

WEBINAR ON “ITC AND ISD”

*ORGANISED BY:
IDIRECT TAXES COMMITTEE
THE INSTITUTE OF CHARTERED ACCOUNTANTS
OF INDIA*

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VENUE : BANDRA KURLA COMPLEX

I. Transitional Provision

1) Credit of Excise Duty or Service Tax

- ❖ Transfer of credit to new registration

The Section 167 of the GST Model Law provides that the registered taxable person shall be allowed to carry forward the credit shown in the returns furnished under the earlier law by him for the period ending 31/03/2017. Therefore, it is essential that all the credits which the Company intends to avail by 31/03/2017 is reflected either in ER-1 Returns, ST-3 Returns or VAT Returns or entry tax return any other return. It must be ensured that –

- All credit shown in the books of account is reflected in the return.
- In many cases because of dispute with the department, the Company does not take the credit in order to avoid the Show Cause Notice. It is advised that the Company should take all such credits on or before 31/03/2017 and reflect in the ST-3 Return.
- The department have been disputing availment of credit on commission on sales, service tax on effluent treatment etc. Many companies were availing the credit and immediately reversing the same. Re-credit of duty reversed shall be taken. The department may issue show cause notice for denial of credit.

d) Many companies take the credit only after payments have been made to the input service provider. Therefore, availment of credit may be delayed. Such credit shall also be taken prior to 31-3-2017.

e) Many services are received regularly, but the invoices are raised after the month end only. These services are like security services, renting of immovable property, telephone, etc. The effort should be made to ensure that the bills for these input services are received prior to 31/03/2017 and the credit is availed prior to 31/03/2017 so that the credit is reflected in the returns.

f) Similarly, in many cases, the Company is required to pay the service tax under reverse charge. As per Rule 7 of the Point of Taxation Rules, 2011, the liability to pay service tax under reverse charge arises on the date of payment to the service provider. The date of payment for the invoices received in February or March may be after 31/03/2017. Therefore, the liability to pay service tax will arise only after 31/03/2017. As mentioned above as of now there is no provision for availment of credit after 31/03/2017 for the service tax paid for the services received before 31/03/2017. Therefore, the Company should preferably pay the service tax under reverse charge on or before 31/03/2017 and take the credit.

2) Section 168 - Unavailed Cenvat credit on capital goods

A registered taxable person, other than a person opting to pay tax under section 9, shall be entitled to take, in his electronic credit ledger, credit of the unavailed Cenvat credit in respect of capital goods, not carried forward in a return, furnished under the earlier law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

PROVIDED that the registered taxable person shall not be allowed to take credit unless the said credit was admissible as cenvat credit under the earlier law and is also admissible as input tax credit under this Act:

Explanation 1.- For the purposes of this section, the expression “unavailed Cenvat credit” means the amount that remains after subtracting the amount of cenvat credit already availed in respect of capital goods by the taxable person under the earlier law from the aggregate amount of cenvat credit to which the said person was entitled in respect of the said capital goods under the earlier law.

Explanation 2.- Capital goods means the goods as defined under clause (a) of rule 2 of CENVAT Credit Rules, 2004.

3) 169.-Credit of eligible duties and taxes in respect of inputs held in stock

- (1) A registered taxable person, who was not liable to be registered under the earlier law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012-Service Tax, dated 20.06.2012 or a first stage dealer or a second stage dealer or a registered importer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions:
 - (i) such inputs and / or goods are used or intended to be used for making taxable supplies under this Act;
 - (ii) the said taxable person passes on the benefit of such credit by way of reduced prices to the recipient;**
 - (iii) the said taxable person is eligible for input tax credit on such inputs under this Act;

- (iv) the said taxable person is in possession of invoice and/or other prescribed documents evidencing payment of duty under the earlier law in respect of such inputs;
- (v) such invoices and /or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and
- (vi) the supplier of services is not eligible for any abatement under the Act:

PROVIDED that where a registered taxable person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then such registered taxable person shall, subject to such conditions, limitations and safeguards as may be prescribed, be allowed to take credit at the rate and in the manner prescribed.

(2) The amount of credit under sub-section (1) shall be calculated in such manner as may be prescribed.

- ❖ The various duties specified in explanation includes service tax leviable under Section 66B of Chapter V.

4) 170.- Credit of eligible duties and taxes in respect of inputs held in stock

(1) A registered taxable person, who was engaged in the manufacture of nonexempted as well as exempted goods under the Central Excise Act, 1944 (1 of 1944) or provision of non-exempted as well as exempted services under Chapter V of Finance Act, 1994 (32 of 1994), shall be entitled to take, in his electronic credit ledger,

- (a) the amount of Cenvat credit carried forward in a return furnished under the earlier law by him in terms of section 167; and
- (b) the amount of Cenvat credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to exempted goods or services, in terms of section 169.

5) 171.-Credit inputs or input services during transit

(1) A registered taxable person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid before the appointed day, subject to the condition that the invoice or any other duty/tax paying document of the same was recorded in the books of accounts of such person within a period of thirty days from the appointed day:

PROVIDED that the aforesaid period of thirty days may, on sufficient cause being shown, be extended by the competent authority for a further period not exceeding thirty days.

(2) The said registered taxable person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under sub-section (1).

II. Matching, Reversal and Reclaim of Input Credit

Section 37 makes provision with regard to verification of credit. This section reads as follows:

37 (1) The details of every inward supply furnished by a registered taxable person (hereinafter referred to in this section as the 'recipient') for a tax period shall, in the manner and within the time prescribed, be matched-

- (a) with the corresponding details of outward supply furnished by the corresponding taxable person (hereinafter referred to in this section as the 'supplier') in his valid return for the same tax period or any preceding tax period,
- (b) with the additional duty of customs paid under section 3 of the Customs Tariff Act, 1975 (51 of 1975) in respect of goods imported by him, and
- (c) for duplication of claims of input tax credit.

(2) The claim of input tax credit in respect of invoices and/or debit notes relating to inward supply that match with the details of corresponding outward supply or with the additional duty of customs paid shall, subject to the provisions of section 16 or 17, as the case may be, be finally accepted and such acceptance shall be communicated, in the manner as may be prescribed, to the recipient.

(3) Where the input tax credit claimed by a recipient in respect of an inward supply is in excess of the tax declared by the supplier for the same supply or the outward supply is not declared by the supplier in his valid returns, the discrepancy shall be communicated to both such persons in the manner as may be prescribed.

(4) The duplication of claims of input tax credit shall be communicated to the recipient in the manner as may be prescribed.

(5) The amount in respect of which any discrepancy is communicated under subsection (3) and which is not rectified by the supplier in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the recipient, in the manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.

(6) The amount claimed as input tax credit that is found to be in excess on account of duplication of claims shall be added to the output tax liability of the recipient in his return for the month in which the duplication is communicated.

(7) The recipient shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5) if the supplier declares the details of the invoice and/or debit note in his valid return within the time specified in sub-section (9) of section 34.

(8) A recipient in whose output tax liability any amount has been added under subsection (5) or, as the case may be, under sub-section (6), shall be liable to pay interest at the rate specified under sub-section (1) of section 45 on the amount so added from the date of availing of credit till the corresponding additions are made under the said sub-sections.

(9) Where any reduction in output tax liability is accepted under sub-section (7), the interest paid under sub-section (8) shall be refunded to the recipient by crediting the amount in the corresponding head of his electronic cash ledger in the manner as may be prescribed:

PROVIDED that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the supplier.

(10) The amount reduced from the output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 45.

III. Input Service Distributor

Section 190.- Credit distribution of service tax by ISD

Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as credit under this Act even if the invoice(s) relating to such services is received on or after the appointed day.

"Input Service Distributor" is defined in section 2(54) as follows:

(54) **"Input Service Distributor"** means an office of the supplier of goods and / or services which receives tax invoices issued under section 28 towards receipt of input services and issues a prescribed document for the purposes of distributing the credit of CGST (SGST in State Acts) and / or IGST paid on the said services to a supplier of taxable goods and / or services having same PAN as that of the office referred to above;

Manner of Distribution

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

- (a) the credit can be distributed against a prescribed document issued to each of the recipients of the credit so distributed, and such document shall contain details as may be prescribed;
- (b) the amount of the credit distributed shall not exceed the amount of credit available for distribution;
- (c) the credit of tax paid on input services attributable to a recipient of credit shall be distributed only to that recipient;
- (d) the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed only amongst such recipient(s) to whom the input service is attributable and such distribution shall be *pro rata* on the basis of the turnover in a State 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 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.

Explanation 1. –For the purposes of this section, the “relevant period” shall be

- (a) if the recipients of the credit have turnover in their States 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 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.

Explanation 2. - For the purposes of this section, ‘recipient of credit’ means the supplier of goods and / or services having the same PAN as that of Input Service Distributor.

Explanation 3. – For the purposes of this section, ‘turnover’ means aggregate value of turnover, as defined under sub-section (6) of section 2.

Manner of Recovery

Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 21 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipient(s) along with interest, and the provisions of section 66 or 67, as the case may be, shall apply *mutatis mutandis* for effecting such recovery.

IV. Credit in Special Circumstance

i) Person applying for registration in Thirty Days:

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

ii) Voluntary Registration:

A person, who takes registration under sub-section (3) of section 23 shall, subject to such conditions and restrictions as may be prescribed, be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration.

iii) Person opted for composition switches to normal

Where any registered taxable person ceases to pay tax under section 9, he shall, subject to such conditions and restrictions as may be prescribed, be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 8:

PROVIDED that the credit on capital goods shall be reduced by such percentage points as may be prescribed in this behalf.

iv) Exempt supply become taxable

Where an exempt supply of goods or services by a registered taxable person becomes a taxable supply, such person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:

PROVIDED that the credit on capital goods shall be reduced by such percentage points as may be prescribed in this behalf.

v) Transfer of Credit

Where there is a change in the constitution of a registered taxable person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provision for transfer of liabilities, the said registered taxable person shall be allowed to transfer the input tax credit that remains unutilized in its books of accounts to such sold, merged, demerged, amalgamated, leased or transferred business in the manner prescribed.

vi) Person switching to composition Scheme etc.

Where any registered taxable person who has availed of input tax credit switches

over as a taxable person for paying tax under section 9 or, where the goods and/ or services supplied by him become exempt absolutely under section 11, he shall pay an amount, by way of debit in the electronic credit or cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of such switch over or, as the case may be, the date of such exemption:

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

V. Removal of Capital Goods

In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by the percentage points as may be specified in this behalf or the tax on the transaction value of such capital goods or plant and machinery under sub-section (1) of section 15, whichever is higher:

PROVIDED FURTHER that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods under sub-section (1) of section 15.

VI. Reversal of Credit in case of Banking company Section 17(3) makes following provision in this regard.

(3) 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 per cent of the eligible input tax credit on inputs, capital goods and input services in that month.

Explanation.- The option once exercised shall not be withdrawn during the remaining part of the financial year.

VII. Recovery of Credit

Section 19 – Where credit has been taken wrongly, the same shall be recovered from the registered taxable person in accordance with the provisions of this Act.

VIII. Refund of unutilised credit where duty structure is inverted.

THANK YOU