Handbook on Blocked Credit under GST

(November, 2025)

The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

New Delhi

Handbook on Blocked Credit under GST

The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

DISCLAIMER:

The views expressed in this book are of the author(s). The Institute of Chartered Accountants of India may not necessarily subscribe to the views expressed by the author(s).

The information cited in this book has been drawn primarily from www.cbic.gov.in and other sources. While every effort has been made to keep the information cited in this book error free, the Institute or any office of the same does not take the responsibility for any typographical or clerical error which may have crept in while compiling the information provided in this book.

First Edition	:	January, 2023
Second Edition	:	November, 2025
Committee/Department	:	GST & Indirect Taxes Committee
E-mail	:	gst@icai.in
Website	:	https://www.icai.org; https://idtc.icai.org/
Price	:	₹ 200/-
ISBN	:	978-93-90668-55-7
Published by	:	The Publication & CDS Directorate on behalf of The Institute of Chartered Accountants of India ICAI Bhawan, Post Box No. 7100, Indraprastha Marg, New Delhi - 110 002 (India)
Printed by	:	Sahitya Bhawan Publications C-27, Site - C, UPSIDC, Sikandra, Agra - 282 007 November | 2025 | P4020 (Revised)

Foreword

Over the years, the Goods and Services Tax (GST) has firmly established itself as a pillar of India's indirect tax system, redefining business processes and modernizing indirect tax administration Since its implementation, GST has unified the country's tax structure, promoting efficiency, transparency, and ease of doing business. The system has continued to mature with numerous policy refinements, digital advancements and technology-driven compliance measures that have simplified tax administration and enhanced revenue collection.

The GST & Indirect Taxes Committee of ICAI has consistently been at the forefront of empowering members and enhancing their professional competence by organizing a wide range of initiatives such as specialized certification courses, conferences, workshops, live webcasts and e-learning modules on current as well as emerging developments in GST. The Committee has also been proactive in developing comprehensive and insightful technical publications to facilitate better understanding and compliance among members and other stakeholders.

It is indeed heartening to note that the Committee has now released the revised edition of its publication titled "Handbook on Blocked Credit under GST"**.** This Handbook serves as a practical guide for professionals, providing a lucid explanation of the provisions under which input tax credit (ITC) is restricted or blocked under the GST law. It elaborates on the circumstances where ITC cannot be availed on procurements and clarifies interpretational aspects with the help of relevant legal references and judicial pronouncements.

I appreciate the dedicated efforts and thoughtful initiative of CA. Rajendra Kumar P, Chairman, CA. Umesh Sharma, Vice-Chairman and the other esteemed members of the GST & Indirect Taxes Committee in revising this publication.

I am confident that this publication will serve as an excellent resource for members in practice and in industry, helping them strengthen their understanding of the concept of blocked credits and apply it effectively in their professional engagements. It will undoubtedly be a useful addition to the growing repository of knowledge resources developed by ICAI for the benefit of its members and the larger tax fraternity.

CA. Charanjot Singh Nanda
President, ICAI

Date:18.11.2025
Place: New Delhi

Preface

Eight years of GST mark a major milestone in India's tax reform journey. Since its rollout on 1st July 2017, GST has replaced multiple indirect taxes with a unified, destination-based system that removed the cascading effect of taxation. At its core lies the concept of Input Tax Credit (ITC), a cornerstone ensuring seamless credit flow. Section 17(5) of the CGST Act, 2017 reflects the Government's intent to restrict ITC to genuine business-related expenses and prevent its misuse for personal or non-core activities.

This Handbook attempts to provide a clear and structured understanding of blocked credits under GST, analysing the legal framework, rationale and practical implications of Section 17(5) and related provisions. As the scope of blocked credits continues to evolve through periodic amendments and notifications, staying updated is essential to ensure compliance and avoid penalties. Accordingly, the GST & Indirect Taxes Committee of ICAI has released the second edition of the "Handbook on Blocked Credit under GST", which is updated till 10th November, 2025. The revised edition incorporates recent amendments, notifications and judicial pronouncements, thereby serving as a practical guide for professionals and other stakeholders in navigating ITC restrictions.

We place on record our sincere gratitude to CA. Charanjot Singh Nanda, President, ICAI and CA. Prasanna Kumar D, Vice-President, ICAI, for their constant encouragement and guidance in all the initiatives undertaken by the Committee. We sincerely thank CA. Akshay M Hiregange and CA. Sreenivasulu Thulasiram for revising this publication and CA. Upender Gupta, Former Chief Commissioner, Customs & Indirect Taxes for reviewing the same. We also thank the esteemed members of the GST & Indirect Taxes Committee for their continued support and valuable inputs and acknowledge the support of CA. Tanya Pandey from the Secretariat of the Committee for her efficient technical and administrative assistance in bringing this publication to fruition.

While every effort has been made to ensure the accuracy and reliability of the information contained in this publication, there may still be differing interpretations or views on certain aspects of the law. We welcome readers to

share their suggestions or highlight any inadvertent errors at gst@icai.in. We also encourage you to visit our website, https://idtc.icai.org for regular updates and to contribute your insights and feedback on various aspects of indirect taxation.

CA. Umesh Sharma
Vice-Chairman
GST & Indirect Taxes Committee

CA. Rajendra Kumar P
Chairman
GST & Indirect Taxes Committee

Date:18.11.2025
Place: New Delhi

Contents

Readers may make note of the following while reading the publication:

Unless otherwise specified, the section numbers and rules referred to in this publication pertain to Central Goods and Services Tax Act, 2017 and Central Goods and Services Tax Rules, 2017 respectively.

Chapter 1
Meaning of Input Tax Credit

MEANING OF INPUT TAX CREDIT

The GST regime came into force from 1st July, 2017. Under 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 Tax Act, 2017 (hereinafter referred to as 'the CGST Act') deals with input tax credit (hereinafter referred to as "ITC"). The said Chapter places certain restrictions on the availment of ITC. In this Handbook, we shall be discussing in detail the provisions contained in section 17(5) of the CGST Act which deals with blocked credits. Before we proceed to examine the provisions of section 17(5), let us first understand some basic concepts in relation to input tax credit.

The terms 'input tax credit' and 'input tax' have been defined vide 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 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 Integrated Goods and Services Tax 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; 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,*

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

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;

In light of the above provisions, it can be summarized that ITC can be availed by the recipient of goods or services (in a transaction) in the following scenarios:

a) Tax charged by the supplier on the supply of goods or services or both under forward charge mechanism;

b) Tax paid by the recipient on receipt of supply of goods or services or both under reverse charge mechanism;

c) Tax paid on import of services would also stand included in reverse charge;

d) Tax paid on the import of goods at the time of filing the bill of entry for home consumption.

At the same time, it has been categorically stated that the composition dealer is not eligible to claim ITC. In fact, the supplier is also not allowed to charge taxes separately from the recipient under the composition scheme.

Further, it can be observed that the definition of input tax credit under GST is defined in an exhaustive manner. Unlike the Cenvat Credit Rules, it does not contain the inclusions and exclusions of available credit within the definition of input tax credit itself.

Under the GST regime, ITC on business-related expenses is generally allowable, provided certain other conditions are met. A critical condition is that such credits must not be restricted or blocked under Section 17(5) of the CGST Act. Therefore, a thorough understanding of the restrictions laid down in the said section is essential for correct availment of ITC.

INPUT, INPUT SERVICES AND CAPITAL GOODS

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 vide 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. *[1][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 certain activities or transactions constitute supply of goods or services.

Once something is identified to be classified as goods, one needs to understand whether the same would be classifiable as inputs or capital goods. The terms 'capital goods' and 'input' have been defined vide 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;

The delineation between inputs and capital goods is whether the same has been capitalized in the books of the accounts. If the value of goods has been capitalized in the books of account, these would be considered as capital

[1]Inserted vide Central Goods and Services Tax (Amendment) Act, 2018 vide Notification No. 02/2019-Central Tax dated 29.01.2019 w.e.f. 01.02.2019

goods. If the value of goods has not been capitalized, they would be classifiable as inputs. Of course, the same should be used or intended to be used in the course or furtherance of business.

Further to the above, once any supply is identified to be a service, then the same would be classifiable only as input services from the perspective of the recipient even if the cost of such input service is capitalized. 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.*

NEED FOR INPUT TAX CREDIT IN GST

With the introduction of GST, major Central and State taxes got subsumed into a single tax. The input tax credit paid on purchase of goods or services under GST can now be set off against the outward taxes leviable under GST. Therefore, this significantly reduces the burden of cascading effect of taxes. Thus, the GST law allows for continuous chain of set-off from the original supplier of goods / services point up to the retailer's level. Also, ITC can now be set off between both goods and services.

The concept of ITC introduced under GST is also in line with the guidelines of OECD that the burden of taxes in any value added tax system should not be borne by the businesses rather it should be borne by the ultimate consumer.

ITC – RIGHT vs CONCESSION

1. In the case of *M/s TVS Motor Company Ltd vs. The State of Tamil Nadu and others [AIR 2019 SC (CIV) 789]* the Supreme Court held that *"ITC is a form of concession which is provided by the Act; it cannot be claimed as a matter of right but only in terms of the provisions of the statute; therefore, the conditions mentioned in the aforesaid section had to be fulfilled."* Similar conclusion was drawn in the case of *ALD Automotive Pvt. Ltd. vs. The Commercial Tax Officer & Ors. [AIR 2018 SC 5235].*

2. If Input tax credit has been lawfully availed after fulfilling the conditions laid down in the Act, does it become a taxpayer vested right? In the case of *Eicher Motors Ltd vs Union of India [1999 (106) E.L.T. 3 (S.C.)]* the assesses demanded quashing of the newly introduced rule 57F which provided for lapsing of MODVAT credit which was lying unutilised

as on 16.03.1995. The assessees argued that MODVAT credit represented a vested right which was rightfully acquired by them under the earlier law. The Hon'ble Supreme Court held that the right to credit had rightfully accrued to the assessee. Section 37 of the Central Excise Act, 1944 [Power of Central Government to make rules] does not have the power to insert a rule that could take away such credit which had already accrued to them. Similar conclusion was drawn in the case of *Collector of Central Excise v. Dai Ichi Karkaria Ltd. [1999] 7 SCC 448*.

3. Reference can also be made to the Hon'ble Supreme Court's judgement in the case of *Jayam & Co vs. Assistant Commissioner [2018 (19) GSTL 3 (SC)]* wherein it was held that when a concession is given by a statute, the Legislature has the power to make the provision stating the form and manner in which such concession is to be allowed. Sub-section (20) seeks to achieve that. There was no right, inherent or otherwise, vested with dealers to claim the benefit of ITC but for section 19 of the VAT Act. That apart, there were valid and cogent reasons for inserting section 19(20). The main purport was to protect the Revenue against clandestine transactions resulting in evasion of tax.

4. Notifications and Rules cannot be introduced to take away the ITC entitlement available to an assessee – enumerated in *Shabnam Petrofils Pvt Ltd vs UOI [29 GSTL 225 (Guj.)]*

5. The Hon'ble High Court of Andhra Pradesh in the case of *M/s. Thirumalakonda Plywoods [2023 (76) G.S.T.L. 172 (A.P.)]* discussed that ITC is a mere concession/rebate/benefit but not a statutory or constitutional right and therefore imposing conditions including time limitation for availing the said concession will not amount to violation of constitution or any statute and secondly, as rightly argued by Learned Advocate General, the operative spheres of Section 16 and constitutional provisions under Article 14, 19(1)(g) and 300A are different and hence infringement does not arise. That, by nature ITC is a concession/rebate/benefit but not a statutory right has been reiterated in a thicket of decisions.

The discussion on ITC being a concession or right is also made in the following judgments:

a) Union of India Vs VKC Footsteps India Pvt Ltd [2021 (52) G.S.T.L. 513 (S.C.)]

b) *Chief Commissioner of CGST Vs Safari Retreats Pvt Ltd [2024 (90) G.S.T.L. 3 (S.C.)]*

From the above, one can draw an inference that CENVAT Credit / ITC is a concession or a benefit and is available only when all the conditions laid down by the law are satisfied. However, once all the conditions are satisfied and credit is availed, it becomes a vested right. In such cases, the right to claim ITC cannot be taken away once it has accrued in terms of law.

Hon'ble Supreme Court in *UOI and Anr. Vs Vijay Chand Jain [(1977) 2 SCC 405]* ruled that the expression 'in respect of' admits of a wider connotation and has been used in the sense of "being connected with". This is important to understand from the point of view of what is admissible input tax credit.

Chapter 2
Conditions and Eligibility for Taking ITC

Section 16 of the CGST Act provides for eligibility and conditions for taking input tax credit. Once a registered person fulfills the basic conditions prescribed in section 16 then he becomes eligible to claim input tax Credit. Once the conditions of section 16 have been satisfied, the registered person also needs to check the provisions contained in section 17(5), which further restricts the eligibility for input tax credit.

STATUTORY PROVISIONS

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.*

BRIEF ANALYSIS OF SECTION 16(1)

1. Under the GST regime, 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. However, input tax credit can be availed only by a registered person, i.e., a person registered under GST.
2. The conditions and restrictions for availing input tax credit have been prescribed under rule 36 to 45 of the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "the CGST Rules").
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.
4. The word 'business' is defined vide section 2(17) as under –

"business" includes—

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) *any activity or transaction in connection with or incidental or ancillary to sub-clause (a);*

(c) *any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;*

(d) *supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;*

(e) *provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;*

(f) *admission, for a consideration, of persons to any premises;*

(g) *services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;*

(h) [2]*[activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and]*

(i) *any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities*

Thus, 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 have any incidental or ancillary nexus with the business. Thus, the connection with the registered person's business is an essential criterion for the availment of ITC.

Section 16(1) provides that ITC is admissible on any inward supplies which are either actually used or intended to be used in the course or furtherance of business or commerce. Hence, ITC would also be eligible for any expense which may be incurred for any future business transaction.

[2] *Substituted vide Central Goods and Services Tax (Amendment) Act, 2018 vide Notification No. 02/2019-Central Tax dated 29.01.2019 w.e.f. 01.02.2019. Prior to its substitution, sub-clause (h) read as under:*
"(h) services provided by a race club by way of totalisator or a licence to book maker in such club; and"

STATUTORY PROVISIONS

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. *[3][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.*

[4][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. *[5][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 [6][section 41[7][]], the tax charged in respect*

---

[3] Inserted vide the Finance Act, 2021 vide Notification No. 39/2021 -Central Tax dated 21.12.2021 w.e.f. 01.01.2022.

[4] Substituted vide the Central Goods and Services Tax (Amendment) Act, 2018 vide Notification No. 02/2019-Central Tax dated 29.01.2019 w.e.f. 01.02.2019. Prior to its substitution, it read as: "Explanation.- For the purposes of this clause, it shall be deemed that the registered person has received the goods 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;".

[5] Inserted vide the Finance Act, 2022 vide Notification No. 18/2022 -Central Tax dated 28.09.2022 w.e.f. 01.10.2022.

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 [8][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 [9][to the supplier] of the amount towards the value of supply of goods or services or both along with tax payable thereon.

Rule 36. Documentary requirements and conditions for claiming input tax credit-

(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 sub-section (3) of section 31 , subject to the payment of tax;

---

[6]Substituted vide CGST (Amendment) Act, 2018 [This amendment was not notified, later omitted.] Before it was read as "section 41".

[7] Words "or section 43A" omitted vide the Finance Act, 2022 vide Notification No. 18/2022 -Central Tax dated 28.09.2022 w.e.f. 01.10.2022

8 Substituted vide the Finance Act, 2023 through Notification No 28/2023-Central Tax dated 31.07. 2023 w.e.f. 01.10.2023. Prior to its substitution, it read as "added to his output tax liability, along with interest thereon".

[9] Inserted vide the Finance Act, 2023 through Notification No 28/2023-CT dated 31.07.2023 w.e.f. 01.10.2023.

(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.

(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 [10][****]:

*[11][**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.]*

(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, willful misstatement or suppression of facts [12][under Section 74].

[13][(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

*[10] Omitted vide Notification No. 19/2022 – Central Tax dated 28.09.2022 w.e.f. 01.10.2022. Prior to omission, it read as "and the relevant information, as contained in the said document, is furnished in **FORM GSTR-2** by such person"*

[11] Inserted vide Notification No.39/2018 -Central Tax dated 04.09.2018

[12] Inserted vide Notification No 20/2024 -Central Tax dated 08.10.2024

[13] Substituted vide Notification No. 40/2021 - CT dated 29.12.2021 w.e.f. 01.01.2022 for "(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using the invoice furnishing facility shall not exceed 5 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the invoice furnishing facility".

*by the supplier in the statement of outward supplies in **FORM GSTR-1** [14]**[as amended in FORM GSTR-1A if any]** or using the invoice furnishing facility; and*

*(b) the details of [15][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.]*

[16][Provided that the said condition shall apply cumulatively for the period February, March, April, May, June, July and August, 2020 and the return in FORM GSTR-3B for the tax period September, 2020 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.]

[17][Provided further that such condition shall apply cumulatively for the period April, May and June, 2021 and the return in FORM GSTR-3B for the tax period June, 2021 or quarter ending June, 2021, as the case may be, shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above.]

BRIEF ANALYSIS OF SECTION 16(2) AND ITS RELATED RULES

1. Documentary evidence required for the availment of input tax credit has been prescribed under rule 36(1).
2. Rule 36(1) prescribes the following documentary evidence on the basis of which ITC can be availed:
   a. an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;
   b. an invoice (self-invoice) where the supply is received from an unregistered person and the tax is payable under reverse charge, subject to the payment of tax;

[14] Inserted vide Notification No 12/2024-Central Tax dated 10.07.2024
[15] Inserted vide Notification No. 19/2022 – Central Tax dated 28.09.2022 w.e.f. 01.10.2022
[16] Inserted vide Notification No. 30/2020–Central Tax dated 03-04-2020
[17] Substituted vide Notification No. 27/2021 – Central Tax dated 01-06-2021. Earlier it was read as "Provided further that such condition shall apply cumulatively for the period April and May, 2021 and the return in FORM GSTR-3B for the tax period May, 2021 shall be furnished with the cumulative adjustment of input tax credit for the said months in accordance with the condition above."

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.

3. Proviso to rule 36(2) provides that if the document does not contain all the particulars as specified in law but contains the following particulars, then also ITC may be availed by the registered person:

   a. Details of the amount of tax charged;

   b. Description of goods or services;

   c. Total value of supply of goods or services or both;

   d. GSTIN of the supplier and recipient;

   e. Place of supply in case of inter-state supply received.

4. Section 16(2) provides that the registered person should have received the goods or services or both on which he intends to avail ITC. It also provides that in case of Bill to Ship to model, the registered person would be deemed to have received the goods or services if such goods or services are delivered to any other person on the direction of such registered person. *Circular 241/35/2024 dated 31st December 2024* provided an important clarification with respect to section 16(2)(b) in respect of goods which have been delivered by the supplier at his place of business under Ex-Works Contract, i.e. delivery is completed at the premises of the supplier and the transport is arranged by the recipient from such location. The supplier bears no risk and rewards with respect to the transaction. To this end, ITC is eligible when goods are handed over by the supplier at his premises and the said goods need not be physically received by the recipient at his location to claim the credit, creating a deemed receipt of goods. The recipient, however, would fulfill all the conditions laid down in section 16 and section 17 including the condition that the said goods are used or intended to be used in the course or furtherance of business by the said registered person.

5. Section 16(2)(aa) was inserted vide Finance Act, 2021 and made effective only from 01.01.2022. This clause is to be read along with rule 36(4). The said rule from 01.01.2022 provides for the availment of only that input tax credit whose details have been reflected in a registered person's GSTR-2B. Obviously, this would be applicable only on forward charge and not on ITC availed under reverse charge, import of goods, import of services, ISD credits etc.

   Before 01.01.2022, even though there was no provision in section 16 which restricted credit to those invoices/ debit notes getting reflected in GSTR-2B but Rule 36(4), which was inserted by *Notification No. 49/2019-Central Tax dated 09.10.2019*, initially allowed availment of input tax credit upto 120% of the input tax credit getting reflected in GSTR-2A. This limit was later reduced to 110% of the input tax credit getting reflected in GSTR-2A vide *Notification No. 75/2019-Central Tax dated 26.12.2019* and made applicable w.e.f. 01.01.2020. There was a further reduction of the said limit to 105% of the input tax credit getting reflected in GSTR-2A/2B vide *Notification No. 94/2020-Central Tax dated 22.12.2020* and was applicable w.e.f. 01.01.2021. Currently the CGST Act as well as the CGST Rules provide for 100% matching with effect from 01.01.2022.

   Hence, for the period prior to 01.01.2022, a registered person can take a plea that without any statutory backing, the rule cannot place restrictions on availment of input tax credit. It is a settled principle that subordinate legislation cannot override the statue. Although, to this end, *Circular 183/15/2022 and 193/05/2023* were issued to deal with difference in ITC availed in Form GSTR 3B as compared to that detailed in Form GSTR 2A for FY 2017-18, 2018-19, 2019-20, 2020-21 and up to December 2021. In short, the taxpayer must obtain vendor certification and/or CA Certificates to prove the claim of ITC wherein such entries did not reflect in Form GSTR - 2A but were genuine and the taxpayer is eligible for ITC.

   There can be a question in a person's mind that section 16(1) entitles a person to take credit subject to conditions and restrictions as may be prescribed. Therefore, rule 36(4) always had a statutory backing. This view is now clarified where the Constitutional validity of rule 36(4) was upheld, negating the premise that the Rule derives its power from Section 43A in the case of *Nahasshukoor Vs Asst. Comm. Of SGST*

[2024 (81) G.S.T.L. 384 (Ker.)] and similarly upheld in Telangana State High Court.

6. Since rule 36(4) requiring the matching of ITC between GSTR 2A /2B and 3B has been inserted with effect from 09.10.2019, one can take a stand that the matching principles were not required for the period from 01.07.2017 till this date.

   Reliance can also be placed on the decision of Hon'ble SC in the case of *Union of India v. Bharti Airtel Ltd. [2021] S.L.P. (C) (SC*). In the said case, the registered person had failed to fully avail his input tax credit which had accrued to him during the period July'17 to Sep'17. The reason that was given for the same was non availability of Form GSTR-2A till September 2018.

   The Hon'ble Supreme Court held that input tax credit is to be self-assessed by the registered person. Reliance is to be placed by him on primary sources such as invoices/challans, receipt of goods and services. While availing input tax credit, a registered person is not solely dependent on GSTR-2A. The assessee is required to submit returns on the basis of self-assessment in Form GSTR-3B manually on electronic platform. Form GSTR-2A is only a facilitator for making informed decision while doing such self-assessment.

   The judgment of Hon'ble Delhi High Court in favour of the assessee was reversed by the Hon'ble Supreme Court by holding that if there is no provision regarding refund of surplus or excess ITC in the electronic credit ledger, the assessee who discharged output tax liability (OTL) by paying cash (which he was free to pay in cash in spite of the surplus or excess electronic credit ledger account), could later on ask for swapping of the entries, so as to show the corresponding OTL amount in the electronic cash ledger from where he could claim a refund.

   The court held that the GST law permits rectification of errors and omissions only at the initial stages but in the specified manner.

7. Section 16(2)(ba) was inserted vide the Finance Act, 2022 and made effective vide *Notification No. 18/ 2022-Central Tax dated 28.09.2022* with effect from 01.10.2022. The said section makes reference to section 38 which was substituted vide the Finance Act, 2022 through *Notification No. 18/2022-Central tax dated 28.09.2022*. This sub-section provides that a registered person shall be able to avail input tax credit only in

respect of those invoices/debit notes which have not been restricted as per the provisions of section 38. The details of such restricted credit will be auto populated in a registered person's GSTR-2B. Section 38 is reproduced hereunder for ready reference:-

Section 38: Communication of details of inward supplies and input tax credit

(1) The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and [18][a statement] containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.

(2) The [19][statement referred in] sub-section (1) shall consist of—

a) details of inward supplies in respect of which credit of input tax may be available to the recipient; [20][]

b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient,[21][including] on account of the details of the said supplies being furnished under sub-section (1) of section 37,-

i. by any registered person within such period of taking registration as may be prescribed; or

ii. by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or

iii. by any registered person, the output tax payable by whom in

[18] Substituted vide Section 127 of the Finance Act, 2025. Notified through Notification No.16/2025 – CT dated 17.09.2025, w.e.f. 01.10.2025. Prior to its substitution it was read as "an auto-generated statement".

[19] Substituted vide Section 127 of the Finance Act, 2025. Notified through Notification No.16/2025 – CT dated 17.09.2025 w.e.f. 01.10.2025. Prior to its substitution, it read as "auto-generated statement under".

[20] Omitted vide Section 127 of the Finance Act, 2025. Notified through Notification No.16/2025 – CT dated 17.09.2025, w.e.f. 01.10.2025. Prior to its omission, it read as "and".

[21] Inserted vide Section 127 of the Finance Act, 2025. Notified through Notification No.16/2025 – CT dated 17.09.2025, w.e.f. 01.10.2025.

accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or

iv. *by any registered person who, during such period as may be prescribed,* has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or

v. *by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or*

vi. *by such other class of persons as may be prescribed; or*

[22]*[(c)such other details as may be prescribed]*

From the above, it can be summarized that availing ITC would be restricted under section 38 in the following cases:

a. where supply is received from a registered person within such period of taking registration as may be prescribed;

b. where supply is received from a registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed;

c. where value of supply in the supplier's GSTR-1 exceeds the value disclosed in GSTR-3B by the prescribed limit;

d. where the input tax credit in the supplier's GSTR-3B exceeds the value disclosed in GSTR-2B by the prescribed limit;

e. where the supplier has paid higher proportion of tax through electronic credit ledger in GSTR-3B than that allowed as per law; or

f. by such other class of persons as may be prescribed

[22] *Inserted vide Section 127 of the Finance Act, 2025. Notified through Notification No.16/2025 – CT dated 17.09.2025, w.e.f. 01.10.2025.*

Section 16(2)(c) imposes a condition which is almost impossible for a registered person to verify. It allows a registered person to avail ITC only on those invoices, whose tax amount has been deposited by the supplier with the Government. Here, one needs to note that GSTR-2B only shows to the recipient the tax invoices which have been uploaded by the supplier in their Form GSTR-1. Therefore, a question arises as to whether the payment of the same which has been done by the supplier through Form GSTR-3B against those invoices can be verified. FORM GSTR 2A does provide the details of FORM GSTR 3B filing date. It may still be impossible to verify whether payments are made against the specific invoice. To this end, rule 88C ensures that short liability declared in FORM GSTR 1 when compared to FORM GSTR 3B is verified in the GST portal by way of FORM GST DRC-01B.

It is important to note that the Constitutional validity of section 16(2)(c) was upheld by the Hon'ble Kerala High Court in the case of *Nahasshukoor Vs Asst. Comm. Of SGST* wherein it was held that the said provision is not in violation of Article 14 of the Constitution. It was also clarified that any tax legislation may not be easily interfered with - Court must show judicial restraint to interfere with tax legislation unless it is shown and proved that such taxing statute is manifestly unjust or glaringly unconstitutional - Taxing statutes cannot be placed, tested or viewed on same principles as laws affecting civil rights such as freedom of speech, religion, etc. - Test of taxing statutes would be viewed on more stringent tests. In the case of *DY Beathel Enterprises v. State Tax Officer (Data Cell) (Investigation Wing), Tirunelveli [2021-HC-MAD-GST],* the assessee purchased goods from registered dealer. Credit was availed by the assessee based on returns filed by the seller. Most of the payments inclusive of tax that were made by the assessee were through banking channels. However, the seller had failed to deposit any tax with the Government. The Department initiated recovery proceedings against the buyer, without initiating any action against the seller. The Court quashed the impugned order as the Department took no steps to initiate proceedings first against the seller. The matter was remanded back with the instruction to initiate recovery of taxes from the supplier at first.

However, the Hon'ble Court in the said case did not dwell on the issue of liability of ITC reversal in cases where the supplier does not pay tax and the Department fails to recover the same.

In the case of *LGW Industries Ltd. vs. Union of India [(2022) (Calcutta-HC)],* the taxpayers were asked to reverse input tax credit along with interest and penalty, as the supplier from whom purchases were made, were found to be non-existing (so there was no tax deposit with the exchequer). Further, the registration of such supplier was also cancelled from retrospective date. The court remanded the case back to the concerned authority with the direction to check:

i. the genuineness of the documents on the basis of which credit was availed by the taxpayer;

ii. whether payments on purchases along with GST were actually paid or not to the supplier;

iii. whether verification was done by the taxpayer to check the genuineness of the supplier;

iv. whether the transactions and purchases were made before or after the cancellation of registration of the suppliers;

v. compliance of statutory obligation by the petitioners in verification of identity of the suppliers (RTP).

If it is found, upon considering the relevant documents, that all the purchases and transactions in question are genuine and supported by valid documents and transactions in question were made before the cancellation of registration of those suppliers and after taking into consideration the judgments of the Hon'ble Supreme Court and various Hon'ble High Courts which have been referred in this order and in that event the petitioners shall be given the benefit of input tax credit in question.

8. The second and third provisos to section 16(2) are applicable only in case of input tax credit availed under forward charge mechanism. The said provisions are not applicable in respect of the following cases:

i. Supplies made under Schedule I of the CGST Act as such supplies are made without consideration;

ii. Value of supplies includes certain amount in accordance with the provisions of section 15(2)(b), i.e., amount on which supplier is liable to pay tax in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both.

The second proviso to section 16(2) provides for the reversal of input tax credit on account of non-payment of the amount [value of supply along with tax payable thereon] to the supplier within a period of 180 days from the date of issue of invoice by the supplier. Interest is also leviable as per section 50 on account of non-payment to the supplier, if the said ITC stands both availed and utilized. However, it is to be noted here that as per *Circular No 170/02/2022-GST dated 06.07.2022*, which provides for reporting requirements in Form GSTR-3B, the reversal of ITC on account of non-payment is to be shown in Table 4(B)(2) of Form GSTR-3B.

There is a requirement to reverse input tax credit on account of failure to pay to the supplier within 180 days from the date of issue of invoice by the supplier. A plain reading of the provision shows that the said reversal is applicable irrespective of the terms of contract between the seller and the recipient. There are certain industries where the terms of credit are long or there is a practice of holding back of certain amount till the completion of work (e.g. retention payments). One needs to note that there is no specific exclusion, or relief is given under the said proviso even where there is no default in payment by the purchaser to the seller as per the terms of the contract.

However, it must be noted that the second proviso to section 16 (2) uses the term "fails to pay". A person can be said to have failed to pay an amount only when he is liable to pay the same. The proviso inherently links the liability to reversal of ITC only in those cases where the supplier was contractually bound to pay the same to the recipient. However, one will have to wait for the meaning to be given by the Courts to the phrase "fails to pay" for determining the liability to reverse ITC for invoices involving retention payments.

STATUTORY PROVISIONS

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

Section 16(3) of the CGST Act clearly provides that one can either claim depreciation on the component of tax paid on inward supply of capital goods and plant and machinery or claim ITC on the same. This option is available to the taxpayer. Where it is possible to utilize the entire ITC for payment of

output taxes, then one may opt for availing the benefit of such ITC. This results in a lower output tax liability to be paid in cash.

Where ITC may not be available or utilizable, then one may claim depreciation on the tax component. Upon claiming higher depreciation, the quantum of income tax on the said component comes down.

STATUTORY PROVISIONS

Section 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 [23][thirtieth day of November] following the end of financial year to which such invoice or [24][xxx] debit note pertains or furnishing of the relevant annual return, whichever is earlier;*

[25][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.]

1. Section 16(4) provides for the last date for the availment of input tax credit. The earlier due date for availment of ITC was the due date of September month's return of the subsequent financial year or furnishing of the relevant annual return for the said period, whichever is earlier. However, the said provision has been amended vide the Finance Act, 2022 so as to provide for the availment of input tax credit by 30th of November following the end of the financial year to which invoice pertains or furnishing of the relevant annual return for the said period, whichever is earlier. The said provisions have been made effective from

[23] Substituted vide Finance Act, 2022 through Notification No. 18/2022 -Central Tax dated 28.09.2022 w.e.f. 01.10.2022 for "due date of furnishing of the return under section 39 for the month of September"

[24] The words "invoice relating to such" omitted vide the Finance Act, 2020 through Notification No. 92/2020-Central Tax dated 22.12.2020 w.e.f. 01.01.2021

[25] Inserted vide Removal of Difficulties Order, 2018, Order No. 02/2018-Central tax dated 31.12.2018

01.10.2022 vide *Notification No. 18/2022 dated 28.09.2022*. The new time limit is applicable for the invoice or debit note pertaining to FY 2021-22.

2. It is important to note here that the time limit [due date of September month's return (before amendment)/ 30th November of the next financial year (after amendment)] provided as per law is an absolute date. On a plain reading of the said provisions, it is clear that in case there is a delay in filing of return for availing ITC beyond the dates specified, input tax credit under section 16(4) shall not be available in relation to invoices/debit notes pertaining to the previous financial year.

3. One of the conditions for availing input tax credit is that the invoice or debit note should have been furnished by the supplier in their GSTR-1, which will then be reflected in the recipient's GSTR-2B. Thus, a conjoint reading of section 16(4) with section 16(2)(aa) of the CGST Act indicates that before availing ITC in Form GSTR-3B within the time limit specified in section 16(4), the relevant invoice or debit note must be reflected in GSTR-2B. *Circular 211/05/2024 dated 26.06.2024* clarified on the time limit under section 16(4) of the CGST Act in respect of RCM supplies received from unregistered persons - ITC can be availed by the recipient only on the basis of invoice or debit note or other duty paying document and as in case of RCM supplies received by the recipient from unregistered supplier, invoice has to be issued by the recipient himself. The relevant financial year, to which invoice pertains, for the purpose of time limit for availment of ITC under section 16(4) in such cases shall be the financial year of issuance of such invoice only. In cases where the recipient issues the said invoice after the time of supply of the said supply and pays tax accordingly, he will be required to pay interest on such delayed payment of tax.

   Although subsequently, Rule 47A was introduced in the CGST Rules vide *Notification No. 20/2024-Central Tax dated 08.10.2024* w.e.f. 01.11.2024 providing for a time limit to raise the self-invoice under section 31(3)(f), i.e., within 30 days from the date of receipt of the said supply of goods or services, or both, as the case may be. Therefore, from November 2024 onwards, the benefit of *Circular 211* would not be available.

4. Can the Act place restrictions on conditions for the availment of input tax credit under section 16(4), even though section 16(2) starts with a non-obstante clause? One can take a view that all the sections contained in the CGST Act in relation to conditions for the availment of input tax credit, are to be read in isolation and hence, all conditions should be complied to avail the ITC. If no effect is given to the conditions laid under section 16(2), it would lead to redundancy of the said provision. In the case of *Kailash Chandra and Anr vs Mukundi Lal and Ors, (2002) 2 SSC 678* it was held that a provision in the statute is not to be read in isolation. It has to be read with other related provisions in the Act itself, more particularly when the subject matter dealt with in different sections or parts of the same statute is the same or similar in nature.

5. Hon'ble Supreme Court in the case of *Gobinda Constructions Vs UOI [2024 (89) G.S.T.L. 81 (S.C.)]* upheld the constitutional validity of section 16(4) of the CGST Act.

6. Conservatively, the ITC on the invoices / debit notes for the previous financial year must be declared in Form GSTR 3B return of October month wherein the return could be delayed to the extent of time limit mentioned, i.e. 30th November. The last date to raise a GST credit note could also be interpreted as 31st October as the return for October month needs to be filed in the month of November.

STATUTORY PROVISION

*[26]**[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)** Where registration of a registered person is cancelled under section 29 and subsequently the cancellation of registration is revoked by any order, either under section 30 or pursuant to any order made by the Appellate Authority or the Appellate Tribunal or court and where availment of input tax credit in respect of an invoice or debit note was not restricted under sub-section (4) on the date of order of cancellation of registration, the said*

[26] Inserted vide the Finance (No. 2) Act, 2024 vide Notification 17/2024-Central Tax dated 27.09.2024.

person shall be entitled to take the input tax credit in respect of such invoice or debit note for supply of goods or services or both, in a return under section 39,–

(i) filed up to thirtieth day of November following the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier; or

(ii) for the period from the date of cancellation of registration or the effective date of cancellation of registration, as the case may be, till the date of order of revocation of cancellation of registration, where such return is filed within thirty days from the date of order of revocation of cancellation of registration,

whichever is later.]

1. A one-time amnesty scheme has been introduced to overcome difficulties faced during the initial period of implementation of GST law by introducing section 16(5). Also, impact of cancellation and revocation of cancellation of GST registration on ITC has been covered by way of Section 16(6).

2. The said provisions are retrospectively applicable w.e.f. 01.07.2017. It was also clarified in section 150 of the Finance (No. 2) Act, 2024 – "No refund shall be made of all the tax paid or the input tax credit reversed, which would not have been so paid, or not reversed, had section 118 been in force at all material times."

3. *Notification No. 22/2024-CT dated 08.10.2024* envisaged a special procedure for rectification of orders under sections 73, 74, 107 and 108 of the CGST Act, which have confirmed demands for wrong availment of ITC, but which is now available under section 16(5) or 16(6) as described above. To this effect, *Circular No. 237/31/2024 dated 15.10.2024* was issued to clarify certain practical scenarios and provide details on GST portal application process for rectification electronically.

4. Therefore, such a modification in law benefits those who had claimed ITC beyond the previously mentioned time limits up to 30th November 2021. It also aids in managing ongoing litigations for the period July 2017 up to March 2021 on account of ITC claimed beyond due date and also covers ITC lost during cancellation of registration/revocation of cancellation of registration.

5. In *Shiv Construction Company [2025 - GUJARAT HIGH COURT] held-*

   'Considering the amendment in CGST Act by insertion of Section 16 (5) of the Act, the alleged default committed by the petitioners of not complying with Section 16(4) of the Act would now no longer exists subject to verification of the facts by the Adjudicating Authority.

   In view of such subsequent development which has taken place after passing the impugned order by the respondent authority, the matter is required to be remanded back to the Adjudicating Authority to pass a fresh denovo order considering the provisions of Section 16(5) which has come into operation w.e.f. 01.07.2017.'

6. Insertion of Section 128A - A one-time amnesty scheme that has been brought on the statute book by way of Section 128A of the CGST Act *vide section 146 of the Finance (No. 2) Act, 2024 and notified through Notification No. 17/2024 dated 27.09.2024.* It relates to waiver of interest or penalty or both relating to demands raised under section 73 for the period 01.07.2017 upto 31.03.2020 subject to conditions and restrictions mentioned in the said provision.

Chapter 3
Overview of Provisions of Apportionment of Credit and Blocked Credit

Section 17 of the CGST Act can be divided into two parts. Sub-sections (1) to (4) of section 17 deal with apportionment of input tax credit and sub-section (5) of section 17 deals with blocked credit.

STATUTORY PROVISIONS

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.*

(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.*

(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.*

[27][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, [28][except, -

(i) the value of activities or transactions specified in paragraph 5 of the said Schedule; and

---

[27] Inserted vide the Central Goods and Services Tax (Amendment) Act, 2018 vide Notification No. 02/2019-Central Tax dated 29.01.2019 w.e.f. 01.02.2019.

[28]Substituted vide the Finance Act, 2023 vide Notification No. 28/2023- Central Tax dated 31.07.2023 w.e.f. 01.10.2023 for "except those specified in paragraph 5 of the said Schedule".

(ii) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said schedule].

***(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.

BRIEF ANALYSIS

1. Where the inward supplies are used by the registered person partly for the purposes of business and partly for other purposes, the amount of credit would be restricted to so much of the input tax as is attributable to the purposes of his business. Therefore, no credit is available on inward supplies used for non-business purposes.

2. Where the inward supplies are used by the registered person partly for effecting taxable supplies, including zero-rated supplies [exports/ supplies done to SEZ for authorised operations], and partly for effecting exempt supplies, the amount of credit would be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

3. 'Exempt supply' refers to supplies which attract "NIL" rate of tax, wholly exempt from tax and includes non-taxable supplies. Further, the value of exempt supply for the purpose of apportionment of the input tax credit shall be such as may be prescribed and would include the following supplies:

    a. Supplies on which the recipient is liable to pay tax on reverse charge basis [from the point of view of the supplier];

b. Transactions in securities and the value of security would be taken as 1 percent of the sale value of such security [as per Explanation provided under rule 45 of the CGST Rules];

c. Sale of land and subject to clause (b) of paragraph 5 of Schedule II, sale of building and the value of land and building would be taken as the same as adopted for the purpose of paying stamp duty [as per Explanation provided under rule 45 of the CGST Rules];

d. The value of activities or transactions mentioned in sub-paragraph (a) of paragraph 8 of Schedule III i.e. the value of supply of warehoused goods to any person before clearance for home consumption and the value of such supplies would be taken as the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers [29][as per Explanation 3 provided under rule 43 of the CGST Rules]. There are many other activities listed in Schedule-III which are treated neither as supply of goods or of services.

The value of exempt supply would not include the following:

a) the value of zero-rated supplies of exempted goods or services.

b) the value of activities or transactions specified in Schedule III, except those specified in para 'c' and 'd' above

4. In case a registered person is utilizing the inputs or input services partly for business and partly for other purposes or he is making both taxable including zero-rated and exempt outward supplies, then the input tax credit on inputs and input services would be eligible in terms of the procedure laid down under rule 42.

5. In case a registered person is utilizing the capital goods partly for business and partly for other purposes or he is using capital goods for making both taxable including zero-rated and exempt outward supplies, then the input tax credit on inward supply of such capital goods would be eligible in terms of the procedure laid down under rule 43 of the CGST Rules.

[29] *Inserted vide Notification No. 38/2023- Central Tax dated 04.08.2023 w.e.f. 01.10.2023*

6. For the purpose of Rule 42 & 43, the aggregate value of exempt supplies shall exclude:

   a. 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 NBFC engaged in supplying such services; and

   b. The value of supply of duty credit scrips specified in *Notification No. 35/2017-Central Tax (Rate) dated 13.10.2017*.

STATUTORY PROVISIONS

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:—*

[30][(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):

[30] Substituted vide The CGST (Amendment) Act, 2018 vide Notification No. 02/2019-Central Tax dated 29.01.2019 w.e.f. 01.02.2019

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;]

[31][(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 [32][plant and

[31]Substituted vide The CGST (Amendment) Act, 2018. Notified through Notification No.02/2019-CT dated 29.01.2019, w.e.f. 01.02.2019.

machinery] on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation [33][1] - 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;

[34][Explanation 2.—For the purposes of clause (d), it is hereby clarified that notwithstanding anything to the contrary contained in any judgment, decree or order of any court, tribunal, or other authority, any reference to "plant or machinery" shall be construed and shall always be deemed to have been construed as a reference to "plant and machinery";]

(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;

[35][(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 referred to in section 135 of the Companies Act, 2013 (18 of 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 [36][section 74 in respect of any period up to Financial year 2023-24.].

---

[32]Substituted vide Section 124 of the Finance Act, 2025 dated 29.03.2025 w.r.e.f. 01.07.2017– before it was read as 'Plant or machinery'. Notified through Notification No. 16/2025 – CT dated 17.09.2025. Brought into force on 01.10.2025

[33] Renumbered as 'Explanation 1' vide The Finance Act, 2025. Notified through Notification No. 16/2025 – CT dated 17.09.2025, w.e.f. 01.10.2025.

[34] Inserted vide Section 124 of the Finance Act, 2025. notified through Notification No. 16/2025 – CT dated 17.09.2025, w.e.f. 01.10.2025.

[35] Inserted vide Section 139 of the Finance Act, 2023.Notified vide Notification No. 28/2023-Central Tax dated 31.07.2023 w.e.f. 01.10.2023

[36] Substituted vide the Finance (No.2) Act, 2024 w.e.f. 01.11.2024. Notified through Notification No. 17/2024-CT dated 27.09.2024 w.e.f. 01.11.2024. Prior to its substitution, it read as "section 74, 129 and 130".

(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 (i.e. V) 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.

BRIEF ANALYSIS OF SECTION 17(5)

Non-Obstante Clause- ***Meaning of 'notwithstanding'***

1. Section 17(5) is a non obstante provision. The sub-section has an overriding effect on the provisions contained in section 16(1) and 18(1), both of which are in relation to availment of input tax credit. The word 'notwithstanding' as per the Black's Law Dictionary means "Despite; in spite of". Thus, sub section (5) will be effective in spite of what is contained in sections 16(1) and 18(1).

2. The term 'notwithstanding' was explained by the Apex Court in the case of *Chandavarkar Sita Ratna Rao vs Ashalata S. Guram [1987 AIR 117, 1986 SCR (3) 866]* as follows-

"*A clause beginning with the expression 'notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract' is more often than not appended to a section in the beginning with a view to give the enacting part of the section, in case of conflict, an overriding effect over the provision of the Act or the contract mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non-obstante clause or any contract or document mentioned the enactment, following it will have its full operation or that the provisions embraced in the non-obstante clause would not be an impediment for an operation of the enactment.*"

Thus, any input tax credit specified under the provisions of sub section (5) of section 17 shall be disallowed irrespective of the fact that it is allowable under section 16 or section 18 of the CGST Act. In a way, section 17 (5)

blocks ITC benefit of tax paid on legitimate inward supplies which otherwise would have been allowable in the normal course of business.

Meaning of 'in respect of'

3. 'In respect of', as per the Cambridge Dictionary means "in connection with something". However, in the Indian courts it has been interpreted in different ways. One interpretation is that it has a wider meaning indicating nexus or connection with something[37]. Another interpretation is that the word "in respect of" should be given a narrow meaning. It should be interpreted as "on"[38]. In the context of section 17(5) of the CGST Act, it is extremely important to understand whether "in respect of" should be given a wider meaning or a restricted meaning, as blocking of credit would depend on the same.

4. In the case of *P.V Narasimha Rao vs State (CBI/SPE) [Appeal (CRL.) 1207 of 1997],* Justice G.N. Ray had noted as under:-

"The correct interpretation of the expression "in respect of" cannot be made under any rigid formula but must be appreciated with references to the context in which it has been used and the purpose to be achieved under the provision in question". Now, to interpret whether the term "in respect of" in section 17(5) shall be given a narrow or broad interpretation, we can take reference to the antecedent or precedent words used. The word "in respect of" is followed by the word 'namely'. As per the Black's Law Dictionary the word 'namely' means *"By name or particular mention". The term indicates what is to be included by name. By contrast, 'including' implies a partial list and indicates that something in not listed*".

5. In the case of *Chairman Sebi vs Roofit Industries Ltd [Civil Appeal No. 1364-1365 of 2005]* it was held as under:

"The use of the word 'namely' indicates that these factors alone are to be considered by the Adjudicating Officer. Black's Law Dictionary defines 'namely' as by name or particular mention. The term indicates what is to be included by name. By contrast, including implies a partial list and indicates something that is not listed. In this context, we find no reason to read 'namely' as including, as learned Senior Counsel for the respondent would

---

[37]The State of Tripura v. Province of East Bengal 1951 SCR 1; Tolaram Relumal and Anr. V State of Bombay 1955 SCR 439; S.S. Light Railway Co. Ltd v. Upper Doab Sugar Mills Ltd. & Anr. [09.02.1960]

[38] State of Madras vs. M/s Swastik Tobacco Factory 1966 (SC) [14.12.1965]

have us do. Similar inference was drawn by the Supreme Court in the case of *Siddharth Chaturvedi vs Securities and Exchange Board India [Civil Appeal No. 14730 of 2015]*.

6. One can apply the rule of '*noscitur a socii'* to infer that since the word "in respect of" is followed by the word "namely", a narrow interpretation should be given to the word "in respect of". Thereby, one cannot expand the coverage of the specific clauses which contains the list of blocked ITC.

Bundles of credits blocked in GST under section 17(5)

One may bifurcate the blockage of credits broadly into the following bundles:

First bundle

This includes goods or services or both related to transport, food, beverage, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, life insurance, and health insurance when used for personal consumption. There is a possibility of such services being construed in the nature of personal benefit. It may be quite difficult to identify the inward supplies which are for personal use and used in direct nexus with business. Hence, ITC is allowed only when a direct and identifiable link can be established.

Second Bundle

This includes blockage of credit on works contract services, goods or services or both when used for construction of immovable property (except plant and machinery). The idea is to block all such credits when used on his own account. However, in case of work contract services, if there is a further supply of works contract service, ITC has been fully allowed.

Third Bundle

Where the goods are lost, stolen, destroyed, written off or disposed of by way of gift or free samples. ITC has been blocked where any goods have alternate disposal mechanism other than being supplied to another person.

Fourth Bundle

This includes any tax paid in accordance with the provisions of section 74 in respect of any period upto financial year 2023-24. Whenever any supplier or recipient pays taxes after having the intent to evade the same, the recipient does not become eligible for the said ITC. This is for discouraging the practice of evasion of taxes.

Chapter 4
Motor Vehicles, Vessels and Aircraft and their Renting

STATUTORY PROVISIONS

Clauses (a) and (b) of Section 17(5) of the CGST Act read as under:

Before 1st Feb 2019

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 and other conveyances except when they are used—

(i) for making the following taxable supplies, namely:—

(A) further supply of such vehicles or conveyances; or

(B) transportation of passengers; or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods

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

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category 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 center;

(iii) rent-a-cab, life insurance and health insurance except where—

(A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or

(B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or

services or both or as part of a taxable composite or mixed supply; and

(iv) travel benefits extended to employees on vacation such as leave or home travel concession;"

Clauses (a), (aa), (ab) and (b) of Section 17(5) of the CGST Act read as under:

From 1st Feb 2019 [as substituted vide the *CGST (Amendment) Act, 2018* vide *Notification No. 02/2019-Central Tax dated 29.01.2019* w.e.f. 01.02.2019]

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.

Brief Analysis

Clauses (a) and (b) of section 17(5) were substituted by clauses (a), (aa), (ab) and (b) vide Central Goods and Services Tax (Amendment) Act, 2018 through *Notification No. 02/2019-Central Tax dated 29.01.2019* effective from 01.02.2019.

Will there be any retrospective applicability of the earlier provisions?

The amendment was not clarificatory in nature. The said amendment at certain places expanded the scope of blocked credit and at certain places restricted the scope of blocked credit. As discussed earlier, the provisions of section 17(5) are to be read strictly. Further, the amendment was not made applicable retrospectively. Thus, for the period from 01.07.2017 to

31.10.2019 provisions which stood prior to introduction of the CGST (Amendment) Act, 2018 shall be applicable and for the period after 01.02.2019, the amended provisions shall be made applicable.

TYPES OF CONVEYANCES

Motor vehicle

The term motor vehicle has been defined under section 2(76) of the CGST Act 2017, as follows:

> *"Motor vehicle" shall have the same meaning as assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988)*

Section 2(28) of the Motor Vehicles Act, 1988 defines 'motor vehicle' as under:

> *"motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimetres.*

Thus, a motor vehicle

i. consists only of vehicles which are made for use on roads;

ii. excludes from its ambit vehicles running on fixed rails e.g. train, tram, metro etc.;

iii. excludes from its ambit a vehicle that is used only in factory or in any other closed premises;

iv. excludes from its ambit a vehicle having less than 4 wheels and engine capacity not exceeding 25 cubic centimeters. Thus, for any two-wheeler or three-wheeler vehicle like auto rickshaws, scooter, bike one needs to check the engine capacity. If the engine capacity is more than 25CC, the said vehicle will be considered as motor vehicle, otherwise it is not a motor vehicle;

v. The term which has been used in the aforementioned definition is "mechanically propelled vehicle". Thus, the term would exclude cycles, cycle rickshaws and vehicles pulled by animals or humans.

Other conveyances

Before the amendment effective w.e.f. 01.02.2019, it was stated that the ITC would be blocked on motor vehicles and other conveyance. The term 'conveyance' has been defined under section 2(34) of the CGST Act as under:

"conveyance" includes a vessel, an aircraft and a vehicle;

The above definition is inclusive and hence even though it explicitly mentions that the same would cover vehicles, aircrafts and vessels, any other conveyance would also be covered.

However, after the amendment, the provisions of blocked credit have been specifically made applicable only with respect to motor vehicles, aircraft and vessels. ITC would be restricted only on motor vehicles, vessels and aircraft.

Aircraft

The term aircraft has not been defined under the CSGT Act. Thus, one can take reference from other laws, dictionaries or case laws [39].

Section 2(1) of the Aircraft Act, 1934 defines aircraft as under:

"aircraft" means any machine which can derive support in the atmosphere from reactions of the air, other than reactions of the air against the earth's surface and includes balloons whether fixed or free, airships, kites, gliders and flying machines;

An aircraft must be a machine-driven airborne craft e.g. Airplane, Helicopter, Motor Kite, hot air balloons, gliders etc.

Vessel

The term vessel has also not been defined in the CGST Act. Thus, one can take reference from other laws or dictionaries.

[39] *Star Paper Mills Ltd vs C.C.Ex. (1989 (43) E.L.T. 178 (SC)*

Section 3(55) of the Merchant Shipping Act, 1958 defines vessel as under:

> *"vessel" includes any ship, boat, sailing vessel, or other description of vessel used in navigation*;

Section 2(32) of the Bharatiya Nyaya Sanhita, 2023 defines vessel as under:

> *"vessel" means anything made for the conveyance by water of human beings or of property;*

Thus, going by the bare reading, a vessel can be either mechanically or non-mechanically propelled. It would cover any kind of vessel like ship, boat, sailing vessel, houseboat etc. The condition is that it should be used for the purpose of navigation in waters. Navigation can either be for human beings or goods.

BLOCKAGE OF ITC ON PURCHASE OF MOTOR VEHICLES

ITC is blocked on certain types of motor vehicles even though they may be used in the course or furtherance of business. This would be so irrespective of the fact that the same is used for daily commutation to and from the place of business by the owner or employee of the company.

Further to the above, there are certain exceptions based on the purpose of usage and the nature of business of the registered person. The following table summarises the eligibility of ITC on motor vehicles during both the periods:

	From 01.07.2017 to 31.01.2019	**From 01.02.2019**	**Remarks**
1	Motor vehicles made and used for transportation of goods.	Motor vehicles made and used for transportation of goods.	ITC is allowed. No change in the eligibility of ITC even after amendment.
2	Motor vehicle for transportation of passengers was allowed when used for	Motor vehicle for transportation of persons having approved seating capacity of not more	Till 31.01.2019, motor vehicles for transportation of persons having seating capacity of

	• Further supply of such vehicle or conveyance • For transportation of passengers • For imparting training on driving	than 13 persons (including driver)	more than 13 persons was allowed only when they were used for the specified purposes. However, such usage has been de-linked from 01.02.2019.
3		Motor Vehicles for transportation of persons having approved seating capacity of upto 13 persons (including driver) is allowed only when used for: • Further supply of such motor vehicles • For transportation of passengers • For imparting training on driving such motor vehicles.	Thereby, for the passenger vehicles having seating capacity upto 13 persons (including driver), the restriction on ITC continues even now, except when used for specified purposes.

Transportation of Goods

Before the amendment of 01.02.2019, a separate exception was there in the law in respect of motor vehicles **used for** transportation of goods. This meant that ITC was allowed specifically for motor vehicles if the primary purpose of usage was for transportation of goods. Thereby, a motor vehicle which was designed for transportation of persons is used for transportation of goods, then also ITC was allowed.

However, after 01.02.2019, the blockage of ITC is on motor vehicles designed for transportation of persons. Since the blockage of ITC is not applicable on motor vehicles designed for transportation of goods in the first place, the same stands fully allowed as per law.

It may be noted that the actual usage of motor vehicles is not relevant anymore. What is relevant is the purpose for which such motor vehicles have been designed or approved. If a motor vehicle designed to carry passengers is used for transportation of goods, the ITC would be blocked.

Approved Seating Capacity of more than 13 persons

ITC would be blocked only on motor vehicles where the approved seating capacity is upto 13 persons (including the driver of the vehicle as well). Where the said capacity is more than 13 persons, ITC would be allowable irrespective of the number of the persons or the use of such motor vehicle.

To check the seating capacity restriction, one needs to check the approved seating capacity granted by the Regional Transport Authority. Here one needs to note that the availability of input tax credit is dependent on the approved seating capacity irrespective of the actual number of persons sitting.

It may be noted that ITC would not be allowable on buses having seating capacity of more than 13 when used for transportation of employees to and from the place of business to their residence in view of discussion in para below. Moreover, ITC would also be blocked if the transportation is being done through a car, having seating capacity of less than 13.

Transportation of Passengers

Input tax credit will be allowed on motor vehicle which is used for providing the transportation service of passengers. The statutory provisions have employed the phrase “used for making taxable supplies of transportation of passengers”. The term “for” as per the Cambridge Dictionary means “intended to be given to”. This means that the vehicle must be registered as a passenger transport vehicle with the State Transport Department. Where any vehicle is temporarily used for passenger transport and is not registered as a passenger transport vehicle, ITC would not be allowed on it. It must be noted that the ITC would be allowed only where the income is earned by way of passenger fare.

Passenger transport service also denotes that such services are available to the public unlike private transport which is provided only to certain individual(s), such as director/employees of an entity.

However, the final eligibility of ITC would also depend on the entry in the rate notification[40]. The passenger transportation services can be provided by the supplier @ 5% (by forgoing the ITC) or @ 12% (with ITC).

There is also a distinguishment drawn between rent-a-cab services and passenger transport service[41].

Used for providing training on driving of motor vehicles

ITC would be allowed on the motor vehicles which are used for providing training on driving of such motor vehicles. This means that the purpose of purchase should be to provide such training. If any vehicle is purchased for any other purpose and is registered as such, ITC would not be allowable simply because later it is converted into a motor vehicle for training. Therefore, the intent of its usage should be present at the time of its purchase itself.

Further supply of motor vehicles

Section 17(5) allows input tax credit on purchase of motor vehicles if there is further supply of such motor vehicles. Here it is important to note that the word used is "supply" and not "sales". The word 'supply' has been defined under section 7 of the CGST Act. The said definition is a wide one which includes within itself sale, lease, rental etc.

Therefore, the motor vehicle purchased and used for renting / sale of such vehicles would also be covered. Hence, ITC would be allowable both to an automobile dealer and a car rental company under this provision. Having said this, one needs to check tariff notification whether any restriction has been placed on availment of input tax credit (for example – 5% without ITC). Further, in case any supply is exempt in terms of section 2(47) of the CGST Act, there shall be reversal of input tax credit in terms of the restrictions placed vide section 17 of the CGST Act read with rule 42 / 43 of CGST Rules.

---

[40] S. No. 8 and 10 of Table to Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017

[41] Para 15 of Circular 177/09/2022-TRU dated 03.08.2022

ITC on Demo Vehicles:

There was an ambiguity with regard to availment of ITC by the car dealers on the demo vehicles. CBIC has clarified the same vide *Circular No 231/25/2024-GST dated 10.09.2024.*

Issue-1: Availability of input tax credit on demo vehicles, which are motor vehicles for transportation of passengers having approved seating capacity of not more than 13 persons (including the driver), in terms of clause (a) of section 17(5) of Central Goods & Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act")

Clarification:

The usage of the words "such motor vehicles" instead of "said motor vehicle", in sub-clause (A) of the clause (a) of section 17(5) of CGST Act, implies that the intention of the lawmakers was not only to exclude from the blockage of input tax credit, the motor vehicle which is itself further supplied, but also to exclude from the blockage of input tax credit, the motor vehicle which is being used for the purpose of further supply of similar type of motor vehicles.

a. As demo vehicles are used by authorized dealers to provide trial run and to demonstrate features of the vehicle to potential buyers, it helps the potential buyers to make a decision to purchase a particular kind of motor vehicle. Therefore, as demo vehicles promote sale of similar type of motor vehicles, they can be considered to be used by the dealer for making 'further supply' of such motor vehicles, and thereby ITC is allowed and not blocked under Section 17(5).

b. If authorized dealer uses the Demo car for purposes other than for making further supply of such motor vehicles, say for transportation of its staff employees/ management etc. In such cases, the same cannot be said to be used for making 'further supply of such motor vehicles' and therefore, input tax credit shall be disallowed under Section 17(5).

c. Where the authorized dealer merely acts as an agent or service provider to the vehicle manufacturer for providing marketing service including providing facility of vehicle test drive to the potential customers of the vehicle on behalf of the manufacturer and is not directly involved in purchase and sale of the vehicles. In such cases, the sale invoice for the vehicle is directly issued by the vehicle manufacturer to the customer. For providing facility of vehicle test drive to the potential customers of

the vehicle, the dealer purchases demo vehicle from the vehicle manufacturer. The dealer may sell the said demo vehicle to a customer after a specified time or kilometres as per agreement with the vehicle manufacturer on payment of applicable GST. In such a case, the authorized dealer is merely providing marketing and/or facilitation services to the vehicle manufacturer and is not making the supply of motor vehicles on his own account. Therefore, the said demo vehicle cannot be said to be used by the dealer for making further supply of such motor vehicles, and thereby ITC shall be blocked on such demo cars under Section 17(5).

Issue-2:

Availability of input tax credit on demo vehicles in cases where such vehicles are capitalized in the books of account by the authorized dealers.

Clarification:

ITC on such Demo vehicles would be eligible as the same is used for making further supply of such vehicles. Thereby, availability of input tax credit on demo vehicles is not affected by way of capitalization of such vehicles in the books of account of the authorized dealers. Further to claim the ITC, depreciation under Income tax act on the ITC component should not have been taken. Further, when such demo vehicles are sold subsequently by the authorized dealer, then Section 18(6) of the CGST Act 2017 shall be followed (with regard to proportionate reversal).

Special Purpose Vehicles (SPV)

SPVs have a separate position in the HSN classification of goods[42], covered generally under HSN 8705 (other than those vehicles principally designed for the transport of goods or persons), such as crane lorries, mobile drilling derricks, fire fighting vehicles, concrete-mixer lorries. Where such SPVs specially constructed or adapted are utilized towards effecting taxable outward supplies, the input tax credit on the same would be eligible.

[42] *Refer Harmonized Commodity Description and Coding System – Explanatory Notes.*

BLOCKAGE OF ITC ON VESSELS AND AIRCRAFT

1. ITC would be blocked on vessels and aircraft. This would include a private yacht, boat, ship etc. used for leisure or business purposes by any person.
2. However, if the vessels and aircraft are used for effecting the following taxable supplies, ITC would be allowable:
    a. transportation of passengers;
    b. transportation of goods;
    c. imparting training on navigating such vessels;
    d. imparting training on flying such aircraft;
    e. further supply of such vessels or aircraft.
3. This means that the shipping lines or airlines are allowed to avail ITC if the vessels or aircraft are used exclusively for transportation of goods.
4. Also, where any vessel and aircraft has the primary purpose of transportation of passengers and is used for commutation purposes, ITC would be allowable.
5. However, where the same is used for the purpose of leisure or tourism (personal purposes), then ITC on the vessels or aircraft would not be available.
6. ITC would be allowable to training schools which provide training for navigation of vessels or flying of aircraft.
7. Also, the registered persons engaged in supplying including selling, renting, leasing of such vessels and aircraft, ITC would also be allowed on purchase / renting of vessels and aircraft. Having said this, one needs to check tariff notification whether any restriction has been placed on availment of input tax credit.
8. Houseboat services, hot air balloon flights, etc. also are included, although, one must be aware of the tariff notifications and understand if there are any other rate restrictions applicable on availment of the input tax credit.

GENERAL INSURANCE, SERVICING, REPAIR AND MAINTENANCE OF MOTOR VEHICLES, VESSELS OR AIRCRAFT

1. Section 17(5)(ab) provides that ITC would not be available on certain expenses relating to motor vehicles, vessels or aircraft. The expenses on which ITC would be disallowed are the services of general insurance, servicing, repair and maintenance of such motor vehicles, vessels or aircraft.

2. At the outset, it may be noted that ITC would be blocked in respect of expenses on motor vehicles, vessels or aircraft only where ITC on the purchase of such motor vehicles, vessels or aircraft is disallowed. This means that the restriction on admissibility of ITC on relevant expenses of each nature relating to motor vehicles, vessels or aircraft would be the same as is applicable on admissibility of ITC upon purchase of motor vehicles, vessels or aircraft. Thus, ITC would be allowable on these expenses with regard to motor vehicles, vessels or aircraft in the following cases:

    a. when used for making taxable supplies of transportation of goods;

    b. motor vehicles having seating capacity of more than 13 persons (including the driver);

    c. when used for making taxable supplies of transportation of passengers;

    d. when used for making taxable supplies of providing training on driving of vehicles, navigating vessels or flying aircraft;

    e. when used for making further supply of such motor vehicles, vessels or aircraft.

3. ITC on the specified services would also be allowed:

    a. when the same are received by a taxable person engaged in the manufacture of motor vehicles, vessels or aircraft [e.g. free maintenance during first year of sale. The said benefit is not allowed to a dealer].

b. to a supplier of the general insurance services in respect of motor vehicles, vessels or aircraft insured by him [e.g. repair expenses incurred by the insurance company during settlement of claims].

4. It may be noted that the list of services mentioned in section 17(5)(ab) is exhaustive. This means that the ITC would be blocked only on the services of general insurance, servicing, repair and maintenance. If there are any other services in respect of motor vehicles (say car parking), vessels or aircraft, then ITC would be admissible and not blocked under Section 17(5)(ab) of the CGST Act.

5. Section 17(5)(ab) is regarding the disallowance of input tax credit on the services of general insurance, servicing, repairs and maintenance in so far as they relate to motor vehicles, vessels or aircraft and this disallowance is applicable w.e.f 01.02.2019 only. Thus, for the period from 01.07.2017 to 31.01.2019, there was no bar on availment of input tax credit on services of general insurance, servicing, repairs and maintenance. Hence, the ITC may be allowable.

6. For services of general insurance, servicing, repairs and maintenance, credit of input tax is allowed where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein and where such services are received by a taxable person engaged—

   a. in the manufacture of such motor vehicles, vessels or aircraft; or [for e.g., free maintenance during first year of sale. The said benefit is not allowed if the same are incurred by the dealer.

   b. in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him; [for e.g. repair expenses incurred by the insurance company during settlement of claims.]

   Thus, in case of services of general insurance, servicing, repairs and maintenance, input tax credit shall be allowed in scenarios as explained above.

Chapter 5
Food and Beverages, Outdoor Catering, Beauty Treatment, Health Services, Cosmetic and Plastic Surgery

STATUTORY PROVISIONS

Section 17(5)(b) of the CGST Act reads as under:

Before 1st Feb 2019

The following supply of goods or services or both:—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category 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) ……..;

(iii) ……...

(iv) ……

From 1st Feb 2019 [as substituted vide *CGST (Amendment) Act, 2018* vide *Notification No. 02/2019-Central Tax dated 29.01.2019* w.e.f. 01.02.2019]

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) ……..; and

(iii) ……..

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.

BRIEF SUMMARY OF THE PROVISIONS

Before 01.02.2019, input tax credit was not allowed in respect of food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category 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.

Post amendment i.e., w.e.f. 01.02.2019, input tax credit is not allowed in respect of food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except -

i. where an inward supply of goods or services or both of a particular category 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; or

ii. where it is obligatory for an employer to provide the same [nature of supplies] to its employees under any law for the time being in force.

APPLICABILITY OF THE EXCEPTIONS

Inward supply used for making outward supply

Pre-amendment

Before 01.02.2019, clause (i) on food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery clearly stated that the ITC would not be allowed subject to the exception that inward supply of the particular category is used for making outward supply of the same nature.

Post-amendment

W.e.f. 01.02.2019, the first proviso to clause (i) also provides this exception. Thereby, ITC continues to be allowed on food and beverages, outdoor

catering, beauty treatment, health services, cosmetic and plastic surgery if inward and outward supply are of the same nature. Furthermore, the proviso to clause (iii) provides that ITC would be allowable where it is obligatory under any law on the employer to provide the respective nature of supply to its employees. *Circular No. 172/04/2022-GST dated 06.07.2022* provides that the said exception is applicable to all the three clauses (i) to (iii). Hence, ITC will be available on the above-mentioned supplies, where it is obligatory on the employer to provide the same to its employees under any law for the time being in force.

Obligation of the employer to provide goods and/or services to its employees

Pre-amendment

Before 01.02.2019, the proviso allowing the ITC in cases where it is obligatory under any law on the employer to provide the respective nature of supply to its employees, has been provided only for clause '(iii) rent-a-cab, life insurance and health insurance'. It was not applicable for clause '(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery'.

Therefore, ITC was not allowable on 'food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery' even if it was obligatory on the employer to provide the same to its employees under any law for the time being in force.

Post-amendment

W.e.f. 01.02.2019, the proviso to clause (iii) states that ITC would be allowable where it is obligatory under any law on the employer to provide the respective nature of supply to its employees. Therefore, ITC would be allowed in all the following cases where it is obligatory on the employer to provide the services to its employees under any law for the time being in force:

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft, life insurance and health insurance;

(ii) membership of a club, health and fitness centre;

(iii) travel benefits extended to employees on vacation such as leave or home travel concession.

ITC ON FOOD AND BEVERAGES

ITC on food and beverages is restricted and hence, cannot be availed except where inward supply of food and beverages is used for making outward supply of food and beverages or as an element of a taxable composite or mixed supply or where it was obligatory on the employer to provide the same to its employees under any law for the time being in force. At the outset, one needs to understand the meaning of both the terms 'food' and 'beverages'.

Food

The term "food" has nowhere been defined under the GST laws. Where a word has not been defined in the Act or Law, meanings of such word could be referred to from other laws or dictionaries.[43]).

As per Oxford Dictionary *food* means "any nutritious substance that people or animals eat or drink or that plants absorb in order to maintain life and growth".

Going by the above definition can raw materials such as spices, which are used to prepare food, be also termed as food?

Here, one needs to note that the term used in the CGST Act is "food". In legal sense, the term "food" can be used with a wide as well as a narrow sense and the same will depend upon the context and background.

Further, where any legal definition is not available, one needs to understand the term in the sense it is understood in common parlance, i.e., their popular meaning[44]. Going by the popular understanding, food will generally mean the composite preparations which normally constitute a meal--curry and rice, sweetmeats, pudding, cooked vegetables etc. Reference can be made to the decision in *The State of Bombay vs Virkumar Gulabchand Shah 1952 AIR 335, 1952 SCR 877.*

If the term "food" is given a wider meaning that does not restrict it to prepared food, cooked food, raw food, packed food or unpacked food, even

[43] *Indo International Industries vs. Commissioner of Sales tax, U.P [1981 (8) E.L.T 325 (S.C)]; Commissioner of Central Excise New Delhi vs Connaught Plaza Restaurant (P) Ltd [2012 (286) ELT 321 (SC)*

unprepared items like spices, ready to eat items etc. could be considered as food. Even *Circular No. 75/49/2018 dated 27.12.2018* issued by the CBIC, mentions ghee, edible oil, sugar/burra/jaggery, rice, atta/ maida /rava /flour and pulses as food items. Thus, in a wider sense the term food would mean all food items-prepared, unprepared, cooked or raw.

The term 'food" appearing in section 17(5)(b) would have to be given the meaning as used in common parlance and considering the context it should be given a narrow meaning. The use of the term "food" along with the term "beverage" further supports this view. The term food would cover the food which is prepared food for consumption and not the articles which are used for preparing it, such articles are generally termed as grocery. It would further include pre-packed food. The scope of the term "food" under the GST law depends on how the Courts interpret it.

Beverages

The term 'beverage' has not been defined anywhere in the GST law. As per the oxford dictionary, 'beverage' means a drink other than water. The term beverage under GST covers both alcoholic and non-alcoholic drinks[45]. Further, a beverage may be aerated or non-aerated, hot or cold. Section 9 of the CGST Act deals with levy and collection which excludes alcoholic liquor for human consumption from the scope of GST.

The Division Bench of the Hon'ble High Court of Kerala in *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam vs. P. Sukumaran [1989] 74 STC 185* held that since 'Rasna' is only a concentrate and not a liquid, it would not come within the ambit of the expression "beverage".

The Hon'ble Bombay High Court in the case of *Commissioner of Sales Tax vs Food Specialities Ltd. on 11.01.1995* observed that "Paloma lime tea mix" sold in powder form is not a beverage but a powder from which non-alcoholic beverage can be prepared.

Can drinking *water* be covered under the definition of "beverage"?

Since beverage has not been defined under the GST Law, one would have to derive its meaning from the general parlance. In general, water is never

[45] *Circular No. 164/20/2021-GST dated 6/10/2021*

referred to as a beverage. Further, food has been defined under section 2(v) of The Prevention of Food Adulteration Act, 1954, which exclude water.

Section 2(v) of The Prevention of Food Adulteration Act, 1954 reads as under:

"*food" means any article used as food or drink for human consumption other than drugs and water and includes—*

(a) any article which ordinarily enters into, or is used in the composition or preparation of, human food;

(b) any flavouring matter or condiments; and

(c) any other article which the Central Government may, having regard to its use, nature, substance or quality, declare, by notification in the Official Gazette, as food for the purposes of this Act.

The Hon'ble Supreme Court in the case of *Hamdard (wakf) Laboratories vs. Collector of Central* Excise [1999 (113) E.L.T. 20 SC] observed that beverages, broadly speaking, are liquids for drinking, other than water, which may be consumed neat or after dilution. Even under common parlance the term "beverage" is different from water. Thus, it can be argued that the restrictions under section 17(5)(b) do not apply to water.

The question whether input tax credit would be allowed on drinking water under GST provisions is yet to be tested in the courts of law.

Can Input Tax Credit be denied on water used for a purpose other than for drinking?

One needs to understand that the restriction is on food and beverages. This term can by no stretch of imagination be related to anything apart from that which cannot be consumed. There are entities which incur cost of water for running their industries. Input tax credit on such expenses can be availed. However, one needs to be cautious before availing such credit.

Where inward and outward supplies are of same nature

Input tax credit is allowed on food and beverages where there is further output taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply. Food and Beverages are served at the restaurants as an outward supply.

Restaurant service has been defined under Para 4(xxxii) of *Notification No. 11/2017 -Central Tax [Rate] dated 28.06.2017* which means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.

Hence, ITC will not be blocked under section 17(5) on food and beverage purchased for providing restaurant services. However, one also needs to refer to *Notification No. 11/2017-Central Tax [Rate] dated 28.06.2017* before availing the input tax credit.

As per *Notification No. 11/2017- Central Tax [Rate] dated 28.06.2017*, ITC cannot be availed when the restaurant opts to collect and discharge GST @ 5% (without ITC) and supplied outside specified premises. Further, restaurant services supplied at specified premises are subject to 18% tax and ITC can be availed. Where there is further sale of goods viz. food and beverages, there is no restriction on the availment of input tax credit on purchase of food and beverages. Further, where in a single premises, there are two types of supplies namely, supply of restaurant services and sale of goods, input tax credit on food and beverages would be available only for outward supplies pertaining to sale of goods (food and beverages).

Thus, if there is purchase of food and/ beverages and subsequent sale of such food and beverages as goods, input tax credit can be availed. One needs to analyze the nature of outward supply before availing input tax credit under this clause. *Circular No. 164/20/2021-GST dated 06.10.2021* has clarified that ice cream parlours sell already manufactured ice-cream; they do not have the character of a restaurant. Thus, the ice-cream parlours are treated as providing outward supply of goods and hence will be eligible to avail ITC on purchase of ice-cream / waffle cones, etc.

Input tax credit on food and beverages is also available when there is outward taxable supply as an element of taxable composite or mixed supply. For instance, there is seminar which is being organized. The organizers of the seminar provide a variety of services like accommodation, lectures by eminent speakers, transport, food etc as a part of their composite supply of event organization. They raise bill for their principal supply i.e., seminar.

Since food was provided as part of composite supply, input tax credit on the same would be available.

Obligation of the employer to provide goods and/or services to its employees

ITC would be allowable where it is obligatory on the employer to provide the same supply to its employees in terms of any law for the time being in force. For further details, refer Chapter 8.

ITC ON ITEMS LIKE COFFEE MACHINE RENTALS, CHEF SERVICES, ETC.

There are two schools of thoughts; one says that ITC in respect of food and beverages including chef services, coffee machine rentals, utensils used for serving the food / beverages is not allowed as per provisions of section 17(5)(b). However, there is also another school of thought which says that the restriction under section 17(5)(b) is only in respect of food and beverages and hence the said restriction will not apply to items like chef services, coffee machine rentals, utensils used for serving the food / beverages, etc. Therefore, one should be cautious before availing ITC on these items.

ITC ON OUTDOOR CATERING

Input tax credit on outdoor catering services is not allowed except when:

I. where inward supply of outdoor catering is used for making outward supply of outdoor catering or as an element of a taxable composite or mixed supply; or

II. where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

The term "outdoor catering" has been defined in Para 4(xxxiii) of *Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017* which means *supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, at exhibition halls, events, conferences, marriage halls and other outdoor or indoor functions that are event based and occasional in nature.*

The basic difference between restaurant services and outdoor services is that outdoor catering is event based and occasional in nature.

For the eventual recipient of the services of outdoor catering, ITC would be blocked in their hands as per the aforesaid provisions. Therefore, even if a company organizes an event for its office employees or its clients and receives outdoor catering services in the course or furtherance of its business, ITC would continue to be blocked.

The Hon'ble Supreme Court in the case of *Tamil Nadu Kalyana Mandapam Association vs. Union of India and Others 2004-TIOL-36-SC-ST* has also explained the concept of outdoor catering as follows:

- In case of services rendered by outdoor caterers the food/eatables/ drinks are the choice of the person who partakes the services. The customer is free to choose the kind, quantum and manner in which the food is to be served. But in the case of restaurant, the customer's choice of foods is limited to the menu card.
- In the case of outdoor catering, the customer is at liberty to choose the time and place where the food is to be served. In the case of an outdoor caterer, the customer negotiates each element of the catering service, including the price to be paid to the caterer.
- Outdoor catering has an element of personalized service provided to the customer. Clearly the service element is more weighty, visible and predominant in the case of outdoor catering.

Where inward and outward supply are of same nature

From the perspective of the caterer, the inputs may be in the form of food and beverages or another sub-contract of outdoor catering services. In such cases, ITC is fully admissible in the hands of the caterer because his inward and outward supply are of the same nature.

However, the final eligibility to ITC would also depend on the entry in the rate notification i.e. *Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017*. Where the caterers' outward supply is liable to tax @ 5% (without ITC), such credit even though prima facie eligible, would turn out to be ineligible based on outward rate applied. Outdoor catering at specified premises may attract GST @ 18% with ITC.

Further ITC would not be admissible where the outward supply is exempt (e.g. catering to education institutions).

Obligation on the employer to provide goods and/or services to its employees

ITC would be allowable where it is obligatory on the employer to provide the same supply to its employees in terms of any law for the time being in force. For further details, please refer Chapter 8.

ITC ON BEAUTY TREATMENT

The term 'beauty treatment' has not been defined in the GST Law. Reference can be taken from Section 65(17) of Chapter V of Finance Act, 1994 which defines 'beauty treatment' as under:

"beauty treatment includes hair cutting, hair dyeing, hair dressing, face and beauty treatment, cosmetic treatment, manicure, pedicure or counselling services on beauty, face care or make-up or such other similar services."

Since the said definition is an inclusive definition, the above is an illustrative list of what can be classified as a beauty treatment. Beauty treatments are superficial treatments aimed at enhancing or improving someone's appearance or overall beauty; there is no major transformation of a person as in the case of cosmetic and plastic surgery.

The law uses the term "beauty treatment" and the term beauty treatment is used in the company of the words cosmetic and plastic surgery. Hence, a view can be taken that only those procedures which are in the nature of treatments done to enhance beauty will be covered in the said phrase. For instance, acne treatment with laser.

However, in a lot of industries, providing beauty treatment services are an integral part of their business. The outward supplies of such industries, not being beauty treatments, cause a significant loss to such industries. Examples of such industries are television and film, news, modelling, etc.

Blocking of input tax credit would significantly increase the cost of these industries. Now, many other industries avail beauty treatment services in order to market their products. The cost of such industries would also increase due to increased cost of beauty treatment services.

Considering the fact that the make-up services procured by those industries is only for specific time and task and not with a view to undertake beauty treatment on a permanent or enduring nature, industries are taking a view that ITC is not blocked on the same. However, such a view is likely to be

disputed by the Department and the courts will have to adjudicate upon the dispute.

Further, a view may emerge that ITC may not be blocked on counselling services, particularly when these are advisory in nature and not in the nature of cosmetic or beauty treatments. This is based on the reasoning that such services, unlike beauty services, do not result in physical transformation or personal indulgence but are instead professional services that may further the objectives of a business. However, such a view is likely to be disputed by the Department and the courts will have to decide the dispute.

However, a purposive reading of section 17(5)(b) indicates that the intent of the legislature is to deny credit on those goods or services or both which result in personal consumption & hence credit can be availed when it's in the course or furtherance of business. This view finds support from the decision in the case of *Reliance Industries Ltd v CCE - 2016 (45) S.T.R. 363 (Tri - Mumbai).*

Where inward and outward supply are of the same nature

From the perspective of the salons, parlors and beauty treatment companies, the inputs may be in the form of cosmetics, professional services by stylist etc. In such cases, ITC is fully admissible in the hands of the supplier of beauty treatment services because their inward and outward supply are of the same nature.

For instance, if beauty treatment services are booked by an event management company for further supply to any individual and the same are even billed to event management company, then event management company can avail ITC.

The allowability of input tax credit extends even to those services that are provided as a part of composite supply/ mixed supply.

ITC ON HEALTH SERVICES, COSMETIC AND PLASTIC SURGERY

Section 17(5)(b) uses the term "health services". The said term is not defined under the GST law.

However, "health care services" is defined in Para 4 (xxxix) of *Notification No.11/2017-Central Tax (Rate) dated 28.06.2017* as under -

"any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma."

The above definition would, therefore, cover any kind of diagnosis, treatment or care for any illness, injury, deformity, abnormality or pregnancy. It would cover treatment under any recognized system of medicine including allopathic, homeopathic, ayurvedic, etc.

The services of cosmetic and plastic surgery are separately covered under the blocked credit.

Cosmetic surgery has not been defined under the GST law, however, as understood in trade, cosmetic surgery is a medical discipline focused on enhancing beauty and appearance through surgical and medical techniques. It is an extremely broad field and can be performed on all areas of the body, face, thigh, stomach, etc. Cosmetic surgery is a part of plastic surgery but concentrated on enhancing the beauty of a person. Types of cosmetic surgeries include botox, liposuction, filler treatments etc.

Plastic surgery, on the other hand, is a surgical specialty dedicated to reconstruction of facial and body defects due to birth disorders, trauma, burns and diseases. Plastic surgery is intended to correct dysfunctional areas of the body and is, by definition, reconstructive in nature. Forms of plastic surgery include rhinoplasty, scar revision surgery, jaw reconstruction, cleft lip, etc.

It is pertinent to note here that input tax credit is allowed in case of health services, cosmetic and plastic surgery where there is outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply.

Although, exception is carved out in cases where such hair transplant or cosmetic or plastic surgery is undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

The legislative intent is to disallow credit on the aforesaid services as these services can be availed by a person for personal use also.

ITC ON PURCHASE OF MEDICINE / FIRST AID BOX

One needs to note that in case the registered person purchases medicines, band aids etc and maintains a first aid box, such purchases will not be covered under health services. Therefore, nexus to business function may need to be established to prove the eligibility for credit.

Purchase of basic medicines and maintenance of first aid kit does not result in the provision of any medical treatment. Provision of First aid is a treatment given to a patient in an emergency before formal or appropriate medical help is made available.

Where inward and outward supplies are of the same nature

Normally where the inward and outward supplies are of the same nature, ITC would be fully allowed. Therefore, if the health services are received and provided by a clinic or a hospital, ITC is not blocked under section 17(5)(b). The allowability of input tax credit extends even to those services that are provided as a part of composite supply / mixed supply.

However, a registered person providing outward supplies of similar nature should check the tariff notification before availing input tax credit. For example, a registered person providing health care services is not allowed to avail Input tax credit for outward exempt supplies as health care services relating to few treatments are exempt. Even if there is an outward taxable supply in the form of renting of hospital rooms @ 5 percent, ITC would not be allowable as it is restricted by means of the rate notification.

Similarly, where food is supplied by hospitals to their in-patients, it is a part of composite supply of healthcare for which there shall not be any charge of GST. Since there is no tax on outward supplies, input tax credit shall not be allowed on food being supplied to in-patients.

Obligation on the employer to provide goods and/or services to its employees

ITC would be allowable where it is obligatory on the employer to provide the same supply to its employees in terms of any other statutory law in force. For further details refer Chapter 8.

RENTING OF MOTOR VEHICLES

The scope of restriction under section 17(5) was widened by placing restriction along with rent-a-cab services on leasing, renting or hiring of motor vehicles, vessels or aircraft w.e.f. 01.02.2019 (if ITC was blocked on the purchase of such vehicles, vessels or aircraft). Thus, before the amendment, a registered person was allowed to avail input tax credit on leasing, renting or hiring of motor vehicles, vessels and aircraft (other than rent a cab) when the same was used in the course or furtherance of business. However, after the amendment, the scope of blocking has been widened to include leasing, renting or hiring of motor vehicles, vessels or aircraft.

After the amendment from 01.02.2019, section 17(5)(b) disallows input tax credit on leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) of section 17(5) except when used for the purposes specified therein. This means that ITC on leasing, renting or hiring of motor vehicles, vessels or aircraft would be disallowed in those cases where ITC on their purchase is also blocked.

Renting vs Transport

It is pertinent to mention that leasing, renting and hiring of transport vehicles [Heading 9966] and [Heading 9973], is not the same as passenger transportation services [Heading 9964]. Input tax credit is not available only in case of renting, hiring or leasing of conveyance.

Circular No. 177/09/2022-TRU dated 03.08.2022 distinguished between transportation of passenger and renting a vehicle used for transportation. The circular clarified the following:

i. Renting of motor vehicle with operator for transport of passengers falls under Heading 9966. According to the explanatory notes to Heading 9966, the service covered here is renting of motor vehicle for transport of passengers for a period of time where the hirer defines how and when the vehicles will be operated, determines the schedules, routes and other operational considerations. Further, motor vehicle is at the disposal of the recipient of service.

ii. On the other hand, “Passenger transport services' falls under Heading 9964. According to the explanatory notes, Heading 9964 covers

passenger transport services over pre-determined routes on pre-determined schedules.

Therefore, a clear distinction exists between service of transport of passengers and renting of a vehicle that is used for transport. RCM would not be applicable on Heading 9964 i.e., passenger transport services.

Based on the aforesaid Circular, one can even conclude that input tax credit shall not be blocked for passenger transportation services. Therefore, the blockage of credit would only be applicable on the service of renting of motor vehicles and not on the services of passenger transportation.

Allowance of ITC on renting of motor vehicles, vessels or aircraft for specified use

Input tax credit on goods and services specified under section 17(5)(b)(i) shall be available if the following conditions are met:-

i. The 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; or

ii. 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.

There was a confusion as to whether the proviso appearing after sub-clause (iii) of section 17(5)(b) of the CGST Act would be applicable to sub-clauses (i), (ii), and (iii) or only to sub clause (iii).

It has been clarified vide *Circular No. 172/04/2022-GST dated 06.07.2022* that the proviso after sub-clause (iii) of section 17(5)(b) was inserted based on the recommendations by the GST Council in its 28th meeting. The press note on recommendations made during the 28th meeting of the GST Council, dated 21.07.2018 clarified that "the scope of input tax credit is being widened and it would be made available in respect of goods and services which are obligatory for an employer to provide to its employees, under any law for the time being in force. Accordingly, it was clarified that, the proviso after sub clause (iii) of section 17(5)(b) of the CGST Act would be applicable to the whole section 17(5)(b) of the CGST Act.

The aforesaid circular also clarified that input tax credit shall be blocked only on leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) of section 17(5) and not on any other leasing, renting or hiring.

Examples:

- Let's say a person is organizing an educational training camp. For the said camp it provides various services such as conducting conference, accommodation, food and beverage and rent -a-cab. The entire service is chargeable under composite supply.
- Here input tax credit shall be available on renting of cab by the organizers, as there is a further supply of such service as a part of taxable composite supply.
- Where any of the State laws obligates the mandatory pickup and drop facility for employees of a company say after 10 pm, then the ITC would be allowable in respect of such renting of such motor vehicles.
- Where the car rental company is engaged in receipt and provision of services of car rental, full ITC would be allowable on availment of such rental services.

Chapter 6
Types of Insurance and Eligibility for Input Tax Credit

STATUTORY PROVISIONS

Section 17(5)(b) of the CGST Act reads as under:

Before 1st Feb 2019

The following supply of goods or services or both:—

(i) ……...

(ii) ……..;

(iii) rent-a-cab, life insurance and health insurance except where—

(A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or

(B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and

(iv) travel benefits extended to employees on vacation such as leave or home travel concession;"

From 1st Feb 2019 [as substituted vide CGST (Amendment) Act, 2018 vide *Notification No. 02/2019-Central Tax dated 29.01.2019* w.e.f. 01.02.2019]:

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) ……..; and

(iii) ……:

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.

As per the above provisions, ITC is blocked on life insurance and health insurance services. The exceptions are where the inward and outward supply are of the same nature or as an element of a taxable composite or mixed supply or where it is obligatory for the employer to provide the same to its employees under any law for the time being in force. At the outset, we need to understand the scope and ambit of life insurance and health insurance.

LIFE INSURANCE

The term "Life Insurance" as per *Notification No. 12/2017-Central Tax [Rate] dated 28.06.2017* has the same meaning as assigned to it in clause (11) of section 2 of the Insurance Act, 1938 (4 of 1938).

As per section 2(11) of the Insurance Act, 1938, "life insurance business" means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include—

(a) the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance,

(b) the granting of annuities upon human life; and

(c) the granting of superannuation allowances and benefit payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons

Explanation. — For the removal of doubts, it is hereby declared that "life insurance business" shall include any unit linked insurance policy or scrips

or any such instrument or unit, by whatever name called, which provides a component of investment and a component of insurance issued by an insurer referred to in clause (9) of this section.

Life insurance is basically a contract between an insurance policy holder and a life insurance company. Here the insurer promises to pay a designated beneficiary a sum of money (sum assured) in exchange for a premium, upon the death of an insured person or on maturity of the policy (depending on the policy contract). Other events such as terminal illness or critical illness can also trigger payment.

Few types of life insurance plans have been explained hereunder:

Term Life Insurance or Term Plan- Term insurance is a type of life insurance that offers benefit to the beneficiary if the insured dies during the policy tenure and does not have a cash value.

Whole Life Insurance Plan- Whole life insurance is a type of life insurance that offers coverage right until the death of the policyholder and has a cash value.

Unit Linked Insurance Plan (ULIP)- This is a type of life insurance product that offers dual benefits of investment and life insurance. A portion of the premium paid towards ULIPs is directed towards ensuring insurance coverage, while the rest of the premium is invested into a bouquet of investment instruments, which can include market-backed equity funds, debt funds and other securities.

Endowment Policy- This is essentially a life insurance policy which, apart from covering the life of the insured, helps the policyholder to save regularly over a specific period of time so that he/she is able to get a lump sum amount on the policy maturity in case he/she survives the policy term.

Money Back Policy- A money-back policy offers policyholders a percentage of the total sum assured at periodic intervals in the form of survival benefits. Once the policy reaches maturity, the remaining amount of the sum assured is also handed over to the policyholder. However, if the policyholder dies while the term is subsisting, their dependents are given the entire sum assured without any deductions.

Child Insurance- A child insurance plan is a savings cum investment plan that provides financial protection for the child's future upon the unfortunate demise of the policyholder.

HEALTH INSURANCE

The term "health insurance" has been defined under section 2(6C) of the Insurance Act, 1938 as under:

> *"health insurance business" means the effecting of contracts which provide for sickness benefits or medical, surgical or hospital expense benefits, whether in-patient or out-patient travel cover and personal accident cover"*

Few types of health insurance have been explained in the following paragraphs:

Individual Health Insurance- One can purchase an individual health insurance policy to provide cover for self, spouse, children and parents. These policies typically cover all kinds of medical expenses, including hospitalization, daycare procedures, hospital room rent and more. Under an individual health insurance plan, each member has his/her own sum insured amount.

Family Floater Health Insurance- A family floater plan provides cover to the proposer's family members under a single policy and everybody shares the sum insured amount.

Senior Citizens Health Insurance- These health plans have been designed specifically keeping in mind the medical needs and requirements of senior citizens.

Critical Illness Insurance- Critical illness benefit provides coverage against specific life-threatening diseases.

Exemption to Individual Life and Health Insurance

At the 56th GST Council meeting, the Council approved a major revision of GST rates. Among the changes, it was announced that all individual life insurance and individual health insurance premiums (and the reinsurance thereof) will be subjected to a nil GST rate (0%) with effect from 22nd September, 2025. This amendment has been notified through *Notification No. 16/2025-CT(R) dated 17.09.2025*.

Scope of the Exemption

a) Services of life insurance business provided by an insurer to the insured, where the insured is not a group

b) Services of health insurance business provided by an insurer to the insured, where the insured is not a group.

The above exemptions shall apply to a contract of insurance where the insured is an individual, or an individual and family of the said individual. Family shall include all individuals insured as family in the contract of insurance.

c) Reinsurance of abovementioned insurance services

'Group' shall mean group of persons who join together with a commonality of purpose or for engaging in a common economic activity, other than availing insurance, and includes

- Employer – employee groups, where an employer-employee relationship exists between the master/group policyholder and the members of the group in accordance with the applicable laws;
- Non employer – employee groups, where a clearly evident relationship exists between the master/group policyholder and the members of the group, for services/ activities other than insurance.

'Health insurance business' means the effecting of contracts which provide for sickness benefits or medical, surgical or hospital expense benefits, whether in-patient or out patient, travel cover and personal accident cover.

GENERAL INSURANCE

There is a restriction on availment of input tax credit only on life insurance and health insurance. However, there is no restriction on availment of input tax credit on any other type of insurance. A business entity avails several types of insurances which are in the nature of general insurance.

As per *Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017*, "general insurance business" has the same meaning as assigned to it in clause (g) of section 3 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972).

The term "general insurance" has been defined under section 3(g) of the General Insurance Business (Nationalization) Act, 1972 as under –

"general insurance business" means fire, marine or miscellaneous insurance business, whether carried on singly or in combination with one or more of them, but does not include capital redemption business and annuity certain business

These types of insurance could be -

(i) Theft insurance

(ii) Marine insurance

(iii) Fire Insurance

(iv) Stock insurance

(v) Fidelity insurance

(vi) Agricultural Insurance etc.

On all of the above, full ITC is available to the business if they are used or intended to be used in the course or furtherance of business.

Upon comparison with the erstwhile law, rule 2(l) of the CENVAT Credit Rules, 2004 placed similar restriction in respect of life and health insurance as under the GST regime. Rule 2(l)(c) of the CENVAT Credit Rules, 2004 excluded input services in relation to -

"(c) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, ***life insurance, health insurance*** *and travel benefits extended to employees on vacation such as Leave or home travel concession, when such services are used primarily for personal use or consumption of any employee."*

Hence, ITC is blocked only on life insurance and health insurance services. On the services of general insurance, ITC would be available to the businesses.

MULTI-INSURANCE

In case the business entity pays for an insurance policy which has elements of both general insurance and life / health insurance, it should be able to bifurcate clearly which are the elements which relate to general insurance and which relate to life / health insurance in order to avail input tax credit. In the case of *Fidelity Business Services India (P.) Ltd. vs Commissioner of*

Central Tax Bengaluru East [(2021) (Bangalore-CESTAT)] the appellant had availed general insurance services in relation to insurance for safeguarding assets, building and property and employees' health and life. However, they had not been able to bifurcate insurance service availed on assets of the company and on lives of persons working in the said company. Hence, in the absence of clear bifurcation and lack of documentary evidence, CENVAT credit on general insurance services was also denied. Therefore, it is recommended that one should not avail any multi-insurance where the elements of life insurance and general insurance cannot be bifurcated.

Insurance which includes a component of investment and a component of life insurance would follow the valuation provisions as provided in rule 32(4), wherein only a part of the premium is taxed. There was ambiguity on the ITC reversal with respect to the portion of the premium that was not taxed and whether the same must be considered as exempt supply or non-GST supply. It was clarified that such portion of premium which was not taxed, followed the valuation process and therefore, cannot be said to be in the nature of exempt supply applicable to ITC reversal. *Circular 214/8/2024-GST dated 26.06.2024* can be referred for detailed clarification with regard to this.

GROUP HEALTH OR GROUP LIFE INSURANCE

Group health/life insurance is nothing, but health / life insurance availed for a specific group. For instance, when an employer takes health/ life insurance for 10 of his employees, it is called a group insurance. If the nature of such insurance is health or life, input tax credit on the same stands blocked. ITC on health / life insurance services is allowed only when it fulfills the following conditions specified in the provisos under section 17(5)(b) of the CGST Act:

- when it is obligatory under any law for the time being in force to provide the same to its employees; or
- the inward and outward supplies are of the same nature or the inward supply used as an element of a taxable composite or mixed supply.

If none of these conditions are satisfied, then ITC on group health or life insurance services stands blocked in the hands of the registered person.

ACCIDENTAL INSURANCE AND WORKMAN'S COMPENSATION POLICY

An accidental insurance covers accidental bodily injury directly resulting in death or disablement to insured person. When this insurance is taken for personal purpose of the employees, one should be cautious before availing ITC as the same has an element of life insurance also, unless the policy does not cover life. However, where accidental insurance is taken for accident taking place at work premises, input tax credit on the same should be allowed as it is taken purely for mitigating the cost which the business entity would have to bear for accidents at workplace.

A workmen's compensation insurance policy is meant for commercial establishments. It provides legal liability coverage to an employer and also assists employees in times of financial emergencies. The policy compensates employees if they are injured at the workplace. Work-related fatalities and illnesses are also covered under this policy. The said policy is generally taken to cover the employer's liability. Even though it covers the life of an employee, the nature of such insurance is not personal.

In the case of M/s *Checkmate Industrial Guards Pvt Ltd vs Commissioner of Central Goods & Service Tax, Noida [ST Appeal No. 71259 of 2018] [2020-CESTAT-ALL],* the appellants were in the business of providing 'Security Services' and 'Detective Agency Service'. The appellant had subscribed to the workmen's compensation insurance policy in respect of employees with the intention of covering the appellant for payment of compensation to the employee if any mis-happening occurs with the employees when they are on duty. It was held by the Hon'ble CESTAT that the expenditure incurred was for running of the business and therefore service tax paid on the premium under workmen's compensation insurance is admissible as CENVAT credit. Further, the same rationale was followed in *Dharti Dredging & Infrastructure Ltd. [2022 (59) G.S.T.L. 171 (Tri. - Hyd.)]* and considering the statutory mandate as per labour laws, the credit was held to be eligible *in the case of Ganesan Builders Ltd Vs Comm. Of Service Tax, Chennai [2019 (20) G.S.T.L 39 (Mad.)].*

KEYMAN INSURANCE POLICY

Keyman's insurance policy is taken out by a business entity to compensate that business for financial losses that would arise from the death or extended incapacity of an important member of the business. Explanation 1 to section

10D of the Income Tax Act, 1961 defines keyman insurance policy as *a life insurance policy taken by a person on the life of another person who is or was the employee of the first-mentioned person or is or was connected in any manner whatsoever with the business of the first-mentioned person and includes such policy which has been assigned to a person, at any time during the term of the policy, with or without any consideration*. Even though the said compensation is in relation to life, the same is received by the employer. This is not to secure the personal life of the employee but for mitigating the losses incurred against the loss of a keyman for the business entity. Hence, input tax credit should be allowed on the same. Reliance can also be placed on the judgement of *M/s Om Logistics Ltd vs. Commissioner (Appeals) Central Goods and Service Tax, Delhi, Central Tax/GST, Delhi [2020-CESTAT-DEL], M/s Anjani Portland Cements Ltd. vs C.C.,C.Ex & S.T. Hyderabad [2017(47) S.T.R. 326 (Tri.- Hyd)]* which allowed CENVAT credit on keyman insurance services under the erstwhile laws.

The difference in GST regime is that the restriction on input tax credit on life insurance does not depend on whether such services are used primarily for personal use or consumption of any employee, which was specifically provided for in Rule 2(l)(C) of Cenvat Credit Rules, 2004. Also, it is not mandatory under law to obtain a Keyman Insurance Policy.

INWARD AND OUTWARD SUPPLY OF THE SAME NATURE

Where an insurance company receives services from a re-insurance company, it will be eligible to claim input tax credit on such services. The said inference was drawn in the case of *M/s Shriram General Insurance Company Ltd vs Commissioner of Central Goods and Service Tax [2021-CESTAT-DEL]* and further applied in the case of *M/s Oriental Insurance Company Ltd. vs Commissioner, Large Taxpayer Unit [2021-CESTAT-DEL] [ST Appeal No. 51676 of 2016].* This is because one can state that inward and outward supplies are of the same nature i.e., that of receipt and provision of the services of insurance.

Chapter 7
Membership of Club, Health and Fitness Centre

STATUTORY PROVISIONS

Section 17(5)(b) of the CGST Act read as under:

Before 1st Feb 2019

(b) The following supply of goods or services or both:-

(i) ……

(ii) membership of a club, health and fitness centre;

(iii) ……—

(A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or

(B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and

(iv) ……..

From 1st Feb 2019 [as substituted vide *CGST (Amendment) Act, 2018* vide *Notification No. 02/2019-Central Tax dated 29.01.2019* w.e.f. 01.02.2019]

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

(i) ……

(ii) membership of a club, health and fitness centre; and

(iii) ……:

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.

ITC has been disallowed on membership of club, health and fitness centre except where it is obligatory for the employer to provide the same to its employees under any law for the time being in force.

CLUB

The term 'club' has not been defined under the GST regime. As understood in common parlance, a club is an association of people united by a common interest or goal. There can be several types of clubs like religious, social, political, academic, etc.

As per Oxford Dictionary the term 'club' has been defined as "an association dedicated to a particular interest or activity".

In the context of section 17(5), the term club would refer to recreational places like gymkhanas, recreational clubs, resort, etc. Generally, the purpose of this club is for the personal interest or use of the employees or owners of the entity. Hence, the law deemed it fit to disallow ITC in such cases.

Section 17(5) of the CGST Act does not include the words "personal use or consumption of employees" along with club. However, the word 'club' is mentioned along with the words 'health and fitness centre'. Health and fitness activities are something which are meant for personal consumption of an individual. Therefore, applying the principle of *ejusdem generis,* the word 'club' would also take colour from its adjacent words. Hence, ITC is not allowed in case the club facility is used for personal benefit of a person and ITC may be allowed in case of trade associations which are established for the growth of the business.

Under the erstwhile regime, rule 2(l) (ii) (C) of the CENVAT Credit Rules, 2004 (CCR) excluded the following input service in relation to -

"(c) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as leave or home travel concession, when such services are used primarily for personal use or consumption of any employee."

Thus, CENVAT credit, under the erstwhile regime, was not allowed on membership of club, health and fitness centre when the same was used for personal use or consumption of any employee. The same analogy has been

made applicable in the GST regime also. Hence, ITC on the membership of clubs, gymkhanas, gym, etc. is disallowed.

Business entities often take corporate membership in clubs, gymkhanas etc. whose facilities are thereafter used for conducting client meetings, business meetings, etc. Although such expenditure is business expenditure, there is a specific disallowance of ITC on expenses for obtaining such membership.

It must be noted that disallowance is only with respect to services of membership of club and not to other services which are availed in such club. For example, if the company holds a sales meeting in the banquet hall of a club, then there is no restriction to avail the ITC on such expense.

TRADE ASSOCIATION

It may be noted that a club cannot be equated with a trade association. The purpose of a trade association is to enhance the business or trade of the registered person. It is not set up for furthering the religious, social, political or personal interest of any person or community. Also, trade associations have not been mentioned in the list of blocked credit under section 17(5). Therefore, ITC on the same is allowed.

Suppose a business entity pays for membership of Golf club for its directors, ITC shall not be allowed on the same. However, in case the business entity takes membership of ASSOCHAM, ITC would be allowed.

In the case of *Alliance Globe Services IT India (P.) Ltd. vs. Commissioner [(2016) (Hyderabad-CESTAT)]*, the assessee took membership in associations like American Chamber of Commerce in India, and International Market Assessment India (P) Ltd. It was held that membership in such associations augments the business of the organization. It is actually for the benefit of organization and not for personal use or consumption of any employee and therefore it would not be excluded from the definition of 'input service'.

Similar inference was drawn in the case of *CGST, C.C & C.E-Ujjain vs Rohit Surfactants Pvt Ltd [Appeal No. E/50972, 51575-51577/2018-SMC],* it was held that membership of Indian Home & Personal Care Industry Association, Foreign Exchange Information Service etc. are for pursuing the business activities of the appellant. Thus, CENVAT credit shall not be denied on the same.

In the case of *Fidelity Business Services India (P.) Ltd vs. Commissioner of Central Tax, Bengaluru East [(2021) (Bangalore-CESTAT)],* it was held that:

"This finding of the learned Commissioner is wrong because the membership of the club was used in relation to promoting the trade and hence it falls within the definition of Input Service."

HEALTH AND FITNESS CENTRE

ITC would not be allowable on the membership services availed in respect of health and fitness centre.

The term "Health and Fitness Centre" has nowhere been defined under the GST law. However, section 65(52) of Chapter V of the Finance Act, 1994 defined the term "Health club and fitness centre" as under: -

"Health club and fitness centre" means any establishment, including a hotel or a resort, providing health and fitness service;

Further, section 65(51) of Chapter V of the Finance Act, 1994 defined the term "*health and fitness service*" as under-

"health and fitness service" means service for physical well-being such as, sauna and steam bath, turkish bath, solarium, spas, reducing or slimming salons, gymnasium, yoga, meditation, massage (excluding therapeutic massage) or any other like service;

Health and fitness services are provided by clubs, fitness centre's, health salons, hotels, gymnasium and massage centres. The services which fall under this category might be for weight reduction and slimming, physical fitness exercise, gyms, aerobics, yoga, meditation, reiki, sauna and steam bath, Turkish bath, sunbath and massage for general wellbeing. These would be taxable supplies.

However, therapeutic massage is not covered under 'health and fitness service'. Therapeutic massage basically means a massage provided by qualified professionals under medical supervision for curing diseases such as arthritis, chronic low back pain, sciatica etc. Ayurvedic massages, acupressure therapy, etc. given by qualified professionals under medical supervision for curing diseases/disorders will come under the category of therapeutic massages. This remains open to interpretation as the same is not defined under GST law, and Human Health and Social care services are taxable under GST law. To verify coverage under exemption entries one may have to look at specific exemption entries and the applicability of 'recognized system of medicine in India'.

Chapter 8
Goods / Services made available by Employer to Employee, whether obligatory or not

STATUTORY PROVISIONS

Section 17(5)(b) of the CGST Act read as under:

Before 1st Feb 2019

(b) The following supply of goods or services or both:—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category 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;

(iii) rent-a-cab, life insurance and health insurance except where—

(A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or

(B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and

(iv) travel benefits extended to employees on vacation such as leave or home travel concession.

From 1st Feb 2019 [as substituted vide the *CGST (Amendment) Act, 2018* vide *Notification No. 02/2019-Central Tax dated 29.01.2019* w.e.f. 01.02.2019]

(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.

OBLIGATION FOR THE EMPLOYER TO PROVIDE GOODS AND/OR SERVICES TO ITS EMPLOYEES

Pre-amendment

Before 1st February 2019, the proviso allowing ITC on the condition that it was obligatory under any law for the time being in force for an employer to provide the respective nature of supply to its employees was applicable only for *'rent-a-cab, life insurance and health insurance'* services. This exception was not applicable for *food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of club, health and fitness centre and travel benefits extended to employees'*.

Therefore, ITC would not be allowable on f*ood and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of club, health and fitness centre and travel benefits extended to employees,* even if it was obligatory for the employer to provide the same to its employees under any law for the time being in force.

Post-amendment

After 1st February 2019, the proviso in section 17(5)(b) states that the ITC would be allowable where it is obligatory for the employer to provide the respective nature of supply to its employees under any law for the time being

in force. Moreover, *Circular No. 172/04/2022-GST dated 06.07.2022* (S. No. 3) provides that the said exception is applicable to all the three clauses, namely clauses (i) to (iii) by referring to the recommendations made in 28th GST Council meeting which provided for widening of the scope of the eligibility. Therefore, ITC would be allowed in all the following cases where it is obligatory for the employer to provide the services to its employees under any law for the time being in force:

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft, life insurance and health insurance;

(ii) membership of a club, health and fitness centre;

(iii) travel benefits extended to employees on vacation such as leave or home travel concession.

DIRECTOR AS EMPLOYEE

In the case of a company, one needs to understand the coverage of various types of directors in order to understand the implications under GST.

As per *Circular No. 140/10/2020-GST dated 10.06.2020,* an independent director defined in terms of section 149(6) of the Companies Act, 2013 read with rule 12 of Companies (Share Capital and Debentures) Rules, 2014 or any other director who is not an employee of the company shall not be regarded as an employee. A managing director or whole-time director whose remuneration is declared as "Salaries" in the books of account of a company and subjected to TDS under section 192 of the Income Tax Act, 1961 shall be treated as an employee.

MANDATORY FACILITIES FOR THE EMPLOYEES

One should refer to the Labour laws as applicable in the respective States (Labour Law is in the concurrent list of the Constitution) to check which facilities are mandatory for an employer to provide to its employees/ workers. Some such facilities which are mandatory for an employer to provide to its employees have been illustrated in the following paragraphs:

Food

Factories Act, 1948

The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.

It is to be noted here that factory has been defined under section 2(m) of the Factories Act, 1948 (the Factories Act) as under:-

> *"factory" means any premises **including the precincts** thereof—*
>
> *(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a **manufacturing process** is being carried on with the aid of power, or is ordinarily so carried on, or*
>
> *(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,—*
>
> *but does not include a mine subject to the operation of [the Mines Act, 1952], or [a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place]*

Further, the term 'manufacturing process' referred to in the above definition of 'Factory' is defined under Section 2(k) of the said Factories Act. The extract of the same is as follows;

> *(k) "manufacturing process" means any process for—*
>
> *(i) making altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or*
>
> *(ii) pumping oil, water, sewage or any other substance; or*
>
> *(iii) generating, transforming or transmitting power; or*
>
> *(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or*

> *(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or*
>
> *(vi) preserving or storing any article in cold storage;*

A factory does not include an office premise unless the said office is within the factory or within the precincts of the factory. For example, Company "X", has its office in the main city and factory at the outskirts of the city. It provides canteen facility to its employees at the factory and offices. ITC will be available for food expenses incurred at the factory only if it meets the criteria mentioned in the Rules made under the Factories Act.

It is pertinent to mention here that the term worker has been defined by the Factories Act to include persons employed directly or through any agency including a contractor. However, the proviso to Section 17(5)(b) of CGST Act uses the term "its employees". Hence, the services received in respect of workers engaged through a contractor will not be covered under this exception (obligatory for an employer). So, the benefit of ITC will be denied if such a canteen facility is used by other workers employed through contract.

Although, another view emerges that such a transaction, where the employer is recovering the food charges from the workers who are contractually hired (other than employees), would be in the nature of making an outward taxable supply of the same category of goods or services and the credit shall not be blocked under Section 17(5)(b) and thereby eligible. However, when the said charges are recovered from workers and GST is discharged on the same @ 5% (without ITC benefits), the ITC would be restricted in terms of the conditions mentioned in the GST rate notification i.e. *Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017*, and it would be treated as outward exempt supplies for the purposes of ITC reversal in terms of Explanation (iv) of the said notification. This restriction is subject to judicial test as the notification appears to be overriding the provisions mentioned in the statute.

Further, when part recoveries are made by the employer from employees (by passing the partial cost) towards the food charges and part of the cost is borne by employer, the dispute arises on eligibility of the ITC. The same is discussed in the ensuing paragraphs.

Motor Vehicle

Act / rules and regulation of various States may make it mandatory for its employers to provide - drop facilities to its women employees after a particular time.

The Karnataka Shops and Commercial Establishments Act, 1961

In general, women are not permitted to be employed for a night shift. However, where the establishment provides services of information technology or information technology enabled services, women are allowed to work late night subject to the condition that the establishment provides facilities of transportation and security to such women employees.

There are other States also which have laid down certain conditions in relation to transport for having women employees in the night shift.

Hence, in such cases ITC shall be available on leasing, renting or hiring of motor vehicle. It should be noted that purchase of motor vehicle is not covered by this statutory mandate.

Health Services

One needs to note that in case the registered person purchases medicines, band aids etc. and maintains a first aid box, such purchases will not be covered under health services. Health Care Services is as defined in Para 2(zg) of *Notification No.12/2017-Central Tax (Rate) dated 28.06.2017* as under -

"health care services" means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;

Purchase of basic medicines and maintenance of first aid kit do not lead to provision of any medical treatment. Provision of first aid is a treatment given to patient before formal or appropriate medical help is available. GST would be applicable on purchase of medicines, the credit of the same may be disputed under 'personal consumption' although where it is mandated the credit is eligible. Shops & Establishments Act (State-wise) generally

mandates first aid facilities which includes such first aid kits to be maintained in the business premises.

Ordnance Factory Medical Regulations

Various types of health care services are mandatory as per the Ordnance Factory Medical Regulations. ITC will be available on such expenses.

Health and Life Insurance

Various State Governments have mandated welfare schemes for unorganized sector workers under the Unorganized Worker's Social Security Act, 2008 for health/ life insurance coverage. Where insurance is availed due to such mandatory provisions ITC shall be available on the same.

In 2019 and 2020, several Central Labour laws were amalgamated, rationalised and simplified into four labour codes, viz, the Code on Wages, 2019; the Industrial Relations Code, 2020; the Code on Social Security, 2020; and the Occupational Safety, Health & Working Conditions Code, 2020. Under the Labour Codes, the Centre and States are required to notify Rules under the four Codes to enforce these laws in their respective jurisdictions. Thus, the relevant labour code and applicable rules should be referred to check the eligibility of ITC under section 17(5)(b) of the CGST Act.

For example, under the Occupational Safety, Health and Working Conditions Code, 2020, section 24(1) states that the employer shall be responsible to provide and maintain in his establishment welfare facilities for the employees like ambulance room in every factory, mine, building or other construction work wherein more than five hundred workers are ordinarily employed or uniforms, raincoats and other like amenities for protection from rain or cold for motor transport workers. Thus, if the provision of such facilities is mandatory under the particular labour law, then the ITC on such expenses would be admissible.

Further, in case ITC is available to an entity which is obligated to provide to its employees certain services, there will still be a need to check the tariff rate notification on outward supplies for knowing the restriction, if any applicable on availment of ITC.

OUTWARD TAXABLE SUPPLIES OF SAME CATEGORY OF GOODS OR SERVICES OR BOTH OR AS ELEMENT OF A TAXABLE COMPOSITE OR MIXED SUPPLY BY AN EMPLOYER TO ITS EMPLOYEES

Section 17(5)(b)(i) of the CGST Act allows for ITC on 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) of section 17(5) of the CGST Act except when used for the purposes specified therein], life insurance and health insurance, 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.

There are many business entities that may provide one of the aforementioned facilities to their employees like canteen facilities, renting of motor vehicles, insurance etc. For these services the employer may have any of the following three models:

1. Provide the entire services free of cost as a part of perquisite;
2. Provide the entire services free of cost as gift;
3. Charge a nominal value for the services, provided the remaining amount to be included as a part of perquisite.

Where the services have been provided completely free of cost by the employer to the employee, one needs to find whether the nature of such services is that of outward supply or not.

ITC eligibility on Specified services under section 17(5)(b) - Supplies by way of gift / perquisite to employees

Gift vs Perquisite

1. At the outset, one needs to understand the nature of the incentive – gift or perquisite. The word 'gift' has not been defined in the CGST Act. Thus, to determine the meaning of this term, one would have to refer to other laws as well as case laws.

   (i) The Gift Tax Act,1958 had defined the word "gift" to mean transfer by one person to another of any existing movable or immovable

property voluntarily and without consideration in money or money's worth.

(ii) Black's Law Dictionary defines 'gift' to mean a voluntary conveyance of land or transfer of goods, from one person to another, made gratuitously and not upon any consideration of blood or money.

(iii) The Supreme Court cited the definition of 'gift' from Corpus Juris Secundum, Volume 38 in the case of *Sonia Bhatia v. State of UP [(1981) 2 SCC 585]* as a 'gift' is commonly defined as a voluntary transfer of property by one to another, without any consideration or compensation therefor.

2. Therefore, a 'gift' is a gratuity and an act of generosity and does not require consideration. However, if there is a consideration for the transaction, it is not a gift. Thus, for any item to be held as a gift, following two basic ingredients must exist:

   (i) Absence of any contractual obligation;

   (ii) Absence of consideration in money or money's worth either.

3. Further, in the *C.B.E. & C. Press Release No. 73/2017 dated 10.07.2017*, the Government distinguished gift and perquisites in case of employment. It was stated that perquisite is provided out of contractual obligation whereas gift is voluntary and without consideration. Further, it cannot be demanded as a matter of right by the employee and the employee cannot move a court of law for obtaining a gift.

4. In *Circular No. 172/04/2022-GST dated 06.07.2022*, perquisite in case of employment arises in terms of contractual agreement entered into between the employer and the employee. Hence, perquisite arises from the terms of contract between two persons.

Taxability and eligibility of ITC in respect of perquisites

The Government in its press release dated 10.07.2017 (*C.B.E. & C. Press Release No. 73/2017, dated 10.07.2017*) clarified the taxability of perquisites and stated that the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods or supply of services). It follows therefrom that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST.

Point No.5 of *Circular No. 172/04/2022-GST dated 06.07.2022* was also in relation to the taxability of perquisite. The Circular clarified as follows:

S. No.	***Issue***	***Clarification***
Perquisites provided by employer to the employees as per contractual agreement		
5.	*Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?*	*Schedule III to the CGST Act provides that "services by employee to the employer in the course of or in relation to his employment" will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.* *Any perquisite provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.*

From the above, it is clear that any perquisite arising out of contractual obligation is not a supply and hence, there is no levy of GST on the same.

Section 17(5)(b)(i) allows ITC on the supplies mentioned in the said provision only when there is further outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply.

Since supply made by employer to employee in the form of perquisite is not an outward supply in itself, ITC shall not be allowable on the inward supplies mentioned in section 17(5)(b)(i).

Taxability and eligibility of ITC in respect of Gifts

Where there is no contractual obligation to provide any goods / services by the employer to the employee and the same is made voluntarily free of cost, the same shall be treated as a gift. The taxability in respect of gifts made by the employer to the employee has been provided in Schedule I of the CGST Act.

As per Schedule I, GST is to be levied where there is supply of goods or services or both between related persons even when the same is made without consideration. It has been provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as a supply of goods or services or both.

As per section 15 of the CGST Act, employer and employee are related persons. Thus, where a gift is provided by the employer to an employee in excess of fifty thousand rupees, GST shall be levied on the full value.

The limit of Rs.50,000/- is applicable per employee per financial year. Valuation for the same is to be done as per rule 28 of the CGST Rules. In such cases, one can avail full ITC of the relevant supply services as the inward and outward supply would be considered to be of the same nature.

Where there are no outward taxable supplies, due to non-crossing of limit of Rs. 50,000/-, ITC shall not be allowed. However, where GST is being charged due to crossing of limit of Rs.50,000/- ITC shall be allowed.

Charge a nominal value for the services provided rest to be included as a part of perquisite

Many a times, the employer bears some part of the cost of service, while the rest is recovered from the employees. For example, if the cost of health insurance premium is Rs. 1,000/- per month per employee, the employer may bear Rs. 600/- and recover Rs. 400/- from his employees. Rs. 600/- which is borne by the employer if it is out of contractual obligation will not be subjected to GST as the same is in the nature of perquisite.

In case of Rs. 400/- which has been received from the employee the following two views are possible: -

1. Tax is leviable- The term business has been defined under section 2(17) of the CGST Act to include an activity which is incidental or ancillary to the main business activity. Any facility which is provided by the employer

to the employee helps in the furtherance of business, thus the same is covered under section 2(17)(b) of the CGST Act i.e., an activity or transaction incidental to the main business. Further the absence of profit motive will not have any impact on such transaction as there is a recovery of an amount from the employees.

In the case of *Caltech Polymers Pvt. Ltd. [2018 (AAAR, KERALA)],* the Appellate Authority for Advance Ruling has upheld the decision of Advance Ruling Authority which held that GST is payable on recovery made from employees for providing the canteen facility and it was held as follows:

"14. The contentions raised by the appellant have been examined in detail. The crucial aspects to be considered in this case are the elements of "supply" and "consideration". The appellant company has admitted that they are serving food to the employees for cash, though there is no profit involved in the transaction. In spite of the absence of any profit, the activity of supplying food and charging price for the same from the employees would surely come within the definition of "supply" as provided in Section 7(1)(a) of the CGST Act, 2017. Consequently, the appellant would definitely come under the definition of "supplier" as provided in subsection (105) of Section 2 of the CGST Act, 2017. Moreover, since the appellant recovers the cost of food items from their employees, there is "consideration" as defined in Section 2(31) of the CGST Act, 2017".

17……..

The supply of food items to the employees for consideration in the canteen run by the appellant company would come under the definition of 'supply' and would be taxable under GST. Therefore, the appeal fails and stands dismissed."

2. Tax is not leviable - Any service which is provided by the employer to employee which is not mandated by any law cannot be termed as a business activity. Further, the same cannot even be said to be ancillary or incidental to the main business activity. These services are merely facilities provided by employer to employee and since it is not in the course of furtherance of business, GST cannot be levied on the same. Also, it can be said to be arising in the course of employer-employee relationship.

There are multiple advance rulings supporting the view that GST is not leviable on recovery of the expenses from the employees for third party services. Some of the notable rulings are discussed hereunder.

a. *In Re: M/s Tata Motors Ltd [2023-AAAR-GST]*, it has been observed as follows:

- On the nominal amount recovered by applicant from employees (for usage of canteen facility) and paid to the canteen service provider, the applicant does not retain with itself any profit margin in this activity of collecting employees' portion of canteen charges and hence GST is not leviable on this amount.
- ITC will be available to the appellant in respect of food & beverages as canteen facility, is obligatorily to be provided under the Factories Act, 1948, to its employees working in the factory.
- However, ITC will be available in respect of such services of canteen facility provided to its direct employees but not in respect of other type of employees including contract employees/workers, visitors etc.
- Appellant during the course of personal hearing had submitted that they will not take input tax credit to the extent applicable on the amount of canteen charges recovered from their employees and will reverse the credit to that extent. Therefore, it was held that ITC will be available to the appellant on GST charged by the service provider in respect of canteen facility provided to its direct employees working in their factory. Further, ITC on the above is restricted to the extent of the cost borne by appellant for providing canteen services to its direct employees, but proportionate credit to the extent embedded in the cost of food recovered from such employees will be disallowed.

b. *In Re: Tata Power Company Ltd. [2022 (57) G.S.T.L. 141 (AAR. - GST - Mah.)],* it has been observed as follows:

- The applicant is not engaged in providing insurance service. The service of insurance is actually provided by the insurance company for which the insurance company is charging GST.
- The applicant is just paying the insurance premium amount to the insurance company and recovering the premium amount from its

employees. The applicant is not taken input tax credit of the GST paid to the insurance company.

- Non-providing of top-up insurance/parental insurance coverage will not affect applicant's business by any way. Therefore, activity of recovery of the cost of insurance premium cannot be treated as an activity done in the course of business or for the furtherance of business.
- The activity undertaken by the applicant like providing of mediclaim policy for the employees and their parents (parents of the employees) through the insurance company neither satisfies conditions of Section 7 to be held as "supply of service" (in the instant case, insurance service) nor is it covered under the term "business" of section 2(17) of CGST Act.
- Hence, the applicant is not rendering any services of health insurance to their employees' parent and hence, there is no supply of insurance services in the instant case of transaction between employer and employee.

c. *In Re: Amneal Pharmaceuticals Pvt. Ltd. [2022 (58) G.S.T.L. 382 (App. A.A.R. - GST - Guj.)]* it was observed as follows:

- The appellant does not supply any goods or services to its employees against the amount collected from the employees.
- The appellant collects employees' portion of amount and pays the consolidated total amount, which includes appellant's share also, to the canteen service provider towards the foodstuffs provided to employees by the canteen service provider.
- The appellant neither keeps any margin in this activity of collecting employees' portion of amount nor makes any separate supply to the employees.
- It is not the appellant who is supplying the foodstuff or canteen service to its employees, but it is a third party who is supplying the foodstuff or canteen service to the employees of the appellant.
- Hence the appellant is not carrying out the said activity of collecting employees' portion of amount to be paid to the canteen service provider, for any consideration, such transactions are without

involving any 'supply' from the appellant to its employees and is therefore not leviable to Goods and Services Tax.

d. *In Re: Emcure Pharmaceuticals Ltd. [2022 (60) G.S.T.L. 231 (A.A.R.- GST- Mah.)]* it has been observed as follows:

- The provision of canteen facility to the employees is a welfare measure, also mandated by the Factories Act and is not at all connected to the functioning of their business of developing, manufacturing and marketing pharmaceutical products. Further, the said activity is not a factor which will take the applicant's business activity forward.
- The applicant is not supplying any canteen service to its employees in the instant case. Further, the said canteen facility services are also not the output service of the applicant since it is not in the business of providing canteen service. Rather, this canteen facility is provided to employees by the third-party vendors and not by the applicant.
- GST is already discharged on the gross value of bills raised on the applicant by the third-party vendors, providing canteen facility. The partial amounts recovered by the applicant from its employees in respect of use of such canteen facility are part of the amount paid to the third-party vendors which has already suffered GST.
- As the provision of canteen facility by the applicant to its employees is not a transaction made in the course or furtherance of business, the canteen services provided by the applicant to its employees cannot be considered as a "supply" and is not liable to pay GST on the recoveries made from the employees towards providing canteen facility at subsidized rates.

Though there are conflicting views by the various Advance Ruling authorities, one can throw weight being the latter of the two views as the recovery of premium charges are only a recovery of cost for a supply made by the third party and not the employer. The employer is merely facilitating the recovery of the part of premium from the employees on behalf of the insurance companies.

If the ITC is blocked under section 17(5) and not under any obligation by the employer to employee under any law, ITC would not be allowed. Since the

outward supply is not taking place in the given case either for Rs. 600/- and Rs. 400/-, the exception for allowance of credit (outward and inward supply of same nature) does not get triggered. Therefore, ITC would continue to be blocked.

Chapter 9
Construction of Immovable Property and Works Contract

STATUTORY PROVISIONS

Section 17(5)(c) & (d) of the CGST Act reads as under:

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) .....

(aa) .....

(ab) ....

(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* [46]*[**plant and machinery**]) on his own account including when such goods or services or both are used in the course or furtherance of business.*

……

Explanation.[47]*[1] —*

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;

[48]*[Explanation.2 —*

---

[46] *Substituted vide Section 124 of the Finance Act, 2025 dated 29.03.2025 w.r.e.f. 01.07.2017. Before it was read as, 'plant **or** machinery'. Notified through Notification No. 16/2025 – CT dated 17.09.2025. Brought into force on 01.10.2025.*

[47] *Substituted vide the Finance Act, 2025. Notified through Notification No. 16/2025 – CT dated 17.09.2025, w.e.f. 01.10.2025. Prior to its substitution, it was read as: "Explanation".*

[48] *Inserted vide The Finance Act, 2023 dated 31.03.2023, notified through Notification No. 28/2023 – CT dated 31.07.2023, w.e.f. 01.10.2023.*

For the purposes of clause (d), it is hereby clarified that notwithstanding anything to the contrary contained in any judgment, decree or order of any court, tribunal, or other authority, any reference to "plant or machinery" shall be construed and shall always be deemed to have been construed as a reference to "plant and machinery";]

……..

……..

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.

The provisions of section 17(5)(c) and section 17(5)(d) relate to blocking of ITC in relation to goods or services or both used for construction of an immovable property. The provisions of both the said sub-sections are to be read along with the explanations given after section 17(5)(d) and section 17(6) of the CGST Act.

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 account;

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

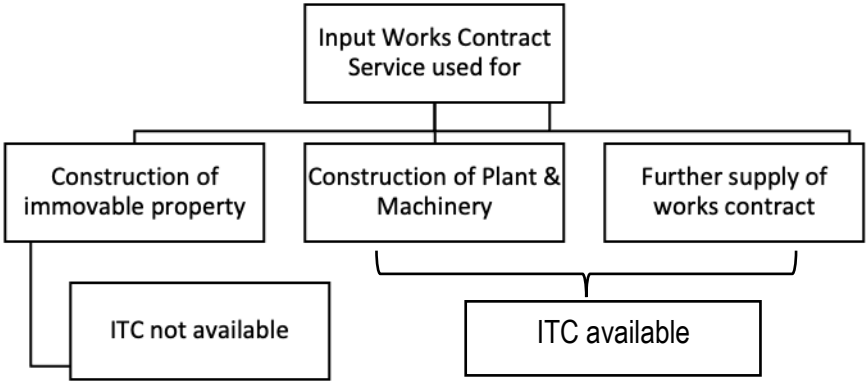
(iii) It should have been used for construction of property other than plant and machinery.

The discussion on the recent amendment, with retrospective effect, in the clause (d) of the Section 17(5) of the CGST Act, vide the Finance Act, 2025, is made in the ensuing paragraphs.

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

Type of property	Construction of	Treatment in books	ITC eligibility
Immovable	Other than plant and machinery	Capitalized	Not eligible
Movable	Plant and machinery or otherwise	Capital or Revenue	Eligible
Movable or Immovable	Plant and machinery	Capital or Revenue	Eligible
Movable or Immovable	Plant and machinery or otherwise	Revenue	Eligible

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



Meaning of the term 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 property in goods (whether as goods or in some other form) should also be involved during the execution of the contract along with such services.

Let us now examine the meaning of each of the word used in the definition of "Works Contract".

Building- Section 2 (j) of the Real Estate (Regulation and Development) Act, 2016 defines building to include *any structure or erection or part of a structure or erection which is intended to be used for residential, commercial or for the purpose of any business, occupation, profession or trade, or for any other related purposes.*

In Black's law dictionary 'building' has been defined as - *a structure with walls and a roof, esp. a permanent structure.* The dictionary further defines accessory building as - *A building separate from but complementing the main structure on a lot, such as a garage.*

Construction-

The word 'construction' is defined in dictionaries as follows:

- the building of something, typically a large structure (New Oxford Dictionary of English);
- to make or form by combining or arranging parts or elements (Webster's Ninth New Collegiate Dictionary);
- the act or process of constructing (Chambers Dictionary);
- the process of bringing together and correlating a number of independent entities, so as to form a definite entity; creation of something new, as distinguished from the repair or improvement of something that already exists; the act of fitting an object for use or occupation in usual way and for some distinct purpose (Black's Law Dictionary).

In the present context, construction refers to the activity of building a structure. The definition nowhere provides that such structure shall be built only with the help of cement, sand, stone, etc. Such structure can be built

with iron and steel, plywood, etc. Thus, the meaning of the word 'construction' is wide enough to cover also the structures which are built with the help of any metal and other materials.

Further, as per Explanation 1 provided under section 17(5)(d), construction includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation to the said immovable property. Thus, for the purpose of this clause, construction would mean supply of construction services whose value has been capitalized in the books of account.

Fabrication- According to Oxford Dictionary *fabrication is the action or process of manufacturing or inventing something.*

Completion – Completion simply means completing any immovable property as mentioned in the definition. The completion and finishing will cover activities such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry and similar services done in relation to an immovable property to complete and finish the same.

Erection -As per Black's Law Dictionary the word "erect*" means to construct.*

Installation- According to Oxford Dictionary, the term 'install has been defined as *place or fix (equipment or machinery) in a position ready to use.*

Fitting out- Fit out is basically done to make a space suitable for occupation. Electrical fittings, mechanical fittings, furnishing etc. are all various types of fit outs.

Improvement- As per the Black's Law Dictionary, *improvement is addition to real property whether permanent or not; esp. one that increases its value or utility or that enhances its appearance.*

Modification – As per the Black's Law Dictionary, 'modification' means *a change to something; an alteration.*

Repair- According to Oxford Dictionary, repair means to *restore (something damaged, faulty or worn) to a good condition.*

Maintenance – As per Black's Law Dictionary, *maintenance is the care and work put into property to keep it operating and productive; general repair and upkeep.*

Renovation -The term 'renovation' as seen from the meanings given in the dictionaries includes the act of making of repairs and also includes the act of making or creating a new thing. The term 'repair' would not include the meaning of creating or making of a new thing.

Alteration – As per the Oxford Dictionary, alter *means making structural changes to building.*

Commissioning - As per Webster's Ninth New Collegiate Dictionary, the word 'commissioning' *is the process of commencement of an item (plant, equipment, machinery etc.) which had been installed.* It involves the process of testing an equipment.

ITC FOR ACTIVITIES OF REPAIR, RE-CONSTRUCTION, RENOVATION, ALTERATION, ETC.

The concept of "construction" has been widened to include the activities of re-construction, renovation, additions or alterations or repairs. The term 'construction' generally refers to the act of making or creating the immovable property for the first time. On the other hand, the activities of repair, renovation, alteration, etc. would involve carrying out the works on an existing immovable property. It must be noted that generally the process / steps which are done during the construction are repeated during its repair. For e.g., wall plastering will be done for the first-time during construction by applying cement mixture and when such wall plaster needs repair, then similar processes of applying wall plaster will be done for undertaking the repairs. Even though similar processes are employed, the later activity would be treated as repair since the same is done on an already constructed structure and with an intent to rectify / cure the defects.

Therefore, the eligibility for ITC need not be decided with reference to the processes / treatment carried out but with reference to the purpose for which such processes / treatment is done.

Further, in terms of Explanation 1 to section 17(5)(d), ITC is not allowed in case of re-construction, renovation, additions or alterations or repairs to the said immovable property, to the extent it is capitalized. Hence, it is imperative to understand the term 'immovable property' and 'capitalized'.

MEANING OF THE TERM 'IMMOVABLE PROPERTY'

The blocking of ITC is only in relation to immovable property. Thus, it is important to understand the meaning of the term 'immovable property' which has not been defined under the GST law. Therefore, one needs to borrow the definition from other Acts.

Registration Act, 1908

Section 2(6) - "Immovable property" includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth, or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass.

The General Clauses Act, 1897

Section 3 (26) - "Immovable property' *shall include land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth".*

Transfer of Property Act, 1882

As per section 3, "Immovable property" does not include standing timber, growing crops or grass.

Real Estate (Regulation and Development) Act, 2016

Section 2 (z) - "immovable property" *includes land, buildings, rights of ways, lights or any other benefit arising out of land and things attached to the earth or permanently fastened to anything which is attached to the earth*, *but not standing timber, standing crops or grass*.

From the above, it is seen that the term "immovable property" not only includes land and building alongwith its benefits but also things attached to earth. It is pertinent to understand the meaning of the term 'things attached to earth'.

Section 3 of the Transfer of Property Act, 1882 defines the term "attached to the earth" to mean:

(i) rooted in the earth, as in the case of trees and shrubs;

(ii) embedded in the earth, as in the case of walls or buildings;

(iii) attached to what is so embedded for permanent beneficial enjoyment of that to which it is attached.

The understanding of this term 'things attached to earth' has been dealt with in depth in the Hon'ble Apex Court's judgement in case of Commr*. of C. Ex., Ahmedabad v. Solid & Correct Engineering Works [2010 (252) E.L.T. 481 (S.C.)],* wherein following principles were laid down:

(i) Attachment of plant with nuts and bolts intended to provide stability and prevent vibration is not covered by the term attached to earth. [similar to *Sirpur Paper Mills Ltd. vs Collector of Central Excise, Hyderabad] [1998 (97) E.L.T. 3 (S.C.)];*

(ii) Where attachment is easily detachable from the foundation, it is not permanent;

(iii) Immovable property involves permanent fixing, embedding or attachment in the sense that would make the machine part and parcel of the earth permanently;

(iv) If it can be dismantled without causing substantial damage to the asset, it is a movable property.

Further, the Hon'ble Supreme Court in the case of *Triveni Engineering & Indus. Ltd. vs Commissioner of Central Excise [(2000 (120) E.L.T. 273)* [where the determination was required as to whether a property is movable or immovable], held as under: -

(i) Whether an article is permanently fastened to anything attached to the earth requires determination of both the intention as well as the factum of fastening to anything attached to the earth;

(ii) this has to be ascertained from the facts and circumstances of each case.

In the case of *Duncans Industries Ltd. v. State of U.P, & Ors [Civil Appeal No. 5929 of 1997, dated 3/12/1999]* it was held as under:-

(i) Whether a property is movable, or immovable would depend upon the facts and circumstances of each case;

(ii) Primarily the court should consider the intention of the parties when it decided to embed the machinery whether such embedment was intended to be temporary or permanent.

From the above discussion, one needs to check the following before concluding whether a supply is that of an immovable property:-

(i) Test of permanency;

(ii) Whether there would be substantial damage in dismantling such property?;

(iii) The intention behind installation of such property - whether temporary or permanent use?

(iv) Further, a proper study of facts and circumstances should be done of each case before deciding upon the immovability or otherwise of the property.

Note:

- It is relevant to mention here that under GST regime sale of land and building (except activities/transactions covered under clause (b) of paragraph 5 of Schedule II of the CGST Act) shall neither be treated as supply of goods nor as supply of services as per Schedule III.
- One needs to note here that even if the goods or services or both received by a registered person are used or intended to be used in the course or furtherance of his business, ITC in relation to immovable property would be allowed only subject to the restrictions placed vide section 17(5)(c) and (d) of the CGST Act.

Meaning of the term 'Capitalized'

As per section 17(5)(c) and (d), one of the pre-conditions for denial of ITC on activity of repair, renovation, alteration, re-construction, etc. is that such expense should have been capitalized in the books of account. 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 capitalized 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 the value of which has been capitalized 'in the books of account' of the registered person.

To fortify the stand that capitalization refers to the treatment as per the books of account 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 capitalized 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 capitalized 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".

The above Circular provides a clear inference that if the value of any item has not been capitalized in the books of account, then the same cannot be regarded as capital goods and ITC cannot be blocked 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 account for determining whether its value has been capitalized or not.

Nature of supply in a works contract

In a works contract, there is both, rendering of service and transfer of property in goods. Under the erstwhile taxation regime, the goods were taxed under VAT/ CST and services were taxed under service tax. Thus, supply of works contract attracted both VAT/CST and service tax after considering the specified deduction. After introduction of GST, both supply of goods and services attract only one tax i.e., GST. Since, in a works contract both supply of goods and services are involved, it shall be treated as a composite supply. 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 goods 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;*

Now a question arises as to 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 in Schedule II of the CGST Act deems a works contract to be a supply of service.

Here one needs 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. In case of immovable property, the deeming fiction i.e., Entry No. 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."

ITC in case of "Plant and Machinery" OR "Plant or Machinery":

Section 17(5)(c) of the CGST Act uses the term 'Plant and Machinery", while Section 17(5)(d) of the CGST Act used the term 'Plant or Machinery'. The Hon'ble Supreme Court in the case of *Safari Retreats [2024 (SC)]* has discussed that, these two clauses are different. However, the Government has amended the clause (d), with retrospective effect, to tune it to the term used in clause (c) i.e., 'Plant and Machinery' meaning of which has been provided in the Explanation below Section 17(6) of the CGST Act. The impact of the same is discussed in the ensuing paragraphs. Only the term 'Plant and Machinery' has been defined under GST and not the term 'Plant or Machinery'.

Sections 17(5)(c) and 17(5)(d) place restriction on ITC in respect of goods or services or both used for something which is 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 or both which are used for construction of such plant and machinery.

For better appreciation, let us understand the meaning of "plant and machinery".

The term "plant and machinery" has been defined by way of an Explanation under section 17(6) of the CGST Act to state the following-

"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."

From the above, it is clear that any apparatus, equipment and machinery fixed to earth and which are used for making outward supply of goods or

services or both qualifies as plant and machinery. 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.

The meaning of the term apparatus, equipment and machinery has not been defined anywhere in the GST law. As per Black's Law Dictionary, the term 'equipment' is defined as the articles or implements used for specific purpose or activity (esp. a business operation). As per P. Ramanatha Aiyar's Legal Lexicon, apparatus has been defined under various case laws as:

"The word apparatus would certainly mean the compound instrument or chain of series if instruments designed to carry out specific function or for a particular use" [Commissioner of Customs v. C-NET Communication (1) (P.) Ltd. [(2007) 12 SCC 72], 82-83, para 36].

"Apparatus is a compound instrument designed to carry out a specific function or for a particular use". I.C.B. (P.) Ltd. v. CCE [1997 (95) ELT 239 (T)].

To have a better understanding of the term "plant and machinery" one can rely on various judicial pronouncements. In the case of *Scientific Engineering House Pvt Ltd. [(1986) 157 ITR 0086 (SC)]***,** it was held as under:-

(i) Plant in its ordinary sense includes whatever apparatus is used by a registered person for carrying on his business. It is not his stock-in-trade which he buys or makes for sale;

(ii) In order to qualify as plant, the article must have some degree of durability;

(iii) In order to determine whether something is apparatus/ plant, the functional test of whether the article fulfils the function of a plant in the assessee's trading activity is to be performed. Is it a tool of his trade with which he carries on his business? If the answer is affirmative, it will be a plant.

In the case of *Commissioner of Income Tax, Gujarat-II vs. Elecon Engineering Co. Ltd. [(1974) 96 ITR 672 (Guj)],* the Hon'ble Gujarat High Court held as under: -

(i) Plant does not cover stock in trade;

(ii) Plant also does not include an article which is merely a part of the premises in which business is carried on as distinguished from a part of the plant with which the business is carried on.

A plant and machinery which is fixed to the earth need not always be immovable. As stated above, “things attached to earth” has been discussed in depth on various occasions by the Apex Court. One needs to remember the principles laid down by the Courts in determining whether a plant and machinery is movable or immovable.

Land, Building and Civil Structure

The term ‘plant and machinery’ excludes within its ambit land, building and civil structures. Any expenses made on land or building would not be considered as pertaining to plant and machinery. It would be considered to be part of ‘land and building’ and not ‘plant & machinery’ even if it is not used as an apparatus / tool for carrying out manufacturing activity. If it is an equipment used for manufacturing, it needs to be classified as plant and machinery. Of course, if there is no connection with manufacturing activity, it would be classifiable purely as land and building.

The term “any other civil structure” is to be read after applying the principle of *ejusdem generis* to the preceding words land and building. The phrase "any other civil structure" is to be restricted to cases where civil work is involved. Any structure which is used as an apparatus in the manufacturing activity will not be "any other civil structure" and it will be a "plant and machinery” for which ITC is admissible.

The Karnataka High Court in the case of *M/s. Jayadev Oil Mill, Hubli vs. The Additional Commissioner of Commercial Taxes, Belgaum [STA No. 23 of 1994]* distinguished a plant from a building and held as under: -

“10. In deciding whether a 'building' or a structure is a plant, the functional test has to be applied as indicated in the said decisions. If the 'building' is an apparatus or tool used by the Assessee for carrying on the business or manufacturing activity, then it would be part of the 'plant'. If on the other hand, if a building or a part of a building has no connection with the business or manufacturing activity that is being carried on, then obviously such a building or portion of the building will not be part of the plant.”

Foundation or Structural Support

The inference whether a construction is a foundation and structural support for plant and machinery or whether it is a land, building and other civil structure has always been a debatable issue. Land, building and civil structures are also used for mounting of plant and machinery. How does one differentiate the same from foundation and structural support? One should bear in mind that a foundation should be exclusively used for fixing of plant or machinery on it. A land, building or civil structure has even other purpose and when only a part of it is used for mounting of plant and machinery, it cannot be said to be a structural or foundation support. The items to be fixed on the foundation should be "plant and machinery."

The Hon'ble Madras High Court in the case of *India Cements Ltd. vs CESTAT, Chennai [2015 (321) E.L.T. 209 (Mad.)]*, held that ITC shall be available on fabrication of structure to support various machines if without such structures, the machinery could not be erected and would not function.

Telecommunication Towers

ITC is also not allowed in case of telecommunication towers. Therefore, the telecom companies would not be able to avail ITC if any type of supply is received in respect of telecom towers.

The exclusion of telecommunication towers from the ambit of the term 'plant and machinery' in Explanation to section 17(5) and the *vires* of section 17(5)(d) with regard to bar on availing ITC on construction of immovable property has been challenged in the case of *Bharti Airtel Limited vs. Union of India [W.P.(C) 13211/2024]*. The Hon'ble High Court issued notice to Government for examining the legality and validity of the Explanation to section 17(5)(d) of the CGST Act.

Pipelines

ITC is not allowed where pipelines are laid outside the factory premises. Here, one needs to note that the restriction on pipeline is only when these are laid outside the factory premises. Where a pipeline qualifies as plant and machinery and is laid within the factory, ITC shall be allowed. In the case of *Shorewala Global Industries P. Ltd. vs. Commissioner of C. Ex, Jaipur-I [2014 (310) ELT 171 (Tri- Del)],* the Hon'ble Delhi Tribunal *inter alia* allowed ITC in respect of pipes used in effluent treatment plant and held as under:

"*In my view, the term "pipes and tubes" covers all pipes and tubes whether of iron and steel or of PVC or HDPE. Therefore, disallowing the credit in respect of PVC/HDPE pipes which according to the appellant were used in effluent treatment plant, is totally wrong".*

Circular No. 219/13/2024-GST dated 26.06.2024 has clarified that ITC on ducts and manholes (used in OFC network in the telecommunication sector) is allowed being part of 'Plant' even though it takes the characteristic of an immovable property.

Can ITC be allowed on pipeline laid outside the factory?

The Explanation below section 17(6) of the CGST Act bars ITC on pipelines laid outside the factory premises. What is outside the factory premises could be an area of litigation. As per the Factories Act, 1948 factory includes precincts thereof. The term "precincts" has been defined under various dictionaries as under:

(i) Cambridge International Dictionary of English - "area around building";

(ii) Collins English Dictionary - "the surrounding region or an area";

(iii) Merriam Webster - "the region immediately surrounding a place."

Thus, precincts also include the area around the factory as per the Factories Act. Therefore, one would have to wait for the Courts to decide if factory would also include the precincts thereof.

It is pertinent to discuss the eligibility of ITC if the pipeline which is being laid outside the factory is being continued inside the factory also. Though this issue is not addressed in GST law, as per legal and logical interpretation, ITC may be allowed on proportionate basis.

Applicability of Section 17(5) on few examples of works contract service in relation to immovable property

Purchase and installation of lift

Supply and installation of lift is to be treated as works contract. A lift comprises components or parts (goods) like lift car, motor, ropes, rails etc. and each of them has its own identity prior to installation and they are assembled/installed to create the working mechanism called lift. Lifts are assembled and manufactured to suit the requirement in a particular building and are not something sold off the shelf. Parts of the lift are assembled at the

site in accordance with its design and requirement of the building which may include the floor levels and the lift has to open on different floors or otherwise depending upon the requirement. It has to synchronize with the building and each door has to open on the level of each floor. The lift therefore becomes part of the building and is not a separate thing *per se.* A lift does not have an identity when removed from the building. Therefore, lift cannot be said to be separate from a building. Thus, a lift can be said to be an immovable property. This was also affirmed by the Hon'ble Supreme Court in the case of *Kone Elevator India (P) Ltd. vs. State of Tamil Nadu [2014 (304) ELT 161 (SC)]*.

Lift is a machine run by electrical energy which is capable of carrying out specific functions, in the form of carrying passengers or goods or both. Though the lift, for its smooth functioning or operation, may be fixed on the earth or building with foundation or structural support and for this reason it may partake the characteristics of immovable property. A lift comes into existence after the installation of various components.

As regards the question, whether lift can be classifiable as 'plant and machinery', the same is yet to be decided by the Court of law. If lift is construed to be an integral part of building, it would not be considered as plant and machinery and hence ITC thereon would be blocked under section 17(5)(c) and 17(5)(d) even when such lift is used in the course or furtherance of business. However, if the lift is construed as plant and machinery, ITC thereon would be available as plant and machinery is specifically excluded from section 17(5)(c) and 17(5)(d) of the CGST Act.

Central Air Conditioning Plant (Centralized A/c)

These are basically systems comprising of compressors, ducting, pipings, insulators and sometimes cooling towers etc. They are in the nature of systems and are not machines as a whole. They come into existence only by assembly and connection of various components and parts. Though each of the component is leviable to tax under GST, the air conditioning plant as such is not goods. The same becomes part of building and treated as an immovable property. The Hon'ble Supreme Court in the case of *Commissioner of C. Ex., Indore vs. Globes Stores (P) Ltd. [2011 (267) E.L.T. 435 (S.C.)]* had held air conditioning plant as an immovable property.

However, in the case of centralised air-conditioning system, the ducts are fastened to the walls and hence to that extent it can be said that for

construction thereof ITC should be blocked under section 17(5)(c) of the CGST Act. Only if it is categorized as plant and machinery, one can avail ITC on it.

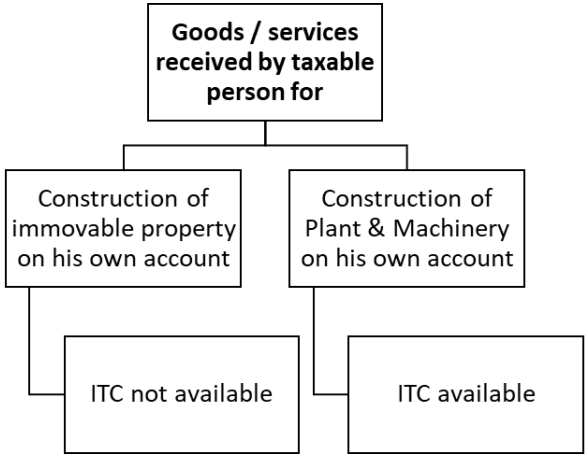
Fire Fighting Equipments

Internal fire hydrant system consists of a system of pipe work connected directly to the water supply main to provide water to each and every hydrant outlet. They cannot be called as plant and machinery; further the said systems become part of the immovable property. Hence, the same shall be considered as immovable property. ITC would be blocked in such cases if it is treated to be part of the building. However, if, the firefighting equipment is classified as *"plant and machinery*" as per the Explanation below section 17(6), ITC on such firefighting equipment would still be available.

However, if the fire-fighting system only includes basic facilities like fire alarm, fire extinguisher etc. which can be dismantled and moved without making substantial damages to it, it would be treated as movable property and the ITC would be available on it.

Availability of ITC in case of Goods and Services received on his own account

This could be better understood by the following Flowchart:



Meaning of the term 'on own account'

As per section 17(5)(d), 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 and machinery) on his own account including when such

goods or services or both are used in the course or furtherance of business. The term "on own account" has been used 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 would not be allowable. Credit of works contract service is allowed only when used for supplying further works contract services.

The term "on own account" has nowhere been defined under the GST law. Therefore, ordinary meaning of the expression can be derived. Ordinarily, the term "on own account" means for one's own use. The Department has, till date, limited the credit of ITC under section 17(5) (c) and (d) of the CGST Act when used for "on own account".

The Hon'ble Supreme Court in the case of *Safari Retreats [2024 (SC)]* has discussed the scope of the words "on its own account". Construction is said to be on a taxable person's "own account" when it is made for his personal use and not for service. It is to be used by the person constructing **as a setting in which business is carried out.** It has further been discussed, in Para 32, that construction cannot be said to be on a taxable person's "own account" if **it is intended to be sold or given on lease or license.**

However, it shall be carefully understood that it is the opinion given by the Hon'ble Supreme Court on what is own account, and the said judgement did not discuss in detail as to what is the scope of 'Own account'. Thereby, the same cannot be used as a precedent as it is an *obiter dictum* and not a *ratio decidendi.*

Applicability of the provisions of Section 17(5)(c) and 17(5)(d) to Real Estate Sector

(a) Eligibility for ITC on Works contract service and other goods or services procured by the Builder / Developer for the construction of buildings, apartments, etc. meant for sale

Section 17(5)(d) allows ITC on goods or services or both received for construction of immovable property which is not done on own account. It is relevant to point out that Entry 5 (b) of Schedule II of the CGST Act is a supply of service which is not treated as on own account. The said entry reads as-

"5(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.

Explanation. — For the purposes of this clause —

(1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely: -

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure.

Thus, where the construction is carried out with the intention to sell the property, it shall be said that the same is not on own account i.e., not for the registered person's own use. Thus, ITC shall be allowed to developer / builder who is constructing the building / apartment intended for sale.

However, the availment of such ITC will be subject to restriction, if any stipulated in the relevant rate notification. The present GST rate notification i.e., *Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017* prescribes concessional rate on construction and sale of residential apartments subject to the condition that the ITC on goods / services is not availed by the said builder / developer. Hence, ITC on works contract service or on receipt of other goods or services will not be available when used for construction and sale of residential apartments for builders / developers of a new project. The ITC, however, would be available on works contract service or on receipt of other goods or services when used for construction and sale of residential apartments for builders / developers of a new project. The ITC would not be available in respect of units the consideration for which was received after issuance of completion certificate or their first occupation, whichever is earlier.

In case of construction and sale of commercial projects, the builder / developer is liable to pay GST at the applicable full rate and is allowed ITC. Hence, in case of construction and sale of commercial apartments, the ITC will be admissible to the builder / developer for goods / services covered under section 17(5)(c) and section 17(5)(d).It is to be noted that ITC shall not be allowed to the developer on units for which he has received the consideration after issuance of completion certificate or first occupation, whichever is earlier. [Section 17(3) of the CGST Act]

(b) Eligibility for ITC on Works contract service and other goods or services procured by the Builder / Developer for the construction of commercial buildings like malls, offices which are meant for providing renting services

A question arises about the eligibility for ITC, in cases where the registered person does not sell a property but builds a property which is given on rent being a taxable service.

This question can be examined in the light of the following decision:

Safari Retreats (P.) Ltd. vs. Chief Commissioner of Central Goods and Services Tax [2019 (105 taxmann.com 324 Orissa)]

(i) The registered person (X) was carrying out business activity of construction of shopping malls for the purpose of letting out of the same to numerous tenants and lessees.

(ii) 'X' had accumulated ITC of Rs. 34,40,18,028/- on purchases made for construction of shopping mall.

(iii) Subsequent to the construction of the said shopping mall, the units of the shopping mall were given on rent on which GST was charged @18%.

(iv) 'X' contended as under: -

a. In case there is no breakage of GST chain i.e. where there is charge of GST on outward supplies, there should not be any denial of ITC. The Department is justified in denying ITC on units sold after the completion certificate as there is no charge of GST on outward supplies of such sale.

b. Construction of immovable property which would lead to generation of GST stream on outward supplies should be treated on the same lines as those immovable property which are intended for sale.

c. There is charge of GST on construction services provided. Similarly, when an immovable property is given on rent, there is charge of GST. Thus, denial of ITC on the latter transaction leads to inequality which is violative of Article 14 of the Constitution of India.

d. Disallowance of ITC is violative of Article 19(1)(g) of the Constitution of India i.e., right to practice any profession or to carry on any occupation, trade or business. Disallowance of ITC leads to substantial loss of credit thereby increasing the cost to the business and making it uncompetitive.

e. Disallowance of ITC under section 17(5) of the CGST Act would lead to double taxation thereby defeating the purpose of GST laws i.e. removal of cascading effect. It is a well settled law that the interpretation which defeats the very intention of the Legislature should be avoided and that interpretation which advances the legislative intent will have to be accepted.

f. Section 17(5)(d) of the CGST Act should be read down to allow ITC on construction of immovable properties where ITC chain is not broken.

g. Immovable property constructed by 'X' is neither "intended for sale" nor for his "own account". The property was "intended for letting out" and therefore, it shall not attract the provisions of section 17(5) of the CGST Act.

h. Reliance was placed upon the doctrine of *contemporaneo expositio* i.e., a document should be read to interpret it as it would have been at the time it was written. Reliance was also placed on the Circular dated 8/12/2018 [SIC] [Press Release: Posted on 8/12/2018 by PIB Delhi, Release ID: 1555274] issued by the Ministry of Finance on effective tax rate on complex, building, flat etc.

i. 'X' also relied upon case laws in support of the stand that literal interpretation should not be adopted where it gives absurd results.

(v) The Department contended as under:

a. Section 16 of the CGST Act places certain restrictions and conditions for claim of ITC.

b. The Department relied on various case laws to drive the point that Legislature can impose restrictions on availment of ITC.

c. Section 17(5) of the CGST Act prescribes denial of ITC. The Legislature has decided in its wisdom the credit of taxes which would be allowed and which would not be allowed.

(vi) It was held by the Hon'ble High Court of Orissa as under: -

a. The petitioner would have been required to pay GST if he had disposed of the property after obtaining the completion certificate. In the case at hand, 'X' is not using the property for his *own purpose* but is letting out the property.

b. Giving section 17(5)(d) of the CGST Act a narrow meaning would frustrate the very objective of the Act.

In the Hon'ble Orissa High Court's decision, the term "on own account" was given a narrow meaning. The Hon'ble Court included only those properties in its ambit which did not lead to any outward revenue stream. If one goes by the literal meaning of the term "own account" coupled with the words "in the course of furtherance of business", one may say that even if a property is generating rental income it will be termed for "own account" as its not constructed with an intention to sell. The said judgment of Hon'ble Orissa High Court was appealed before the Hon'ble Supreme Court and the verdict of the Hon'ble apex court is discussed below.

Hon'ble Supreme Court's Verdict [2024]:

1. The expression "plant **or** machinery" used in Section 17(5)(d) of the CGST Act cannot be given the same meaning as the expression "plant **and** machinery" defined by the explanation to Section 17.
2. "Functionality test" will have to be applied to decide whether a building is a plant for the purposes of clause (d) of Section 17(5) of the CGST Act.
3. The writ petitions were remanded to the High Court of Orissa for limited purposes of deciding whether, in the facts of the case, the shopping mall is a "plant" in terms of clause (d) of Section 17(5) of the CGST Act.

Retrospective amendment in CGST Act, 2017

Section 17(5)(d) of the CGST Act has been amended, with retrospective effect i.e. w.e.f. 01.07.2017, Vide Section 124 of the Finance Act, 2025 and

replaced the phrase "plant or machinery" with the phrase "plant and machinery".

(c) Eligibility for ITC of GST paid on expenses towards FSI, TDR, Development Rights

Effective from 01.04.2019, the relevant reverse charge notification i.e. *Notification No. 13/2017- Central Tax (Rate) dated 28.06.2017* covers the supply of TDR, FSI, development rights and the GST is payable under reverse charge if the said FSI, TDR and development rights are supplied to a promoter of a project (residential / commercial). In other cases, and before 01.04.2019, GST was payable under forward charge.

The construction of the building will require utilization of the available FSI / TDR and the same has to be construed as being used for construction of building / apartment for sale and hence ITC of the same will be admissible if the said service is used for construction of building / apartment for sale. However, the ultimate eligibility of ITC will depend on conditions / restrictions which may be imposed under the rate notification i.e., *Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017.*

With respect to the FSI / TDR purchased for construction of mall, offices, etc., the eligibility of ITC will have to be determined in terms of discussions in para (b) above.

(d) Eligibility for ITC in case of Joint Development Agreement (JDA)

Under a JDA transaction, the landowner transfers the development rights / FSI to the builder / developer. Against the supply of the development rights / FSI by the landowner, the builder supplies the constructed area to the landowner.

Eligibility for ITC in respect of the GST paid on the development rights transferred by the landowner to the builder / developer will be dependent on the rate notification i.e. *Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017*.

Chapter 10
Goods or Services or both used for Personal Consumption

STATUTORY PROVISIONS

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;*

Section 17(5) of the CGST Act overrides section 16(1) and section 18(1) of the CGST Act. Thus, only those input tax credits which have surpassed the eligibility criteria as per section 16 and 18 are blocked under section 17(5).

Section 16(1) of the CGST Act allows availment of input tax credit only on those goods or services or both which are used or intended to be used in the course or furtherance of his business. The term furtherance of business can be said to be having nexus/ connection with the registered persons' business. The Hon'ble Supreme Court in the case of *Malayalam Plantation Ltd., In re 1964 AIR 1722* held that the expression 'for the purpose of the business' may include not only the day-to-day running of a business but also the rationalization of its administration and modernization of its machinery. It may include measure for the preservation of the business and for the protection of its assets and property from expropriation, coercive process or assertion of hostile titles. It may also comprehend payment of statutory dues and taxes imposed as a pre-condition to commence or for the carrying on of a business. It may comprehend many other acts incidental to the carrying on of a business.

Thus, the term "furtherance of business" is wide enough to cover credit of input tax on goods or services or both which helps directly or indirectly in the furtherance of business. Tax paid on any goods or services or both which does not help in the furtherance of business is not allowed as credit. Logically, there should not be any input tax credit which would get covered in

clause (g) of sub-section (5) to section 17 as it would be eliminated at the first instance. However, the insertion of such clause could mean that there are input tax credits which the legislature feels might get covered under section 16(1) and needs to be covered under section 17(5)(g). This may include expenses accounted for the advancement of business from entity perspective but the supply is consumed for personal benefit.

STATUS OF PERSONAL CONSUMPTION IN THE ERSTWHILE REGIME

Earlier as per the CENVAT Credit Rules, 2004 (CCR, 2004 for short) credit of inputs and input services used for personal consumption was ineligible when:-

(a) It was used for certain specified purpose; and

(b) Used by the employees

The definition of input as contained in rule 2(k) of the CCR, 2004 excluded from its ambit the following vide sub clause (E) thereof:

"any goods, such as food items, goods used in a guest house, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for personal use or consumption of any employee".

Further, the definition of input service as contained in rule 2(l) of the CCR, 2004 excluded from its ambit the following vide sub clause (c):

"*such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as leave or home travel concession, when such services are used primarily for personal use or consumption of any employee".*

Thus, the erstwhile provisions of the law specifically restricted the credit only when such goods or services were used primarily *for personal us*e or consumption of the employees.

Meaning of Personal Consumption

The term "personal consumption" has nowhere been defined under the GST law. The term personal consumption should be understood in its ordinary sense. Ordinarily personal consumption would mean anything meant for

private use. In the case *M/S. Anwarkhan Mahboob Co vs The State Of Bombay [1961 AIR 213]* the term consumption was explained as under :-

"…*The act, of consumption with which people are most familiar occurs when they eat, or drink or smoke. Thus, we speak of people consuming bread, or fish or meat or vegetables, when they eat these articles of food; we speak of people consuming tea or coffee or water or wine, when they drink these articles; we speak of people consuming cigars or cigarettes or bidis, when they smoke these. The production of wealth, as economists put it, consists in the creation of "utilities". Consumption consists in the act of taking such advantage of the commodities and services produced as constitutes the "utilization" thereof… Again, the final act of consumption may in some cases be spread over a considerable period of time. Books, articles of furniture, paintings may be mentioned as examples".*

The Supreme Court in C J Coelho AIR 1964 (SC) 321 had stated that the personal expenses would include expenses on the person of the assessee or to satisfy his personal needs such as clothes, food, etc. or purposes not related to the business for which deduction is claimed.

Therefore, any supply received for the purpose of private benefit of the owner or employee of the company would be covered herein. They are not used in the process of effecting supply directly. However, they are for the individual welfare and advancement of the persons affiliated to the entity. This may include personal insurance, personal travel benefits, expenses for personal laptop / mobile phone, health services etc.

The CCR, 2004 disallowed ITC only when the activities listed therein were primarily for personal use or consumption. Further the law specifically listed down such activities. However, under the GST regime there is widening of the scope of blocked credit in relation to personal consumption or use by removal of specified services and the term employee. It must also be noted that the activities which were disallowed in the various clauses of the CCR, 2004 are already covered in various other clauses of section 17(5). Therefore, section 17(5)(g) has to be read in a manner which avoids redundancy.

The provision will thus have to be read to restrict ITC on those goods or services or both which are used by the owner / employees for private and personal benefit and will not cover the goods or services or both which are used for legitimate business purposes.

JUDICIAL DECISIONS

In the case of *ABAN Offshore Ltd. vs. Commissioner of CGST, Mumbai West [2020 (43) GSTL 213 (Tri- Mumbai)],* the Hon'ble Tribunal held that short term accommodation for crew members to stay at the base until the choppers take them offshore has been held to be eligible and it was held that such expenses cannot qualify as a service availed for personal consumption. Therefore, it was held that the said service is in relation to and in pursuance of the service being provided by the appellant and therefore, CENVAT credit availed on the same is admissible.

Excel Industries Ltd. Vs. Commissioner of Central Excise, Raigad [2018 (363) ELT 1183 (Tri- Mumbai) – All three services viz. air travel service, public relation media liaison campaign fee, renting of immovable property were used in or in relation to the manufacture of final product and/or overall business activity. None of the three services can be said to have been used for personal consumption of any employee of the appellant company. Therefore, exclusion provided w.e.f. 01.04.2011 is not applicable in the present case. It was held that, all the three services are covered in the first limb of definition of input service i.e., input service means any service used by manufacturer whether directly or indirectly, in or in relation to the manufacture of final product. Accordingly, CENVAT credit in respect of all the three services was allowed.

In the case of *Solar Industries India Ltd. 2022 (60) G.S.T.L. 216 (Bom.)* the Hon'ble High Court observed that the facility of transportation provided by the appellant to its employees was merely in the nature of service for personal use or consumption of its employees. The said judgement has been approved by the Apex Court as reported in 2022 (64) G.S.T.L. 257 (S.C.).

Deduction for payment of personal liability of director qualifies as personal expenditure – *Dhimant Hiralal Thakar v CIT Bombay High Court.*

If the expenditure is incurred in pursuance of any statutory mandate, then it does not fit into the ambit of personal consumption - *Ganesan Builders Ltd. 2019 (20) GSTL 39 (Mad.).*

The Revenue cannot justifiably claim to put itself in the arm- chair of the businessman or in the position of the board of directors and assume the role to decide how much is reasonable expenditure having regard to the

circumstances of the case.- *CIT Vs. Dalmia Cement (B.) Ltd. (2002) 254 ITR 377.*

Cenvat credit - Input Service - Expenses incurred for hiring furniture for guest house fall under definition of input service as guest house is used for business purposes, service of subscription of periodicals, cable operator service & Air travel charges used for purpose of business trips undertaken by company officials/guests is for business related purposes – *Mangalore Refinery and Petrochemicals Ltd Vs Comm. Of CCEx. 2021 (52) G.S.T.L. 606 (Tri. - Bang.).*

In the GST regime, the definition of 'input' is broader and the nexus to business is wider than the nexus to manufacture under the Central Excise Act. Section 16 of CGST Act itself is limited to 'course or furtherance of business', the question arises whether we can further disseminate into personal nature (individual benefit)?

The eligibility/ineligibility of ITC must be verified on a case-to-case basis considering all facts and circumstances.

Chapter 11
Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples

STATUTORY PROVISIONS

> ***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*

The basic idea of the legislature is not to allow input tax credit on articles which would not be generating any further flow of GST from outward supplies.

Let us try and understand each of the terms mentioned in section 17(5)(h) of the CGST Act, 2017.

LOST

The term 'lost' has not been defined under the GST law. As per the Oxford dictionary the term 'lost' means *"that has been taken away or cannot be recovered."* As per the Black's Law dictionary the term 'lost' means *"beyond the possession and custody of its owner and not locatable by diligent search".*

Reversal on account of normal loss which is inherent in nature

In case of *ARS Steels & Alloy International (P.) Ltd. [2021],* the assessee was engaged in manufacturing of MS Billets and Ingots. There was a loss of a small portion of inputs inherent to the manufacturing process. On this, the Department sought to reverse the ITC claimed by the petitioners, proportionate to the loss of the input and passed an assessment order to this effect. This assessment order was challenged in a writ petition before the

Hon'ble Madras High Court. The Hon'ble Madras High Court held that the reversal of input tax credit in case of loss by consumption of input which was inherent to manufacturing process was not contemplated or covered by situations adumbrated under section 17(5)(h) and therefore, ITC reversal was not required.

This seems to cover 'normal loss' although, interpretation on 'abnormal loss' remains open. Abnormal loss occurs generally due to unexpected or unforeseen events (for example – goods damaged in a warehouse fire). It may also be due to inefficiency or mischief. Where the goods have not been put to use in the course or furtherance of business and are lost due to abnormal circumstances, the ITC would have to be reversed. Where such goods are insured, it may be possible to obtain an insurance claim inclusive of GST-ITC reversal.

If inputs are short received and there is loss during transit, the goods short received cannot be termed as used in or in relation to manufacture. Hence, ITC was denied – *Asea Brown Boveri Ltd Vs CCE 1994 (74) ELT 897 Tri-Bombay.* Although, the above decision has been distinguished in *M/s Jalan Dying & Bleaching Mills, 2011 (271) ELT 321 (Tri-Mumbai)*, stating the shortage was very negligible and within the Standards of Weights and Measures Act. Specific factors to consider were laid down in *Bhuwalka Steel Industries Limited [2010 (249) ELT 218 (Tri-LB)].*

STOLEN

The term "stolen" has not been defined under the GST Law. The word steal (past principle stolen) has been defined in the Oxford dictionary as "*take (another person's property) without permission or legal right and without intending to return it"*. As per the Black's Law dictionary the term steal has been defined as *"to take something by larceny, embezzlement, or false pretenses".*

Assume raw materials are procured and utilized to manufacture a finished product. Such finished product was stolen, in such a case whether ITC must be reversed or not is an area of dispute. *Section 17(5)(h) reads "goods lost, stolen…"* thereby indicating the goods originally procured must be stolen to warrant ITC reversal, i.e. in this case the raw materials. Where the raw materials have been put to use in the course or furtherance of business and the finished product is stolen, ITC reversal on such goods may be disputed. Caution must be exercised during availment of ITC in such a case.

DESTROYED

The term 'destroyed' has not been defined under the GST Law. As per *P. Ramanatha Aiyer*'s 'The Law Lexicon', the term destroyed means "*To pull down; unbuild; demolish; to make away with; to reduce to nothing; to kill; slay"*.

In the case of *CIT v. Sirpur Paper Mills Ltd. [(1978) 112 ITR 776 (SC)],* the apex court held as under:-

"The word "destroy" is a word in common usage, with well-defined non-technical meaning. As used in law, it does not in all cases necessarily mean complete annihilation or total destruction. But in the context and under particular circumstances, the word many a times has been defined as meaning totally obliterated and done away with as also made completely useless for the purpose intended—vide Corpus Juris Secundum, Volume 26, page 1246".

Thus, as per the Hon'ble Supreme Court, the term 'destroyed' does not mean that something should have been totally destructed. However, the term "destroyed" has been used in the company of the words "stolen, lost, written off or disposed" and hence applying the principle of *ejusdem generis,* the said term will take the color from the words surrounding it. 'Destroyed' would therefore mean when the goods are not in physical possession and which cannot be put to use in the course or furtherance of business.

Sale of goods destroyed

The intention of the legislature is to block credits in respect of those goods which will not generate any outward supplies leviable to GST. Where any goods have been destroyed, it may be possible that the same can be sold as a scrap. Sale of such scrap will attract GST. The area of litigation in such cases would be:

(i) Whether input tax credit will be allowed in relation to such goods?

(ii) If allowed, whether the same would be allowed proportionately?

The GST law is based on the concept of value added tax and allows the ITC as long as the tax is paid on outward supply. There is no provision which restricts the ITC if the goods are sold at a lower value than the procurement value. Thus, ITC on the goods will be available even if the said goods are

partially destroyed and are in a saleable condition as such under the same HSN or any other HSN code.

Insurance Claim in case of goods lost, stolen, or destroyed

It is pertinent to note here that the blockage of input tax credit is irrespective of whether or not there was any claim of insurance on goods lost, stolen or destroyed.

Circular on treatment of expired medicines

The CBIC had issued *Circular No. 72/46/2018-GST dated 26.10.2018* specifying the treatment to be followed in respect of expired drugs or medicines under GST laws. The said Circular clarified as under: -

(i) *Return of expired goods as a supply* - Where the drugs have expired, the person returning such medicines ("Y") can raise an invoice charging GST to the supplier ("X"). The recipient "X" shall avail input tax credit on such supplies. When these expired drugs / medicines are destroyed by "X", there shall be reversal of ITC on GST charged by "Y" on "X", in terms of provisions of clause (h) of sub-section (5) of section 17 of the CGST Act. The Circular further clarified that reversal should be of input tax credit availed on the return supply and not the ITC that was attributable to the manufacture of such time expired goods.

(ii) *Return of time expired goods by issuing credit notes* – Where a credit note is issued by the original supplier ("X") to the person whose medicines have expired ("Y"), credit of such GST shall be reversed by "Y". Further, where the expired goods are destroyed by "X" there shall be reversal of input tax credit attributable to the manufacture of goods returned in terms of the provisions of clause (h) of sub-section (5) of section 17.

(iii) The Circular further clarified that even though it discusses the scenarios in relation to return of goods on account of expiry, the said circular shall be applicable to such other scenarios where the goods are returned on account of reasons other than expiry of medicines or drugs.

The requirement that the manufacturer must reverse the ITC is a disputable area as such goods returned for destruction, were tax paid goods during the original supply on which outward taxes were paid. It is important to note that the Circular is expected to be read in line with the GST Act & Rules and is not binding on the assessee/taxpayer. There is also an ambiguity in

interpretation of the circular vis-à-vis the manufacturer and the dealer/stockiest etc.

WRITE OFF

"Write off" is done in the books of account of a taxpayer. Write off is where a debit entry has been passed in the profit and loss in respect of any asset which is not having any value.

Write off vs Write down

In case of write off, the value of the asset is reduced to zero. A write off negates all present and future value of an asset.

In case of write down, there is reduction in the value of asset. The value of the asset is not reduced to zero.

Input Tax Credit in case of write down or impairment of an asset

Section 17(5)(h) of the CGST Act only disallows input tax credit where the value of asset has been written off i.e., the entire value of the asset has been reduced to zero. There is no restriction on availment of ITC where the value of an asset has been written down or impaired. Hence, ITC shall be allowed in respect of goods, the value of which has been written down as the restriction is only with respect to goods which are written off.

It is also worthwhile to note that the GST law does not contain any provision similar to erstwhile rule 3 (5B) of CCR, 2004 which specified reversal of CENVAT credit even when the provision for write off was created in the books of account.

GIFT

The word 'gift' has not been defined under the CGST Act. As per the Black's Law Dictionary, 'gift' means a voluntary conveyance of land, or transfer of goods, from one person to another, made gratuitously and not upon any consideration of blood or money.

The Supreme Court cited the definition of 'gift' from Corpus Juris Secundum, Volume 38 in the case of *Sonia Bhatia v. State of UP [1981] 2 SCC 585* as follows: A 'gift' is commonly defined as a voluntary transfer of property by one to another, without any consideration or compensation therefor.

Thus, for any item to be treated as a gift, there are two basic ingredients that must exist:

(i) Absence of any contractual obligation;

(ii) Absence of consideration in money or money's worth.

Gift given as CSR Activity

CSR expenditure is a statutory obligation which certain companies have to fulfill. It cannot be termed as a gift as it is incurred out of compulsion. As per section 17(5)(fa), credit of 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 referred to in section 135 of the Companies Act, 2013 is blocked. To know more about the input tax credit impact on CSR expenditure, refer chapter 11 of this Handbook.

SAMPLE

The word 'sample' has not been defined under the GST law. As per the Black's Law dictionary, a sample means a specimen i.e., a small quantity of any commodity, presented for inspection or examination as evidence of the quality of the whole.

Samples are considered as representative of the main product provided to the buyer before he places any order. It is generally provided to the buyer so that he gets an idea about the quality, composition etc. of the main product. From the above, the buyer would be able to judge whether his requirements will get fulfilled or not.

TREATMENT UNDER GST LAW

In cases where goods have been lost, stolen or written off, the goods cannot be sold. However, in cases where goods are available for supply i.e., goods destroyed or given as gift or free sample, the same will not be treated as supply under GST [except in case of activities mentioned in Schedule I of the GST Act]. If it is not treated as supply, then input tax credit will be reversed under section 17(5)(h) of the CGST Act.

CBIC had issued *Circular No. 92/11/2019-GST dated 07.03.2019* wherein it had provided the treatment that has to be followed in case of goods given as free samples or as gifts. The Circular clarified as under: -

(i) In case a supply falls under Schedule I [i.e. Activities to be treated as supply even if made without consideration] then GST shall be charged on it and ITC can be availed on the same.

(ii) In other case, there shall be reversal of ITC under section 17(5)(h) of the CGST Act.

It was also clarified vide the Circular that input tax credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration. However, where the activity of distribution of gifts or free samples falls within the scope of 'supply" on account of the provisions contained in Schedule I of the CGST Act, the supplier would be eligible to avail the ITC.

TREATMENT OF "BUY ONE GET ONE FREE" OFFER

The treatment of buy one get one free offer was clarified vide *Circular No. 92/11/2019-GST dated 07.03.2019* as under:

Where there is/ are products supplied free of cost with other products, it may appear at first glance that in case of offers like "Buy One, Get One Free", one item is being "supplied free of cost" without any consideration. In fact, it is not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one. Taxability of such supply will be dependent on whether the supply is a composite supply, or a mixed supply and the rate of tax shall be determined as per the provisions of section 8 of the CGST Act. It was also clarified that ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

GIFTS GIVEN TO EMPLOYEES

Refer Chapter 8 of this Handbook.

GIFTS GIVEN AS DONATION

Circular No. 116/35/2019-GST dated 11.10.2019 was issued by CBIC clarifying the cases where donations were to be treated as a supply under GST. The said Circular clarified as under: -

(i) Where the name of the donor is displayed by the donee in such a way that it is an expression of gratitude and public recognition and not aimed at providing publicity to the donor, it shall not be treated as a supply;

(ii) Where there is no obligation (*quid pro quo)* on the part of the done/recipient to do anything (supply a service), it shall not be treated as a supply.

Now one needs to bear in mind that where a donation is not treated as supply, there shall be reversal of input tax credit.

BUSINESS PROMOTION – GIFT?

Goods procured and distributed to either vendors or customers as part of business promotion activities are disputed under GST regime. Recent decision in the case of *ARS Steels & Alloys International Pvt Ltd. [Mad-HC W. P. Nos. 31, 33 and 35 of 2022]* disallowed credit on sales promotional goods such as t-shirts and gold coins.

Goods given on achieving results – There are many instances wherein vendors/customers are given targets and based on specific activity, in lieu of which certain goods are given to them (example – refrigerator, AC, etc.) to motivate and improve on the purchase/sales.

Where such goods are provided with an understanding/agreement which is linked to non-monetary consideration, it cannot be termed as a 'gift' and therefore, ITC can be said to be eligible. It is also important to verify whether such expenses form part of the costing of the outward supplies on which GST is paid. Caution must be exercised while claiming such ITC.

SAMPLES SUPPLIED/EXPORTED

It often happens that a customer retains the sample and places an order for more such goods (especially in the case of high value items). The invoice shared by the supplier would include the sample which was earlier provided free of cost. In such cases, the ITC is eligible as such sample has now been converted into an outward supply leviable to tax.

Exports although are zero-rated supply in terms of Section 16(2) of IGST Act, 2017, the ITC claim is restricted in terms of section 17(5)(g) of the CGST Act and, therefore, ITC would remain inadmissible. Where payments are received against samples sent, it may be verified if such a transaction could be considered as an outward supply thereby not attracting the provisions of section 17(5)(g) of the CGST Act.

Chapter 12
Tax paid under Section 74 in respect of any period upto the Financial Year 2023-24

STATUTORY PROVISIONS

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 [49][section 74 in respect of any period up to Financial Year 2023-24]

SECTION 74

Section 74 of the CGST Act deals with issuance of show cause notice (SCN) pertaining to the period up to Financial Year 2023-24, where tax has not been paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts.

The blockage under section 17(5) of the CGST Act with respect to section 74 of the CGST Act would be applicable only for tax that has not been paid or short paid with a *malafide* intention. Where any refund has been made erroneously or input tax credit has been wrongly availed or utilized, a registered person simply needs to pay the tax along with applicable interest and penalty demanded as per the SCN.

The tax which a registered person would be required to pay under section 74 can be on account of forward charge mechanism or reverse charge mechanism. Under forward charge, if the supplier has paid taxes under

---

[49]Substituted vide section 119 of the Finance (No. 2) Act, 2024 dated 16.08.2024 w.e.f. 01.11.2024, earlier it was read as 'sections 74, 129 and 130'. Notified vide Notification No. 17/2024–Central Tax dated 27-09-2024.

section 74, ITC would not be allowable to the recipient. If the taxes have been paid under reverse charge by the recipient under section 74, then ITC would not be available in the hands of the recipient.

Practically, in many cases, the SCN that is issued by the Department is under section 74. There are chances that the taxpayer might contest that the SCN should have been issued under section 73 (non-fraud cases) and not under section 74.

Section 74 of the CGST Act should not apply in revenue-neutral situations where the tax paid under reverse charge is entirely available as ITC to the recipient. Reliance can be placed on the judgement of the Hon'ble Supreme Court in the case of *Nirlon Ltd vs. Commissioner of Central Excise, Mumbai [2015 (14) SCC 798]*, wherein it has been observed that no mala-fide intention can be attributed if the entire situation is revenue neutral. In such a case where payment has been made under reverse charge mechanism, one may decide to avail the credit and not utilize the same till the matter is decided in favour of the registered taxpayer. Where the matter gets decided against the registered taxpayer, he can reverse the input tax credit. However, one must be cautious before availing the input tax credit.

Rule 53(3) of the CGST Rules specifies that "*any invoice or debit note issued in pursuance of any tax payable in accordance with the provisions of section 74 or section 129 or section 130 shall prominently contain the words "INPUT TAX CREDIT NOT ADMISSIBLE*". The supplier who intends to issue any debit notes / supplementary invoices for recovery of taxes needs to comply with the provisions of rule 53(3).

However, the said rule 53(3) remains unamended despite the amendment made in Section 17(5)(i) to only block the credit of GST paid under section 74 till FY 2023-24. Thereby, the lawmakers need to re-look this Rule and make the changes to tune the said rule with the amended provisions of the CGST Act.

SECTION 129

Section 129 of the CGST Act deals with detention, seizure and release of goods and conveyances in transit. The said section was amended vide the Finance Act, 2021 and the amended section became effective with effect from 01.01.2022 so as to allow release of goods / conveyance on payment of only penalty as against earlier provision of payment of tax and penalty. Thus,

after amendment of section 129, now there is no relevance of section 129 in section 17(5)(i) of the CGST Act.

However, before the said amendment, the owner of the goods had to pay 100 percent tax and penalty in FORM GST DRC-03 under section 129 in case of detention of goods. In such cases, as per provisions of section 17(5)(i), the recipient was not allowed to avail the ITC of the said taxes paid under section 129 of the CGST Act.

SECTION 130

Section 130 of the CGST Act deals with confiscation of goods or conveyance and levy of penalty. Where any taxes are paid on goods confiscated under section 130, no input tax credit was allowed on the same.

However, Section 130 has been amended vide the Finance Act, 2021 and the amended section became effective with effect from 01.01.2022. Now the amended section does not contain any provision for the payment of tax. Therefore, the disallowance of ITC does not get attracted.

SECTION 74A

Section 74A of the CGST Act deals with the 'Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised **for any reason** pertaining to Financial Year 2024-25 onwards'. There is no distinction between the tax demanded and paid in terms of section 73 and section 74.

Chapter 13
ITC Blockage on Other Supplies

This Chapter deals with the following blocked services: -

(a) Travel benefits to employees

(b) Tax paid under composition scheme

(c) Obligation under Corporate Social Responsibility

(d) Non-resident taxable person

STATUTORY PROVISIONS

***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;*

*[50]**[(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 referred to in section 135 of the Companies Act, 2013].*

…..

---

[50] Inserted vide Finance Act, 2023 vide Notification No. 28/2023-Central Tax dated 31.07.2023 w.e.f. 01.10.2023.

TRAVEL BENEFITS EXTENDED TO EMPLOYEES

A registered person can offer travel benefits to its employees. If these travel benefits on vacation are in the nature of leave or home travel concession then input tax credit shall not be allowed on any such expenditure. It may be noted that this is in the nature of personal travel expenditure for the employees which is provided as a perquisite. The blocking of ITC is applicable only where the expenses for such travel are borne directly by the company. Where the employees are booking the travel in their own name and thereafter take the reimbursement, ITC does not even accrue in the hands of the employer.

Blockage of ITC is also applicable for executive directors of the company as they are considered to be employees of the company. Where the travel benefit is extended to non-employees like non-executive directors, input tax credit has not been blocked on it specifically under the GST law. Though not specifically blocked, the primary test of checking whether such procurements are used or intended to be used in the course or furtherance of business would remain intact.

When such expenditure is incurred for the employees and it is mandatory under any law for the time being in force to do so, in such instances, ITC is not restricted and thereby eligible. Benefits of LTC are presently obligated to be granted under Central Civil Services (Leave Travel Concession) Rules, 1988 for Government employees. However, private employers need to check from time to time on any laws which mandates them to extend LTC benefits to its employees, to be eligible for availing the ITC on the expenditure so incurred, subject to satisfaction of other conditions (Invoice issued in the name of Employer etc.,).

GOODS OR SERVICES OR BOTH ON WHICH TAX HAS BEEN PAID UNDER SECTION 10

Section 10 of the CGST Act deals with the composition levy. As per section 10(4) of the CGST Act, a registered person who has opted for composition levy under section 10 shall not collect any tax from the recipient on supplies made by him.

When the taxes have not been collected by the supplier, there is no question of availment of ITC by the recipient.

Even if the supplier who has opted for composition levy violates the provisions of the Act and levies GST, it cannot serve as a pretext for the recipient to avail input tax credit due to the blockage of credit provided herein.

The supplier who is registered under the composition scheme at the time of supply would have paid GST to its supplier under the forward charge mechanism or would have paid GST by himself under the reverse charge mechanism. In both situations, the GST paid on the procurements of goods or services is said to be 'input tax'.

NON-RESIDENT TAXABLE PERSON

A person who has taken registration as a non-resident taxable person under section 25 of the CGST Act shall not be allowed to take input tax credit of goods or services or both except on goods imported by him.

Non-resident taxable person is a person who does not have any place of business within India and temporarily conducts any business within India. For this, ITC would be available only for the goods which are imported by him from outside India. For other input and input services which are procured indigenously, ITC would not be available to the non-resident taxable person. Needless to say, the output taxes would continue to be applicable on all the outward supplies made by such person within India.

CSR Expenditure

Section 135 of the Companies Act, 2013 (the Companies Act) mandatorily provides for the specified companies to spend at least 2 percent of the average net profit for the immediately preceding three financial years on corporate social responsibility (CSR) activities.

Under the GST regime, there have been adverse AAR which have disallowed input tax credit on CSR expenditure by covering it under the ambit of section 17(5)(h) of the CGST Act.

There have been favorable judgements which have been rendered during the erstwhile indirect taxes regime, allowing CENVAT credit on CSR expenditure. In the case of *Essel Propack Ltd.vs Commissioner of CGST, Bhiwandi [2020]* (CESTAT – Mum), the Hon'ble CESTAT, Mumbai, under the service tax regime, it was held that CSR expenditure is not a charity but has a direct bearing on the business activity of a company and helps a company to get

positive credit rating and image in the corporate world. Thus, the Hon'ble CESTAT held that CSR activities can be considered as input services since they are included within the definition of "activities relating to business" and accordingly allowed the credit of the same.

Although, with effect from 01.10.2023, the obligatory expenditure under CSR is blocked for the purpose of ITC claim, the following questions remain:

Whether ITC is eligible for the period upto 30.09.2023? – The provision introduced is prospective, and therefore, ITC can be said to be eligible for the past periods. Although, it must be seen where CSR expenses have been fulfilled considering the tax portion (availed as ITC) as an expense?

Whether CSR expenses which are over and above the 2% obligation are eligible for ITC benefit? – The ITC restriction under section 17(5)(fa) of the CGST Act is limited to the obligation under section 135 of the Companies Act. Although there is no apparent restriction in the ability to link such expenses to the furtherance of business under Section 16 of the CGST Act but legislative intent appears to be to disallow ITC on all CSR expenses.

Notes

Notes

GST & Indirect Taxes Committee
The Institute of Chartered Accountants of India
ICAI Bhawan, A - 29, Sector - 62, Noida - 201309
Phone : 0120-3045954
E-mail : gst@icai.in
Website : www.icai.org, https://idtc.icai.org/