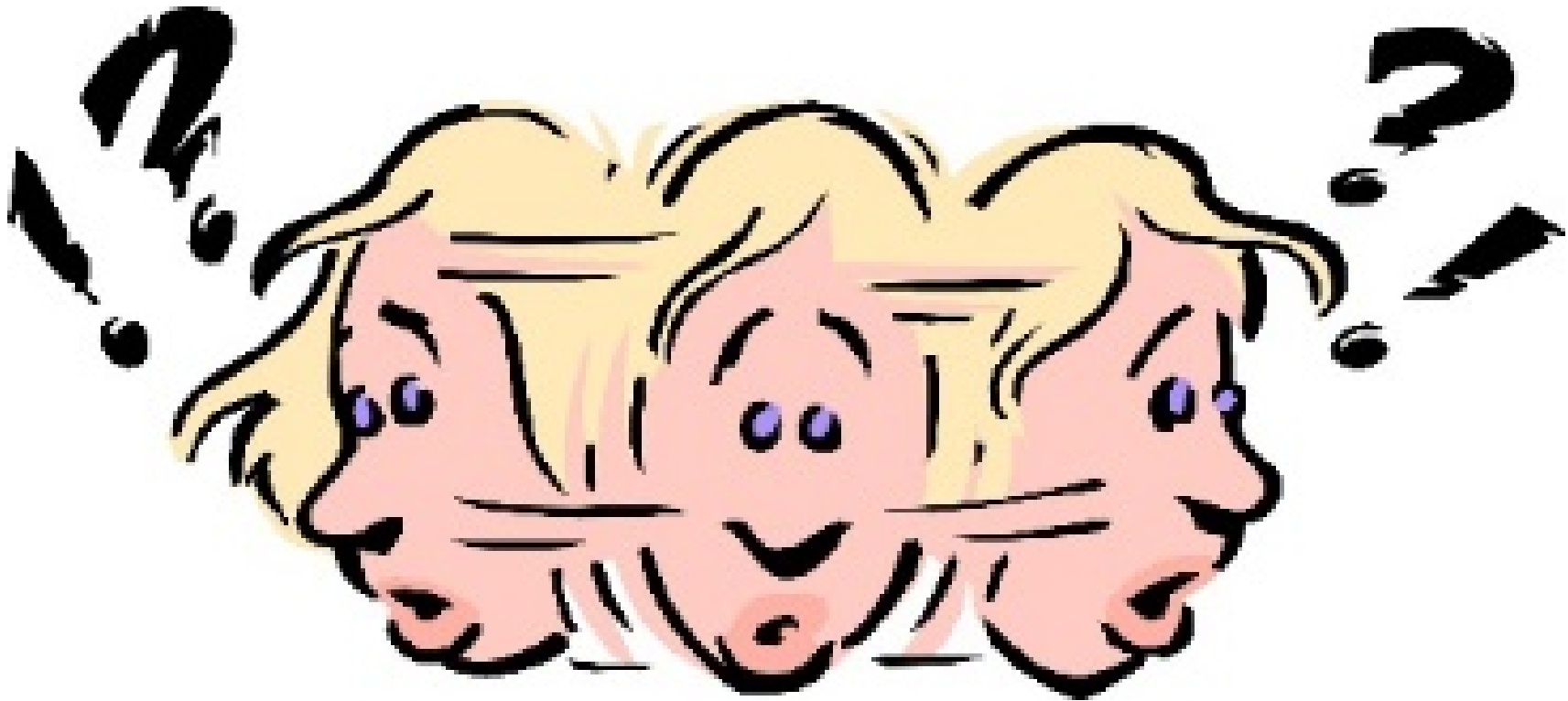
# Credit not allowed 17(5)(c) & (d)

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- Works contract services when supplied for construction of immovable property,
  - other than plant and machinery,
  - except where it is an input service for further supply of works contract service;
- goods or services received by a taxable person for construction of an immovable property other than plant and machinery, on his own account incl. when used for furtherance of business
- **Construction** includes re-construction, renovation, addition, alteration, repair - to the extent of capitalization to said immovable property
- **'Plant and Machinery'** means apparatus, equipment, machinery fixed to earth by foundation or structural support that are used for making outward supply and includes such foundation and structural supports **but excludes** land, building or any other civil structures, telecommunication tower, pipeline laid outside factory premises



# ITC on Construction of **GMJ** Shopping mall for the purpose of letting out



# Safari Retreats Private Limited Vs CC of CGST

## – Orrisa High Court W.P. (C) No. 20463 of 2018

- Applicant is in the business of construction of shopping mall and later on give on Rent.
- Applicant purchase various material and availed various services for construction of Mall.
- Where inputs are consumed in the construction of an immovable property which is meant and intended to be for the provision of taxable output services, whether input tax credit was available to the assessee?



- Rent income is arising out of the malls which are constructed after paying GST on different items.
- If ITC is denied on building meant and intended to be let out, it would amount to treating the transaction as identical to a building meant and intended to be sold.
- Further, treatment of these two different types of transactions as one for the purpose of GST, is contrary to the basic principles regarding classification of subject matter of tax levy and, therefore, violative of Article 14 of the Constitution.
- Hence, the interpretation adopted by the Revenue is frustrating
- the Petitioner in that case has to pay huge amount without any basis.
- The very purpose of the credit is to give benefit to the assessee.
- Therefore, if the Petitioner is required to pay GST on the rental income arising out of the investment on which he had paid GST, it is required to have the input tax credit on the GST.

# Karnataka AAR in the case of M/s.

## Tarun Realtors Pvt. Ltd.

- The Applicant is developing a shopping Mall. To undertake development of the said property, the Applicant was and is required to procure numerous goods and avail numerous services including works contract service.
- The mall will be given on rent.
- The relevant provisions of Section 17(5) relating to Blocked credit of the CGST Act, 2017 applicable to the applicant & question reads given above.
- As these goods or services when incorporated in the construction becomes part and parcel of the building and civil structure which is given on rent and no longer has separate existence.
- The provision of these are either statutory for a building or defines the nature of the building as a commercial mall.
- Hence the ITC on the inward supplies of goods or services involved in the construction of immovable property which is a civil structure or building is not available to the applicant and hence blocked.

# ITC of Lift

- **Jabalpur Hotels Private Limited. vs MP AAR**

- plant and machinery many a times requires support structure and / or foundation for installation and cannot work otherwise.
- Thus, civil structures and foundation as supporting structure for fastening of plant and machinery to earth has been included as part of plant and machinery.
- The lift cannot be said to be separate from a Building.
- The lift has become part of the building
- The ITC paid on Lifts procured and installed in hotel building shall not be available to the applicant as the same is blocked in terms of Section 17(5)(d) of the GST Act 2017.

# ITC detachable sliding or partition?

- **Karnataka AAR in the case of We Work India Management Pvt. Ltd**
- Appellant is engaged in providing shared Workspace on rent to various businesses. The appellant procures goods and services from various contractors for fitting-out of the workspaces and provides the said workspace on rent, as sharing work spaces. The major components procured by the appellant that are used in the construction of furniture's and fixtures in its buildings are:
  1. Detachable 14mm Engineered wood with Oak top wooden flooring
  2. Detachable sliding and stacking glass partitions
- **Questions:**
  - Whether ITC can be availed on the detachable 14mm Engineered Wood with Oak top Wooden Flooring which is movable in nature and capitalized as “furniture and fixture”, and is not capitalized as “immovable property”?
  - Whether ITC can be availed by the applicant on the detachable sliding and stacking glass partition which is movable in nature and capitalized as “furniture and fixture” and is not capitalized as an “immovable property”?



- For construction of an immovable property (other than plant and machinery) on his own account including when such goods or services or both are used in the course or furtherance of business. For triggering the restriction, certain criteria have to be satisfied viz:
  1. The goods or services should be used for the construction of immovable property.
  2. The construction can be in the form of re-construction, renovation, additions, or alterations or repairs to the immovable property.
  3. The construction should be on his own account.
  4. The goods or services received are capitalized in the books of accounts.
- In the first case of “Detachable 14mm Engineered Wood with Oak top Wooden Flooring”, which is movable in nature, the condition 2, 3 and 4 can be satisfied as the construction of the same is considered as addition or alteration to the property, which is done on his own account, and is capitalized as “furniture and fixture” in the books of account.

- The term immovable property is not defined in the GST Law but rather it is defined in the Section 3(26) of the General Clauses Act, 1897 as “including land, benefits arising out of land, and things attached to the earth, or permanently fastened to anything attached to the earth”.
- As it is clearly stated, the 14mm Engineered Wood with Oak top Wooden Flooring is detachable and movable in nature, it cannot be considered as permanently fastened to anything attached to the earth and hence cannot be identified as an immovable property. Thus, the provisions of Section 17(5)(d) are clearly not applicable in this case and ITC of the same is not restricted.
- The second case is in relation to “Detachable sliding and stacking glass partitions”. The sliding and stacking glass partitions are fixed to the earth with nuts and bolts and can be easily dismantled and moved without demolishing the civil structure according to the requirements of the clients of the Appellant.
- There is no permanency as the same can be easily dismantled and re-fixed. Therefore, the “Detachable sliding and stacking glass partitions” cannot be considered as immovable property and thus ITC of the same is eligible.

# ITC on water park?

- **MP AAR in the case of M/s. Atriwal Amusement Park**
- Applicant is engaged in construction of Water Park. For construction of the same various components & services will be used
- **Question:**
  - Whether ITC eligible on Purchase of Water Slides? Water Slides are made up of Strong PVC.
  - Water Slides are installed on Steel and Civil Structure. Credit of Tax paid on Input goods and services used in the construction of this support structure will be available or not?
  - Input Tax will be available or not on Goods and services used for area development and preparation of land on which water slides are erected.
  - Whether applicant will be eligible to take credit of Input Goods and Services used for construction of Swimming Pool/ Wave Pool as water slides directly run into pools?

- Section 17(5) of CGST Act, 2017 deals with the Blocked Credit.
- As per section 17(5)(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. 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 land, building or any other civil structures.
- In the explanation relating to Plant and Machinery, beneath sub section (6) of Section 17, while providing the meaning of the term plant and machinery it has been clearly stated that Buildings and Civil Structures shall not be covered under the term Plant.
- However, while so clarifying, it has been accepted and understood that plant and machinery many a times requires support structure and / or foundation for installation and cannot work otherwise. Thus, civil structures and foundation as supporting structure for fastening of plant and machinery to earth has been included as part of plant and machinery.

- Regarding the eligibility of ITC in case of Input Tax paid on Purchase of Water Slides, we have to state that Water Slides shall fall within the meaning of the term apparatus, equipment and machinery and therefore, shall be eligible for claim of ITC.
- Regarding the Steel and Civil Structure on which the Water Slides are installed, we have to state that foundation and support structures which are used to fasten plant and/or machinery to the Earth is classifiable as Plant and or Machinery. Therefore, the credit of Tax paid on Input goods and services used in construction of this support structure shall be available. However, the Machine Room, which is a civil structure created for protecting machine is neither foundation nor civil structure for machine. Therefore, It relatable to the construction of the room for hosing the machine shall not be eligible for ITC.

- Regarding the Input Tax on Goods and services used for area development and preparation of land on which water slides are placed. We have to state that are development and expenditure on preparation of land like site formation services are part of the cost of the land and thus are interminably bound with land. These expenses are liable to be capitalized under the head land. Therefore, on account of the specific exclusion of Land from the meaning of plant and machinery ITC related to Land Development subject to is capitalization as per accounting principles shall not be available.
- Regarding eligibility of ITC on Goods and Services used for construction of swimming pools/Wave Pool in which the water slides directly run into, we have to state that such Swimming Pools/Wave Pools are not support structure or foundation for a plan but are independent items per se. Since they are not foundation or support structure on which are fasted for affixing them to earth and also on account they being Civil Structures. They are therefore excluded from the meaning of plant and machinery. Thus, The ITC related the construction of the Swimming Pools and Wave Pools, subject to its capitalization shall not be available.

# Karnataka AAR in the case of Shri

## Keshav Cement and Infta Ltd

- The Applicant is in the business of manufacture and sale of cement.
- It has 2 manufacturing plants located at two different locations.
- The applicant has a solar power plant situated at a 3<sup>rd</sup> location.
- All the 3 places of business are registered under the same GST Registration and mentioned as additional places of business.
- The electricity generated at the solar power plant is for sole consumption of at the two manufacturing units of the applicant.
- Electricity generated at the solar power plant is banked and then transmitted to the manufacturing units utilizing the grid facility of KPTCL, GESCOM & HESCOM under an agreement. As per the requirement of the statute, the agreement clearly states that the electric energy generated by the solar power plant that is un-utilized at the end of 6 months from the date of banking, is deemed to be consumed by KPTCL, GESCOM & HESCOM. For such un-utilized energy, the electricity providers pay a certain sum to the applicant as compensation.

# Questions

- Whether the company is eligible to take input tax credit as 'inputs/capital goods' or 'input services' of the equipment's and machinery used at the solar power plant? Additionally, whether the capital goods and inputs constitute plant and machinery of the applicant for the business of Manufacturing Cement and hence not blocked Input Tax Credit under section 17(5) of the CGST Act?
- Whether the applicant company is permitted to avail the input tax credit of the items being used towards the electricity generation at the solar power plant for consumption at the cement manufacturing plants which are physically located at distinct locations?
- Whether the applicant company is required to reverse the ITC on the electricity generated by it at its plant and banked with KPTCL, GESCOM & HESCOM which is un-utilized at the end of 6 months from the date of banking and is deemed to be consumed by the electricity providers at the end of 6 months?



- The general interpretation of the Section 16(1) implies that applicant is entitled to credit of ITC charged on any supply of goods and services or both made to the applicant and used by the applicant in the course and furtherance of business.
- Here the electricity produced by the solar power plant is used in the cement manufacturing business in the course and furtherance of business.
- Therefore, the supplies of goods and/or services that go into the setting up of the solar power plant can be rightly construed as supplies made and used in the furtherance of business.
- Section 2(59) of the CGST Act provides that “input” means any goods used or intended to be used by a supplier in the course or furtherance of business.
- Capital Goods are defined in Section 2(19) as goods, the value of which is capitalized in the books of accounts and which are used or intended to be used in the course or furtherance of business.

- This implies that goods which have been capitalized in the books of accounts will not qualify to be considered as inputs. Therefore, goods the value of which has been capitalized in the books of accounts would not be considered as inputs and the applicant will not be entitled to credit of input tax in relation to such goods.
- The applicant is entitled to input tax credit in respect of goods other than capital goods. Section 17(5) of the CGST Act stipulates certain situations where the Input Tax Credits are blocked. Section 17(5)(c) reads as “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” This provides that ITC of works contract services are not available unless those services are in relation to plant and machinery or for further supply of works contract service. Plant and machinery has been described in the Explanation to Section 17(5) as follows: “For the purpose of this Chapter and Chapter IV, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to the 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”. Section 17(5)(c) clearly states that ITC shall be available in respect of works contract services related to construction of plant and machinery. Therefore, the credit of input tax shall only be qualified of the goods that answer to the definition stated above of ‘plant and machinery’. In respect of other goods, the provisions of 17(5)(c) shall apply and credit of input tax shall not be available.

- The activity of production of electric energy is a supply to self as the electricity produced is captively used.
- The fact that the electricity is produced at the solar power plant that is situated elsewhere is not a barrier but is to be considered as in intermediate process in the manufacture of cement.
- The electricity energy produced at the power plant is solely used at the cement manufacturing units after transmission through the grid and drawl from the grid at the manufacturing point.
- Therefore, the operation of the solar power plant shall not constitute a separate supply warranting the application of Section 17(1) and/or Section 17(2).
- Although, it is implied that this shall apply only in the case where the entire electricity generated is consumed captively and no part of the energy produced is sold or discharged into the grid and not taken out at their manufacturing site.
- Therefore, the applicant shall be entitled to the eligible input credits [eligible constitute the part decided in question (a)] in entirety provided the entire production is captively consumed.

- As it is clearly stated in the 'Wheeling and Banking agreement' between the applicant and KPTCL, GESCO & HESCO, the un-utilized energy banked with the energy providers at the end of 6 months shall be deemed to have been purchased by the Distribution Licensee of the area, and the applicant will be paid.
- This demonstrates the applicant makes a supply of electric energy (i.e. goods) in exchange for monetary consideration.
- Even though the applicant contends that he is required by the statute to forgo the surplus energy at the end of 6 months, the Appellate Authority points out it is a fact that the Distribution Licensee pays them a price.
- Such a transaction would constitute as an exempt supply
- Therefore in respect of the supply of surplus electric energy it is evident that the applicant is engaged in supply of exempted goods and is required to reverse the input tax credit on the un-utilized energy banked with KPTCL, GESCO & HESCO, for which the applicant receives a consideration

# Credit not allowed 17(5)(e)(f)(g) and (h)

- Tax paid under Composition
- Received by Non-resident taxable person except on goods imported by him
- Used for personal consumption
- Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples
- ITC wrongly availed or utilised by reason of fraud etc.
- Detention, seizure and release of goods and conveyances in transit
- Confiscation of goods and/or conveyances



# Clarifications based on Circular No.

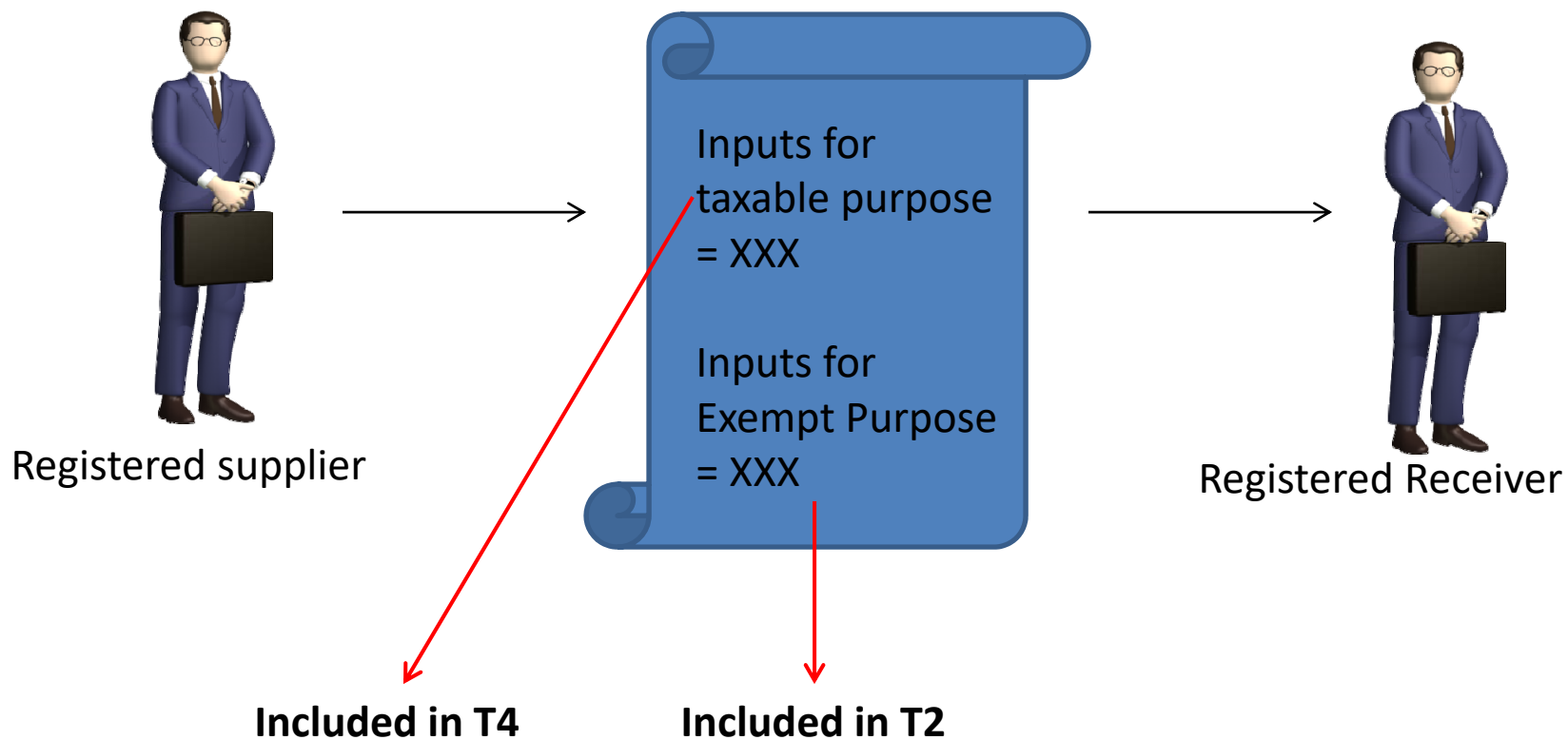
## 92/11/2019-GST dt. 7<sup>th</sup> March, 2019

- ITC in relation to gifts or free samples distributed without consideration **shall be available** where such distribution is covered under Schedule I.
- ITC in relation to supply of goods or services as part of **‘Buy One Get One Free’** offers shall be eligible as it shall be treated as supplying 2 goods for the price of one.
- In case of **“Buy more, Save more”** scheme and **post supply/volume discounts** established **before or at the time of supply**, the supplier shall be entitled to avail the ITC in relation to supply of goods or services on such discounts.

# ITC of gold coin given as part of scheme

- **Biostadt India Limited –Maharashtra AAR**
  - Gold coin will be given on purchase of certain number of goods or making payment of time.
  - Section 17(5) of CGST Act deals with blocked credit and begins with the non obstante clause, which means even if Section 16(1) allows ITC, shall block in respect of certain cases
  - ITC on procurement of Gold coins which are to be distributed to the customers are not available.

# Invoice level segregation





# Reversal of Inputs and Input Services Rule 42

Particulars	Notation	Action	Amount
Total Credit	T		1,00,000
ITC for non business purpose	T1	Reversal	10,000
ITC for exempt supply	T2	Reversal	7,500
ITC ineligible [17(5)]	T3	Reversal	5,000
ITC for taxable supply used for business purpose	T4	Allowed	70,000
<b>Balance ITC – Common Credit</b>	<b>C2</b>		<b>7,500</b>
ITC partly used for non business out of common credit (5% of C2)	D2	Reversal	375
ITC partly used for exempt supply out of common credit ( $C2 * ES/TT$ )	D1	Reversal	1,500
Common Credit available $[C2 - (D1 + D2)]$	C3	Allowed	5,625
Total available credit for Off Set liability (C2+C3)		Allowed	75,625
<b>Total turnover in the state</b>	<b>TT</b>		<b>1,00,00,000</b>
<b>Exempt supply</b>	<b>ES</b>		<b>20,00,000</b>

# Exempt Supply

- “**exempt supply**” means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the IGST Act, and includes non-taxable supply
- “**non-taxable supply**” means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act

## Exempt Supplies:

- ATF, HSD, Petroleum Crude, Petrol, Natural Gas?
- Alcoholic liquor for human consumption?
- ENA?

# Exempt Supply shall exclude

GMJ

- ~~Supply of Service to Nepal or Bhutan against payment in INR. (Omitted vide Notf No. 03/2019-CT dt. 29.01.2019 wef 1<sup>st</sup> Feb, 2019)~~
- Interest other than Interest earned by Bank, NBFC, FI.
- Transportation of Goods in vessel for export
- Aggregate value of Exempt supplies and total turnover shall exclude Excise, VAT etc. Alcohol, Petroleum products etc.
- Schedule III (except Sale of Land & Building) (Inserted by CGST Amendment Act, 2018, wef 1<sup>st</sup> Feb, 2019)

Month	Taxable supplies	Exempt supplies
July	100,000	50,000
August	0	100,000
Purchases In August towards	75,000	25000

↓  
Here even if there are no taxable supplies in August, ITC of 75,000 can be taken

In case 75000 is common credit, the same can be availed by applying ratio of July

# Final settlement of ITC in September



C3 shall be again calculated for the entire year on or before 20<sup>th</sup> October of the succeeding year.

In case C3 calculated every month is greater than Final C3 for that year

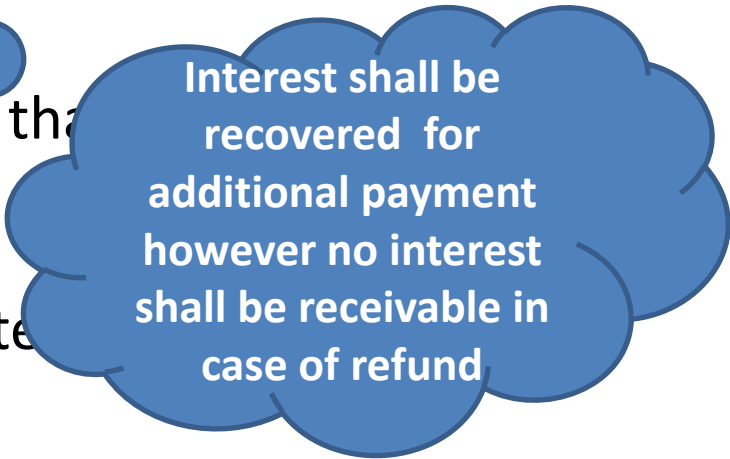


**Reversed** not later than 20<sup>th</sup> October of succeeding year along **with interest** from April of the succeeding year

In case C3 calculated every month is less than Final C3 for that year

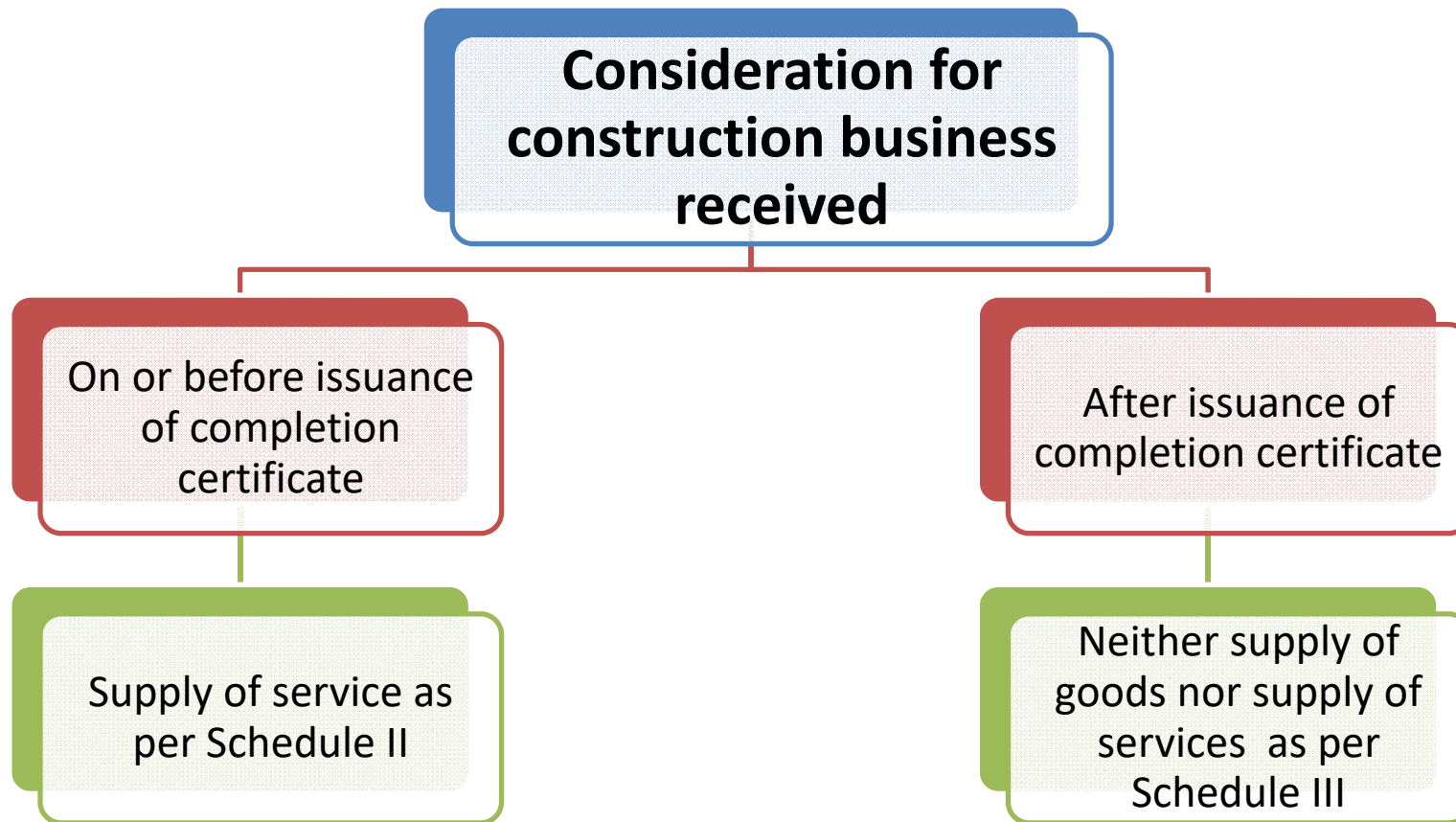


Added to electronic credit ledger not later than 20<sup>th</sup> October of succeeding year



Interest shall be recovered for additional payment however no interest shall be receivable in case of refund

# Reversal under Rule 42 for construction business **GMJ**



**Since there are above two probabilities in case of construction services, Rule 42 has been amended vide Notification No. 16/2019-CT dated 29/03/2019 wef 01/04/2019**

# How ITC has to be Reversed?

PROJECT  
START DATE

YEAR	ITC AVAILED	FLATS SOLD	CONSIDERATION RECEIVED	PAID
2018-19	0.5 CR		-	
2019-20	1		15CR	Cr. After izing ITC
2020-21			55 CR	Cr. After izing ITC
2021-22			85 CR	YES 10.2 Cr. By ng ITC. ce ITC
2022-23	2.5 CR	10	85+80=165 CR	
TOTAL	4 CR	50		

What about ITC?  
Balance Of 1.3Cr  
Availed in C.Y.  
2.5 Cr  
Total 3.8 Cr.

Since Part of  
consideration is  
received before  
entire  
ble

Not Taxable

Since entire  
Consideration is  
received after  
OC hence entire  
will be Non-  
Taxable

80Crs. Is Not-  
Taxable

OC Received  
01.04.2022

TOTAL NUMBER OF FLATS- 50

for 8Crs

Each flat is Sold at 6Crs. After OC Each Flat is sold

# Which method to be followed? **GMJ**

## If as per Turnover 22-23

Total Credit = **2.5 cr**

Taxable T/o = 85Cr.

Exempt T/o = 80Cr.

Credit to be Reversed =  
 $2.5 \times 80/165 = \text{Rs } 1.21 \text{ cr}$

## If as per Area

Total Credit = 20 Cr.

Sold Before OC = 40

Sold after OC = 10

Credit to be Reversed =  
 $20 \times 10/50 = \text{Rs. } 4\text{Cr.}$

# How is IT to be

## If as per Total Value

Total Credit =  
Total  
Total S  
Total S  
Credit  
 $20 \times 80/320 =$

The value to be  
calculated for each  
project separately  
w.e.f 1<sup>st</sup> April, 19

W.e.f 1<sup>st</sup> April, 2019  
for other than  
residential project  
and for residential  
if continued in old  
scheme for ongoing  
project

Upto 31<sup>st</sup>  
Mar, 2019



# Reversal of credit of Capital Goods

## Rule 43

	Particulars		Treatment
Add:	Total Input Tax Credit on CG	T	
Less:	Exclusive for other than business/exempt supplies		No credit in elec. credit ledger
Less:	Exclusive for taxable supplies		Full credit in elec. credit ledger
	Net Common Credit of CG	Tc	Avail equally every month for 60 months
Less:	Credit attributable to exempt supplies – reverse in t/o ratio	Te	Reverse every month for 60 months

From the date of Invoice

- **Change of use of CG from exempt/non-business/taxable to common use or vice versa, reduce ITC of CG by 5% / quarter**

ITC relating to common use		month	July	August	Sept	Total
Computer	Pur	60	10,000			10,000
Furniture	Pur	60		20,000		20,000
Add : ITC on change of use	Added	30			2,500	2,500
Total of ITC of CG relating to common use			10,000	20,000	5,000	32,500
ITC for the Tax Period						
Computer	Tr		167	167	167	500
Furniture	Tr			333	333	667
Add : ITC on change of use	Tr				83	83
Total of ITC of CG relating to common use for a tax period	Tm		167	500	583	1,250
Total Turnover	F		10,00,000	11,00,000	12,10,000	
Exempt Supplies	E		1,00,000	95,000	90,250	
Total of ITC of CG relating to exempt supplies	Te		17	43	44	103
Interest on (Te)			-	3	10	13
Total Amount to be added to output liability			17	46	54	116

# Example

Particulars	Amount
Cost of Machinery	1,00,000/-
Tax @ 18%	18,000/-
Total	1,18,000/-

However, if ITC is taken of 18,000/-, Depreciation shall be allowed only on 1,00,000/- under Income Tax

Suppose this machinery is used for providing taxable as well as exempt supply, proportion of credit shall be reversed as per rule 43.

Reversal ratio	10%
Reversal amount	1,800
Available credit	16,200



**Hence in the above case, person has lost ITC of Rs 1,800/- and also depreciation on Rs 1,800/- since he claimed the entire credit.**

**When the capital goods were used exclusively for effecting exempt or for non-business purpose, but subsequently used for effecting both taxable and exempt supplies.**

Particulars	Up to 31 <sup>st</sup> March 2020	From 1 <sup>st</sup> April 2020
Date of Purchase of CG	1 <sup>st</sup> April 2019	1 <sup>st</sup> April 2019
Change in Nature of Supply	1 <sup>st</sup> July 2020	1 <sup>st</sup> July 2020
ITC on said goods	Rs. 1,20,000/-	Rs. 1,20,000/-
The above ITC was not taken in the month of April 2019 as it was used for making Exempt supplies.		
ITC to be taken in July 2020	Rs. 90,000/- [Rs.1,20,000- (Rs.1,20,000*5%*5)]	Rs. 1,20,000/-
ITC to be considered in Outward Liability	-	Rs. 30,000/- (Rs. 1,20,000* 5%* 5)
Common Credit to be considered for reversal	Rs. 1,500/- (Rs. 90,000 / 60)	Rs. 2,000/- (Rs. 1,20,000 / 60)
Exempted to total turnover ratio for the month of July 2020	20%	20%
<b>Amount to be reversed for the month of July 2020</b>	<b>Rs. 300/- (Rs. 1,500*20%)</b>	<b>Rs. 400/- (Rs. 2,000*20%)</b>
<b>*Interest will also be applicable on reversal of ITC (every month) @18% from the date of availment to the date of reversal of ITC.</b>		

**When the capital goods were used exclusively for effecting taxable supplies, but subsequently used for effecting both taxable and exempt supplies.**

Particulars	Up to 31 <sup>st</sup> March 2020	From 1 <sup>st</sup> April 2020
Date of Purchase of CG	1 <sup>st</sup> April 2019	1 <sup>st</sup> April 2019
Change in Nature of Supply	1 <sup>st</sup> July 2020	1 <sup>st</sup> July 2020
ITC on said goods	Rs. 1,20,000/-	Rs. 1,20,000/-
ITC to be taken in April 2019	Rs. 1,20,000/-	Rs. 1,20,000/-
ITC to be taken in July 2020	-	-
Common Credit to be considered for reversal	Rs. 1,500/- [Rs. 1,20,000 - (Rs. 1,20,000*5*5%)] /60	Rs. 2,000/- (Rs. 1,20,000 / 60)
Exempted to total turnover ratio for the month of July 2020	20%	20%
<b>Amount to be reversed for the month of July 2020</b>	<b>Rs. 300/- (Rs. 1,500*20%)</b>	<b>Rs. 400/- (Rs. 2,000*20%)</b>
<b>*Interest will also be applicable on reversal of ITC (every month) @18% from the date of availment to the date of reversal of ITC.</b>		

# Final settlement of ITC

- The amount  $T_e$  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.



# Some issues related to Covid-19

- Can ITC be claimed on Rent Invoices not paid for the lockdown period?
- Whether ITC can be claimed on purchase entries passed in books in March 2020 however the goods were not received till 31st March 2020 due to lockdown?
- ITC on Sanitation, Thermometers , Safety equipment?
- ITC on Sanitizer, Mask, Disinfection Material?
- ITC on Group Medical Insurance?
- ITC on Gadgets , Equipment's , Installation services, etc. at employee residences due to work from home?
- Food distributed due to Covid-19 as CSR activity?



**Opinions or views  
are like wrist  
watches.**

**Every watch shows  
different time from  
others.**

**But every one  
believes that their  
time is right!**





Information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of particular situation.

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