6th Intensive Workshop on Goods and Services Tax-Input Tax Credit

SPEAKER: SHIVAM MEHTA, EXECUTIVE PARTNER

Agenda (1/2)

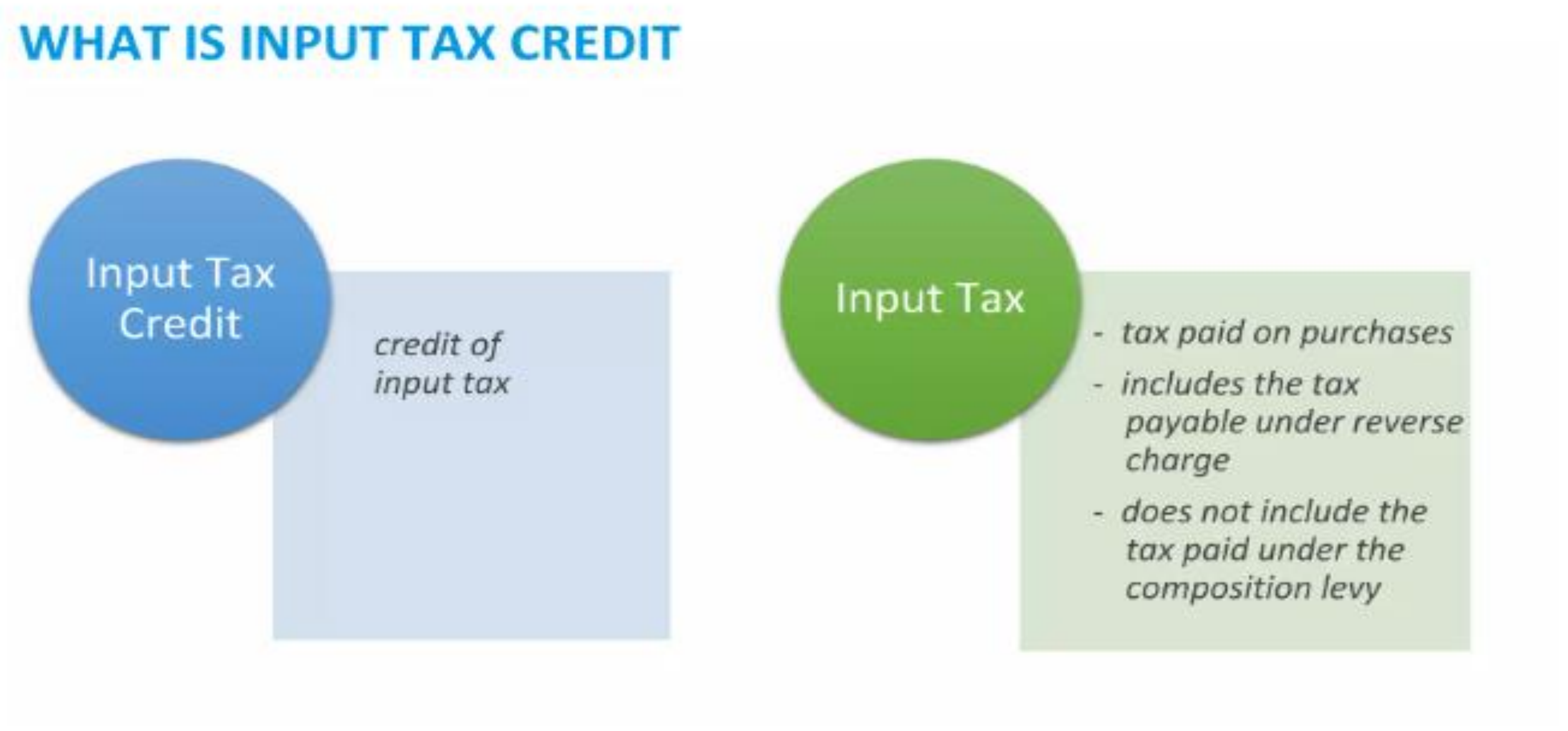
- Basic Understanding of Concept of Input Tax Credit
- Key Conditions for Availment of ITC- Receipt of Goods and Services
- Capitalisation of Assets
- Non-Payment of Tax by Suppliers
- Tax paid by Supplier- Not Payable
- Payment of invoices within 180 days – Retention Money
- Reversals under Rule 42
- Blocked Credits

Basic Understanding and Concept of Input Tax Credit

Eligibility for availing ITC - 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.

Input Tax Credit

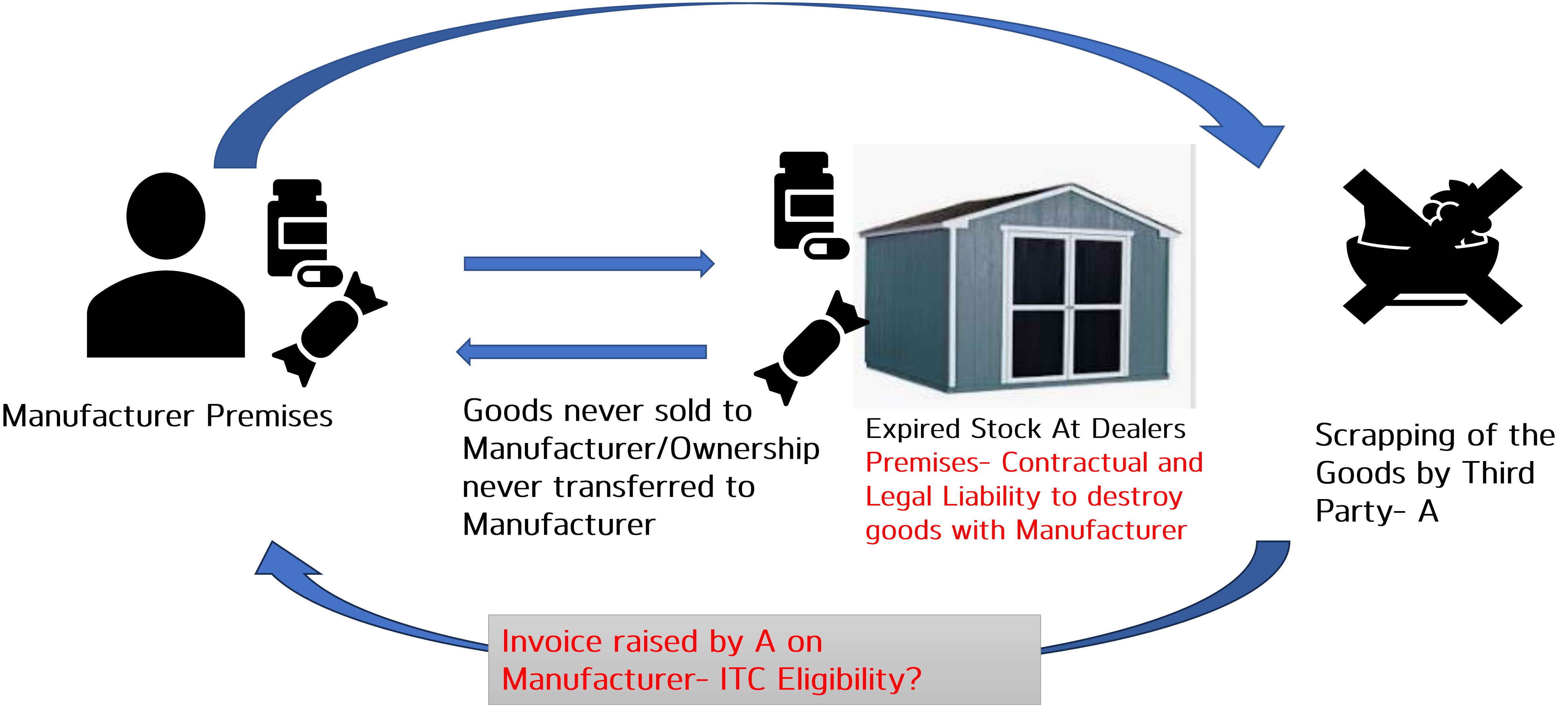


Definition-Business

(17) 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) 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

Services availed for Scrapping of Goods



Services availed for Disposal of Waste

Waste at Manufacturer Premises

Waste At Dealer's premises

Disposal of the Waste by Third Party- A

Invoice raised by A on Manufacturer- ITC Eligibility?

Extended Producer Responsibility on Manufacturer

Scope of “In the course or furtherance of business”

- Mazagaon Dock Ltd. v. Commissioner of Income tax and Excess Profits Tax, AIR 1958 SC 861
  - The word “business” is, as has often been said, one of the wide import and in fiscal statutes, it must be construed in a broad rather than a restricted sense and stated that the word ‘business’ connotes some real, substantial and systematic or organized course of activity or conduct with a set purpose
- Coca Cola India Ltd. V. CCE, Pune, 2009 (242) ELT 168 (Bom.)
  - The expression “business” appearing in Rule 2(l) of Cenvat Credit Rules is an integrated/continued activity and not confined or restricted to mere manufacture of product.
  - It was observed that the activities in relation to business can cover all activities related to functioning of a business and the expression “business” is of wide import in fiscal statutes

Scope of "In the course or furtherance of business"

- **Karnataka High Court in the case of Toyota Kirloskar Motor Pvt. Ltd. vs. CCE, LTU, Bengaluru - 2011 (24) STR 645 (Kar.)**
  - The assessee had organized a function for the Kannada Rajyotsava Day. The assessee had incurred expenses towards Shmaiyana services, furniture, colour photography etc.
  - Karnataka Rajyostsava day is the day on which the present State of Karnataka was formed integrating the five regions where Kannada speaking people were in a majority. Most of the employees working in the assessee's factory were Kannada speaking people.
  - The Court observed that the purpose of organizing the function was to extend financial help to the employees in celebrating such functions and also rope in police authorities. It served the interests of the industry. The underlying idea behind organizing such function was to ensure security and peace at the establishment.
  - Accordingly, it was held that the expenses incurred in relation to organizing the function were in connection with the activities relating to the business of the assessee and consequently, qualified as an input service for the assessee.

 STRICTLY CONFIDENTIAL

Contractual Obligation

- Leo Fasteners v CCE, Puducherry, 2017 (3) G.S.T.L. 496 (Tri. - Chennai)
  - ITC allowed on sorting- cum delivery services on account of contractual obligation to sort out the goods and deliver the same at the buyers point.
- Coca Cola India Ltd. V. CCE, Pune, 2009 (242) ELT 168 (Bom.)
  - ITC allowed on services of Chartered Accountant availed for verification of stock of final products lying with the distributor

Legal Obligation

- Delphi Automotive Systems Pvt. Ltd. Vs CCE, Noida [2015 (315) E.L.T. 255 (Tri. - Del.)
  - In view of obligation of appellant under Factories Act, 1948 to keep the factory clean, Cenvat credit of Service Tax allowed on factory cleaning service
- Hindustan Zinc Ltd. vs CCE & ST 2018-VIL-1384-CESTAT-DEL-CE
  - Disposal/ dumping of waste is a necessity to run a manufacturing activity. Even if services for disposal are availed post-production, they are considered an integral part of the business
- M/s Hindalco Industries Limited vs. The Additional Commissioner, CGST & CX, Ranchi 2020-VIL-22-GSTAA
  - The services utilized for the removal and disposal of fly ash (classified as hazardous waste) in accordance with environmental laws merit consideration as essential input services for the business.

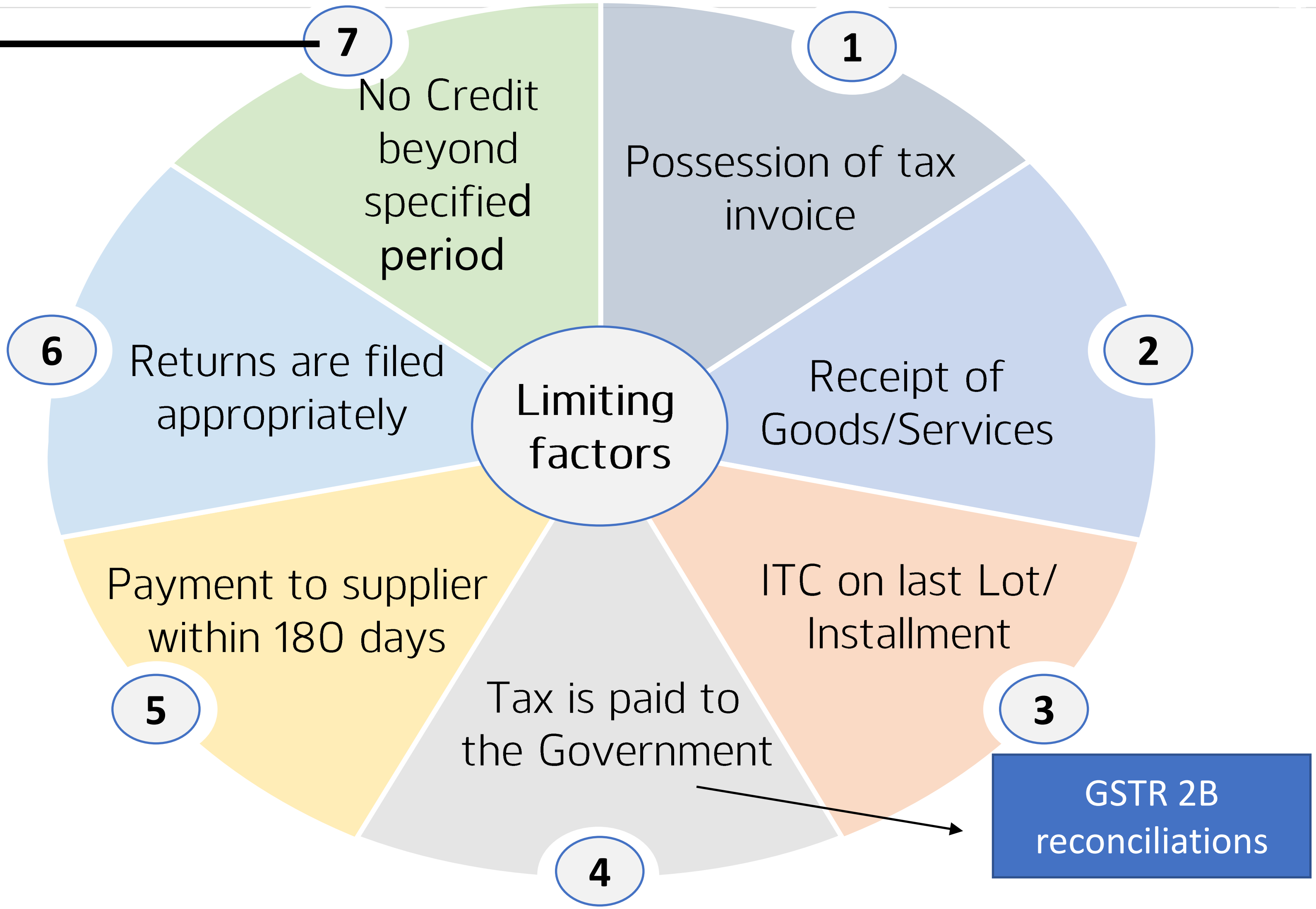
Key Conditions for Availment of ITC- Receipt of Goods and Services

Availing ITC - Conditions

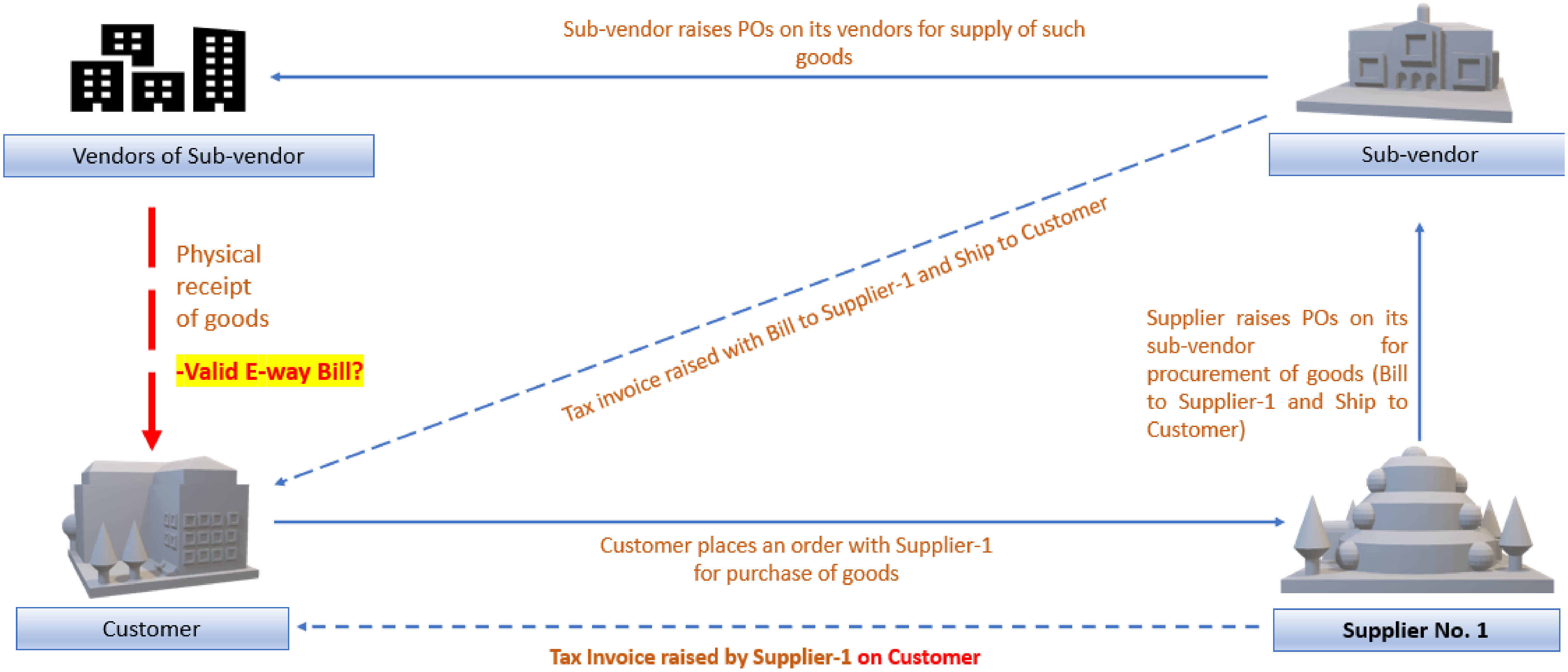
Time Limits
(E.g. FY 25-26)

Earliest of:

- 30th November
- Filing of Annual Return for FY 25-26



Proof of receipt of goods?



Relevant Conditions for availment of ITC

SECTION 16. Eligibility and conditions for taking input tax credit. –

(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;

....

(*b*) he has received the goods or services or both;

Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

(*i*) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(*ii*) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]

Relevant Conditions for availment of ITC

(c) subject to the provisions of Section 41, <u>the tax charged in respect of such supply has been actually paid to the Government,</u> either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) <u>he has furnished the return under Section 39:</u>

Burden on claimant of ITC- GST

SECTION 155. Burden of proof

Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

Ecom Gill Coffee Trading Private Limited- Recent SC Decision

- Decision of Quest Merchandising distinguished.
- <u>Burden of proving the correctness of credit- upon dealer and cannot get shifted on the revenue.</u>
- <u>Mere production of the invoices or the payment made by cheques not enough</u>
- <u>Dealer to furnish name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc.</u>
- Genuineness of the transaction and actual physical movement of the goods to be proved

HOW TO PROVE RECEIPT OF SERVICES??

Decisions denying ITC under GST regime

M/s Anil Rice Mill (Allahabad High Court)

"12. In the case in hand, the petitioner has only brought on record the tax invoices, e-way bills, and payment through banking channel, but no such details such as payment of freight charges, acknowledgement of taking delivery of goods, toll receipts and payment thereof has been provided. Thus in the absence of these documents, the actual physical movement of goods and genuineness of transportation as well as transaction cannot be established and in such circumstances, further no proof of filing of GSTR 2 A has been brought on record, the proceeding has rightly been initiated against the petitioner

Decisions denying ITC under GST regime

<u>M/s Shiv Trading Vs State of UP and 2 others [Allahabad High Court]</u>

8. It is admitted fact between the parties that the goods have been shown to be purchased from M/s Krishna Trading Company, Mathura. In support thereof, tax invoice, e-way bill, weighment receipt before & after loading, bilty, etc. were filed and on the basis of the said documents, ITC was availed by the petitioner. Thereafter, on scrutiny, neither M/s Krishna Trading Company was found to be in existent, nor the persons, who issued the bilty and weighment slip, was found in existent. Once the very basis to show that the movement of goods has taken place was doubted, the petitioner, apparently, failed to prove actual physical movement of goods.

*"9. The authorities have categorically recorded the fact that the petitioner failed to show actual movement of goods and therefore, the judgements cited by the petitioner, as referred to hereinabove in the preceding paragraphs, are of no aid to the petitioner. The petitioner also could not distinguish the judgements of the Apex Court in **M/s Ecom Gill Coffee Trading Private Limited** (supra).*

12. From the perusal of the record shows that the petitioner failed to discharge its onus to prove and establish beyond doubt the actual transaction, actual physical movement of goods as well as the genuineness of the transactions and as such, the proceedings have rightly been initiated against the petitioner under section 74 of the GST Act.

Section 122 of the Central Goods and Services Tax Act, 2017

SECTION 122. Penalty for certain offences.—(1) Where a taxable person who –

(*ii*) <u>issues any invoice or bill without supply of goods or services or both</u> in violation of the provisions of this Act or the rules made thereunder;

(*vii*) <u>takes or utilises input tax credit without actual receipt of goods or services or both</u> either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;

he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under Section 51 or short deducted or deducted but not paid to the Government or tax not collected under Section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

Penalty of Individual

(1-A) Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.

Penalty on Individual

(3) Any person who–

(a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);

(b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

(d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;

(e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account,

shall be liable to a penalty which may extend to twenty-five thousand rupees.

Circular No. 171/03/2022-GST dated 6th July, 2022

Subject: Clarification on various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices-Reg

Scenario 1 :

‘Supplier’ liable for penal action under Section 122 (1)(ii)

‘Supplier’ (registered person)

Raises tax invoice without any underlying supply of goods or services **(Fake Invoice)**

‘Recipient’ (Registered person)

Cont.

<u>Scenario 2:</u>

'Supplier' liable for penal action under section 122(1)(ii) and section 122(1)(vii)

'X' (Registered person)

Raises tax invoice without any underlying supply of goods or services **(Fake Invoice)**

'Supplier' (Registered person)

'Supplier' avails ITC on the basis of the said tax invoice.

Passes on the said ITC to 'Recipient' by issuing invoices without underlying supply ('**Fake Invoice**')

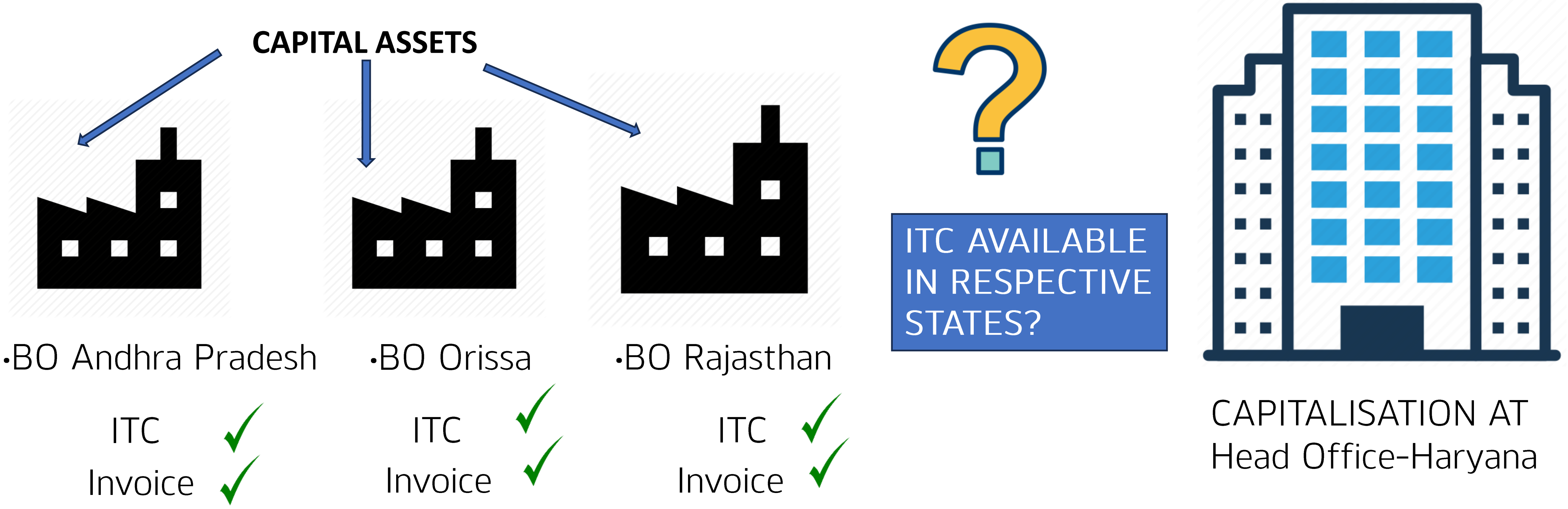
'Recipient' (Registered person)

Suggestions/Recommendations to be GST compliant

- Always check if invoice/delivery challan is valid with correct particulars such as name, address etc.
- Check the particulars in e-way bill specially in case of bill to ship to transactions
- Check if Part A and Part B of e-way bill is filled.
- Due Diligence of seller and buyer
- Check for the details of the vehicle which has delivered the goods along with transporter details
- Proof of payment of freight charges
- Acknowledgement of taking delivery of goods (very important)
- Payment particulars
- Toll Tax receipt, in case of inter state movement

Capitalisation of Assets

Capitalisation of Assets

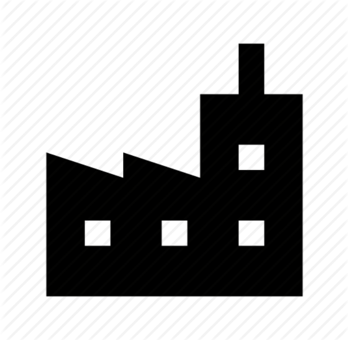


Relevant Provisions

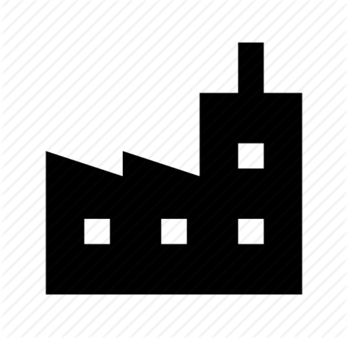
- (19) "capital goods" means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;

- (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.

Case Scenario



Stock transfer



Maharashtra GSTIN

Goods Purchased- 1,00,000+ 18000 GST
1,18,000- Capitalised
No ITC Claimed

Permissible under GST Law??

MP GSTIN

Goods Purchased- 1,00,000+ 18000 GST
18,000- ITC Claimed

Relevant Decisions

- Commr. Of C. Ex., Coimbatore Versus Anugraha Valve Castings Ltd. [2010 (262) E.L.T. 929 (Tri. - Chennai)].
  - In the said case, the revenue had filed appeal against the order of Tribunal. The assessee had availed 50% of the credit on capital goods during the year of purchase and the balance 50% in the next financial year; and they had deducted 50% of the Cenvat credit from the value of the capital goods while claiming depreciation on such goods under the Income Tax Act.
  - The balance 50% of Cenvat credit was deducted from the capital goods in the next financial year i.e., in the year in which balance 50% of credit was availed. They had availed only 50% of the Cenvat credit on those capital goods and deducted the same from the value of the capital goods for depreciation purpose and deducted balance 50% from the value in the next year i.e., in the year in which they claimed credit.
  - Considering the said fact, the tribunal held that they availed the claim for depreciation on the duty portion of the capital goods by reducing the block of asset in the year in which balance credit was availed. Thus, there was no simultaneous availment of double benefit. Therefore, the appeal filed Revenue of any mistake apparent in the Tribunal's final order was dismissed.

Relevant Decisions

- Tribunal, Mumbai in the case of Vasudha Chemicals Pvt. Ltd. Versus Commissioner of Central Excise, Belapur [2016 (337) E.L.T. 478 (Tri. - Mumbai)].
  - In the said case, the assessee had availed 50% of the credit on capital goods during the year of purchase. The assessee had earlier capitalised the Cenvat credit and claimed depreciation on the remaining 50% of Cenvat credit.
  - Thereafter, it deducted the said 50% of the Cenvat credit from the value of the capital goods and then claimed Cenvat credit on the remaining 50% of the Cenvat Credit. Considering the said fact, the tribunal noted that Rule 4(4) clearly provides that only part of the value of capital goods which represents the amount of duty on such capital goods, which the assessee claimed as depreciation shall not be allowed as cenvat credit.
  - Thus, since the Cenvat credit was held to be eligible since no depreciation was claimed on the same.

Non-payment of tax by supplier

Section 16(2)(c)-Introduction of GST

(c) subject to the provisions of section 41, <u>the tax charged in respect of such supply has been actually paid to the Government</u>, either in cash or through utilisation of input tax credit admissible in respect of the said supply;

- Already challenged before Different High Courts (Around 34 writ petitions filed)
    - Bharti Telemedia Limited (Delhi HC)
    - Cummins Technologies Pvt Ltd (Madhya Pradesh HC)
    - LGW Industries Limited (Calcutta HC)

- No control over the seller to ensure that such tax is deposited with the Government
- Provision in violation with Article 14

Transfer petition filed before Supreme Court dismissed

Section 16(2)(c)-Read down- M/s Sahil Enterprises- Tripura HC

Issue:

- Whether Section 16(2)(c) of the CGST Act is violative of Articles 14, 19(1)(g) and 300-A of the Constitution?

Held:

- Section 16(2)(c) of the CGST Act relates to denial of ITC to purchasing dealer on the ground that the supplier had not deposited the tax with the Government. The High Court observed that the purchasing dealer cannot be expected to ensure that the selling dealer deposits the tax collected from the purchasing dealer with the government, as this is practically impossible. Denying ITC to a bona fide purchasing dealer for the fault of the selling dealer would be arbitrary and unreasonable, and violate Article 14 of the Constitution.
- The Hon'ble High Court noted that the said Section places an onerous burden on a bona fide purchasing dealer and the legislature must balance the interests of both the taxpayer and the State. While the ITC is a benefit/concession extended to the dealer, it cannot be used to penalise a bona fide purchasing dealer.
- The Court observed that although the said Section is not violative of Articles 14, 19(1)(g), and 300-A of the Constitution, it should be read down to apply only in cases where the transaction is found to be not bona fide or is a collusive or fraudulent transaction. Accordingly, the Court held that Section 16(2)(c) is read down to apply only in cases where the transaction is found to be not bona fide or is a collusive or fraudulent transaction to defraud the revenue

Section 16(2)(c)-Read down- Other Courts

- Malaya Rub-Tech Industries vs. Union of India and others- 2026 (2) TMI 654- Tripura High Court
- Instakart Services Private Limited vs. Union of India and others- 2026 (3) TMI 1674 - Karnataka High Court
- National Plasto Moulding and Ors. vs. The State of Assam and others- 2024 (8) TMI 836- Guwahati High court

Case Scenario

Date	Transaction	Registration at the time of Issuance of Invoice	Cancellation of Registration
01.01.2019	L1 supplied goods to L2	Registration Active at the time of supply of goods to L2	Retrospectively from 01.07.2017
01.02.2019	L2 supplied goods to L3	Registration active at the time of supply of goods to L3	Prospectively from 01.07.2021 due to business closure post application filed by L2
20.03.2019	L3 availed ITC on invoice raised by L2	Registration Active	

- Department relied on various statements in the SCN
- Invoice being shown in GSTR-2A of L2 and L3
- Payment made by L3 to L2
- GSTR-1 and GSTR-3B filed by L1, L2 and L3
- Proof of Payments, movement such as e-way bill, weighbridge slips available with L3

Tax is paid to Government?

- Mahalaxmi Cotton Ginning Pressing And Oil Industries, Kolhapur Versus State of Maharashtra & Ors.
- Quest Merchandising India Pvt. Ltd. Versus Govt
- On Arise India Ltd. vs Commissioner of Trade and Taxes, Delhi- Delhi HC
- Gheru Lal Bal Chand v. State of Haryana- Punjab and Haryana HC

Points to Consider

- **Any privity of contract between L1 and L3?**
  - M/s S.K. Foils Ltd. Versus Commissioner of Central Excise, Rohtak-2015 (315) E.L.T. 258 (Tri. – Del.),
  - Juhi Alloys Ltd.(2014 (302) E.L.T. 487 (All.)
- **Can ITC be denied in genuine cases?**
  - Bhuwalka Steel Industries Ltd, 2012 (281) E.L.T 213 (Kar.)
  - Malerkotla Steels & Alloys Pvt. Ltd. v. Commr. of C. Ex., Ludhiana, 2008 (229) E.L.T. 607 (Tri. - Del.), upheld by 2009 (244) E.L.T. 48 (P & H))
- **Requirement of registration of supplier is only qua the invoice or supplier?**
- **Will Post factum cancellation disentitle the recipient from ITC?**

Points to Consider

- Can liability can be fixed on actions beyond the control of the Appellant?
    - "Lex Non Cogit ad Impossibilia
- Can recovery be made from the recipient even where the recovery can be made from the supplier?
    - D.Y. Beathel Enterprises v. State Tax Officer (Data Cell), Tirunelveli, 2022 (58) G.S.T.L. 269 (Mad.)
- Recovery from recipient only in exceptional circumstances
    - Press Release dated 04.05.2018

Suncraft Energy Private Limited (Calcutta High Court)

- Invoices not being reflected in GSTR-2A.
- SCN issued to deny excess ITC on the basis of difference in GSTR-2A and GSTR-3B.
- Held that no allegation on recipient that there is no receipt of goods and services or it is not in possession of tax invoice
- Payment details submitted by recipient
- Held that without resorting to the action against the supplier, ITC cannot be denied unless there is a case of collusion
- In case of default in payment of tax by the seller recovery shall be made from the seller however, reversal of credit from the buyer shall also be an option available with the revenue authorities to address the exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.

Suncraft Energy Private Limited (Supreme Court)

- Having regard to the facts and circumstances of this case(s) and the extent of demand being on the lower side, we are not inclined to interfere in these matters in exercise of our powers under Article 136 of the Constitution of India.

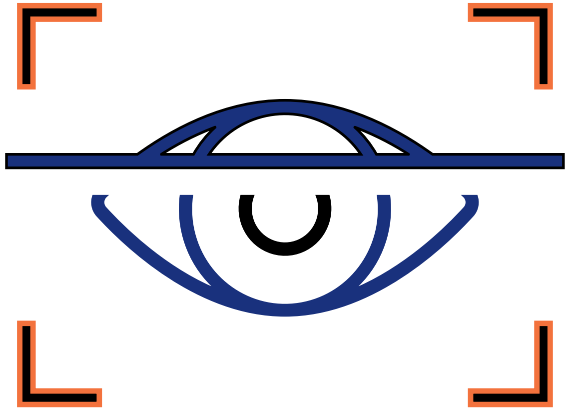
[No detailed reasoning given by Supreme Court]

Tax Paid by Supplier- but not payable

Recent investigations & potential disputes

Other Probable disputed areas

- Promotional service invoices received from distributors- No service such as visibility, promotional services provided by distribution- No tax required to be paid
- Tax paid on Liquidated Damages- Not payable as per Circular Circular No. 178/10/2022-GST, dated 3-8-2022

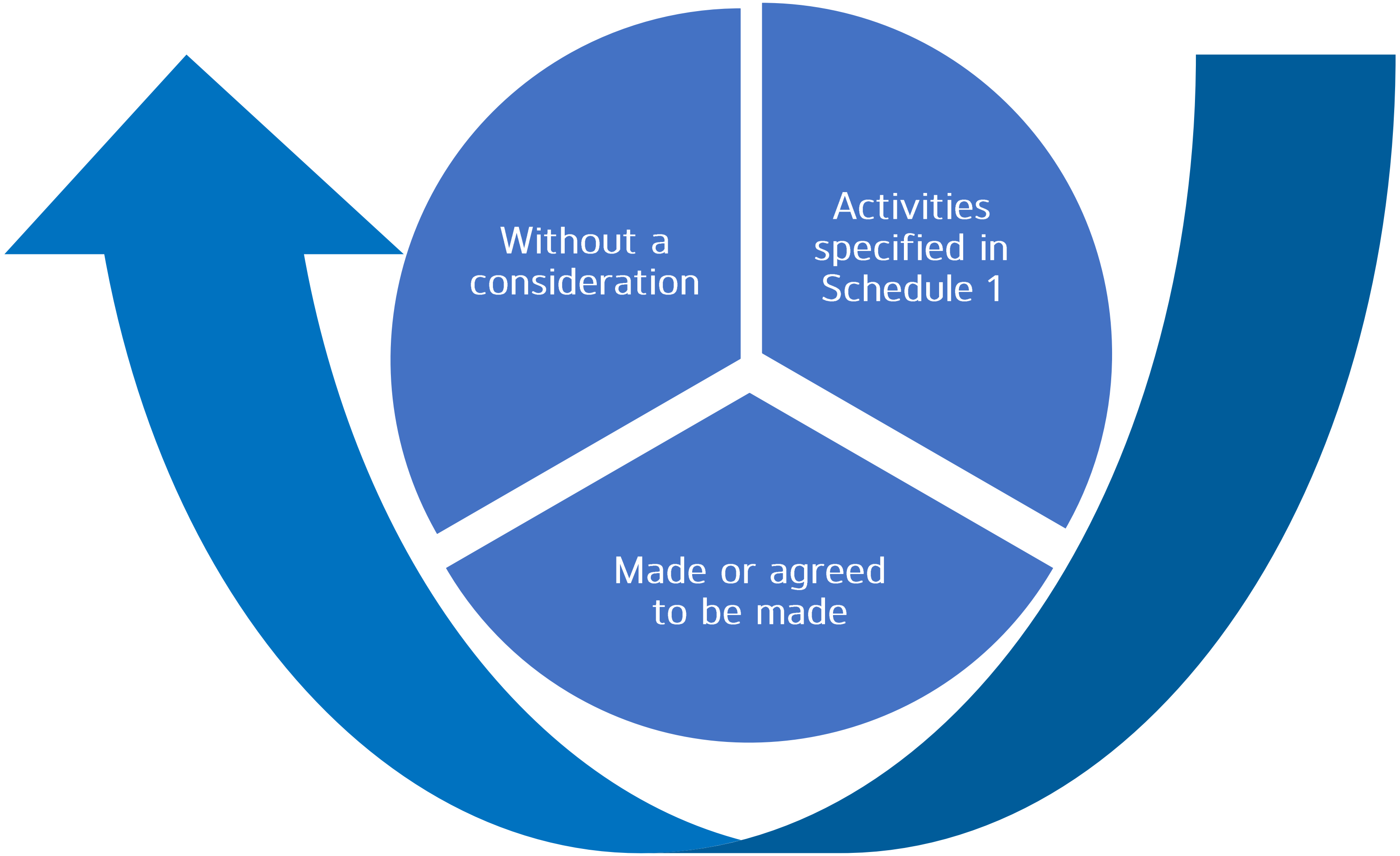


Can ITC be denied at the end of recipient?

- Parasrampuria Synthetics Ltd. v. CCE, Jaipur 2005 (191) E.L.T. 899 (Tribunal)
- Acero Fabrica v. CCE, Mumbai 2005 (191) E.L.T. 670 (Tribunal)
- CCE, Mumbai v. Anand Arc Electrodes Pvt. Ltd. 2010 (252) E.L.T. 411 (Tribunal)

Blocked Credits

Section 7(1)(c): Supplies without Consideration



Section 17(5)(h)

Section 17(5)(h)

- goods lost, **stolen, destroyed**, written off or disposed of by way of **gift** or free samples; and

Schedule I- Activities to be treated as supply even if made without consideration

- Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.

What are Gifts?

- Section 122 of Transfer of Property Act, 1882, "Gift" is the transfer of certain existing moveable or immoveable property **made voluntarily** and **without consideration**

- Australian GSTR 2001/ 06 :- Unconditional incentives and promotional giveaways. ………, 'a non-monetary payment is sometimes made by an entity (such as a manufacturer) **to induce another party to make or continue to make purchases from the entity. Where the payment is truly unconditional (that is, a gift), it is not consideration for a supply by that other party.**

- Black Law Dictionary defines "gift" as a **"<u>voluntary conveyance of land, or transfer of goods, from one person to another, made gratuitously, and not upon any consideration of blood or money.</u>"**

- Merriam Webster Dictionary, the meaning of gift is, **"<u>something voluntarily transferred by one person to another without compensation; the act, right, or power of giving.</u>"**

Products Given To Employees

Festival Expenses Such As TV, Washing Machine etc

Business Gifts

Diairies, Pens, calendars, unforms distributed.

Point of Sales Material

- Types of POS
  - Returnable Assets- Not consumable
    - Demo Goods, Refrigerators, High Value Items
  - Consumable
    - Brochures, Standees, Pamphlets

Returnable Assets

Demo Goods

Refrigerator

Shelves

- Assets in Books of Accounts of Manufacturer?
- Ownership with whom?
- Proof of Return?
- Contractual Obligation to Return?
- Whether Permanent **Transfer** of Business Assets- Schedule I attracted?

Consumable- Non Returnable Assets

Display Sign Board

Brochures/Pamphlets /Catalogues

Standees

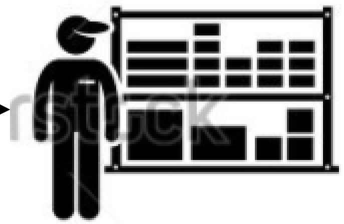
- Commercial Value
- Whether returned by the dealers?
- Merely advertisement and marketing expense
- Ownership by way of agreement/conduct
- To be distributed to end consumers?

Page Industries-AAAR Karnataka

- The issues was eligibility of credit on items like half busts, storage units, hangers, signages, posters, display stands, etc. provided by an assessee to its distributors/franchisees. In this case, the Appellate Authority observed that the said items cannot be said to be assets of the business of the assessee.
- However, the Appellate Authority held that provision of such items qualifies as exempt supply under GST law and as per Section 17(2) of the CGST Act, assessee is not eligible input tax credit of such items.

Trips Given to Dealers

Manufacturer



Distributor

Retailer

Customer

<u>Foreign trip </u>given to retailer on attaining a purchase target

Service as a gift?

Opinion of Advocate General in Kuwait Petroleum v. Commissioners of Customs & Excise dated 9th July, 1998

"25. Secondly, it is difficult to avoid the conclusion that the contrasting treatment of services by Article 6(2)(b) of the Sixth Directive is deliberate. Without wishing to speculate, I suggest that among the obvious differences between goods and services is that services do not lend themselves, at least not so readily, to free promotion schemes. The more significant labour content would presumably reduce capacity for mass supply of free services. Thus, it seems likely that the disparity in the wording of the two provisions was deliberate."

Service as a gift?

Associated Newspapers Limited and The Commissioners for her Majesty's Revenue and Customs (2017 EWCA Civ. 54)

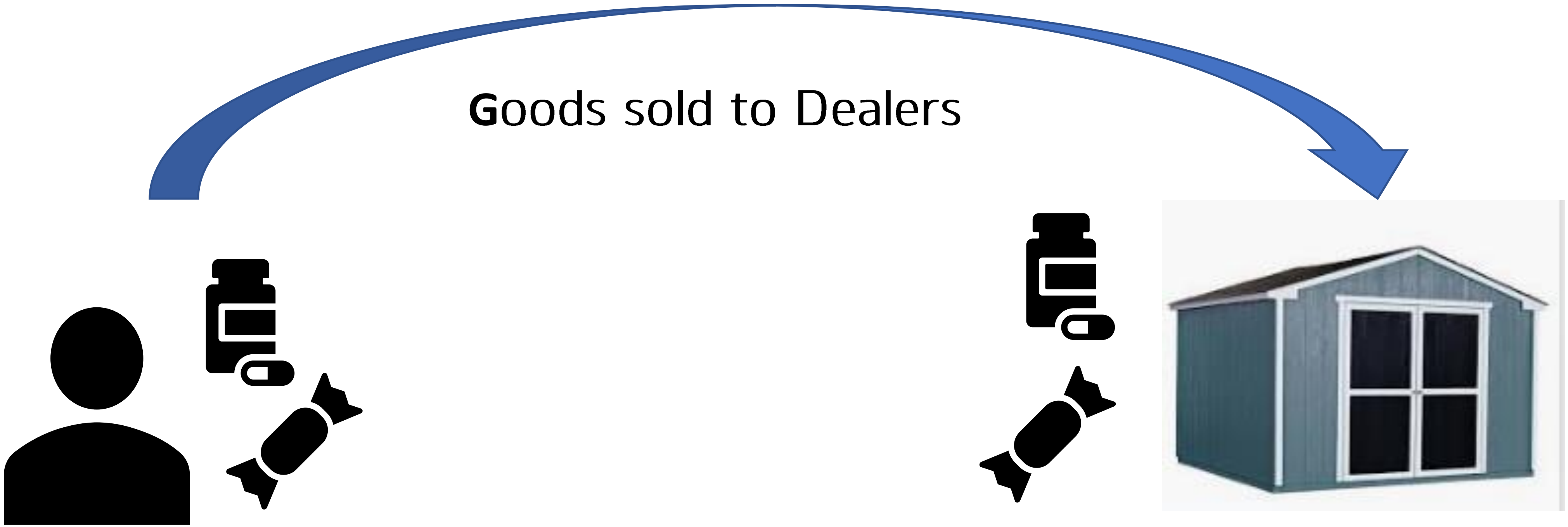
"62. Against that background, I can now turn to the specific criticisms made by HMRC in relation to the FtT's decision about the applicability of Article 3. The main issues are how to interpret Article 26 and whether it imposes a strict test of necessity which excludes anything (such as the vouchers) that are not necessary for the running of ANL's business.

63. One can begin with the wording of Article 26 compared with that of Article 16. In the case of goods, Article 16 imposes output tax on any free supply of goods comprising business assets apart from goods supplied as business samples or gifts of small value. A free supply of goods not in these categories will be treated as a supply for consideration and therefore a taxable supply even if made for business purposes. The wording of Article 26 is, however, materially different and treats as a taxable supply only supplies of services:

"carried out free of charge by a taxable person for his private use or for that of his staff or, more generally, for purposes other than those of his business."

64. The words "carried out free of charge ..... for" qualify all of the specified uses which follow and Articles 3 and 6 of the 1993 Order are to the same effect."

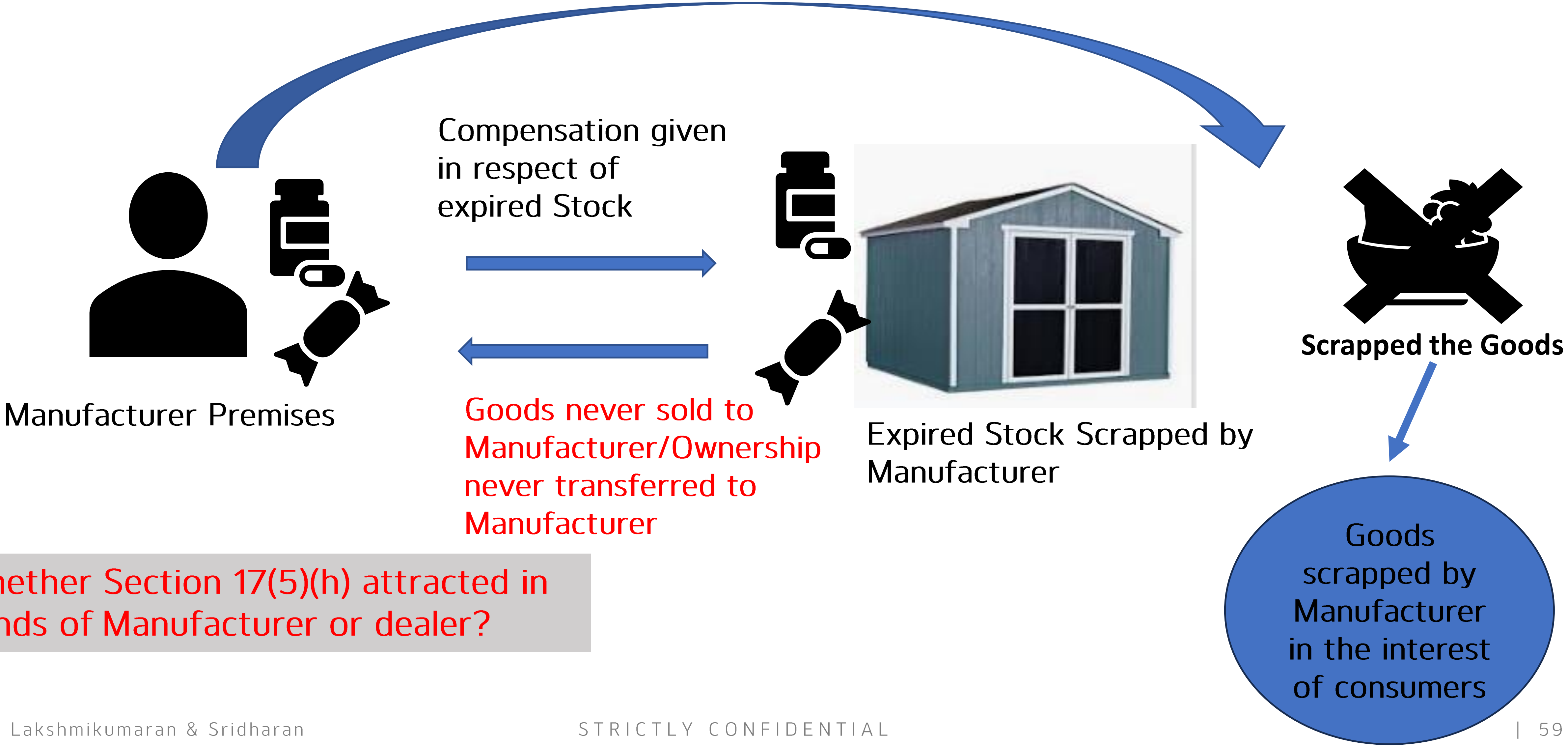
Expired Stock



Manufacturer Premises

Dealer Premises- Stock Expired

Expired Stock

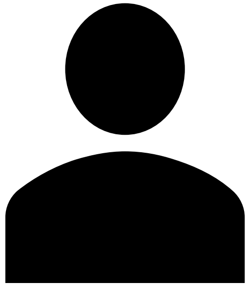


Whether Section 17(5)(h) attracted in hands of Manufacturer or dealer?

Circular No. 72/46/2018-GST

- *Return of time expired goods to be treated as fresh supply :*
  - Where the time expired goods which have been returned by the retailer/wholesaler are destroyed by the manufacturer, he/she is required to reverse the ITC availed on the return supply in terms of the provisions of clause (h) of sub-section (5) of section 17 of the CGST Act. It is pertinent to mention here that the ITC which is required to be reversed in such scenario is the ITC availed on the return supply and not the ITC that is attributable to the manufacture of such time expired goods.
- *Return of time expired goods by issuing Credit Note*
  - Further, where the time expired goods, which have been returned by the retailer/wholesaler, are destroyed by the manufacturer, he/she is required to reverse the ITC attributable to the manufacture of such goods, in terms of the provisions of clause (h) of sub-section (5) of section 17 of the CGST Act.

ITC on Scrap if sold as consideration



Manufacturer Premises

Car to be Scrapped

Scrapped as Metal and Sold at 10/Kg

Chennai Sakhti Steel Products Pvt. Ltd- Madras HC

- A reading of the Section 19(9)(i) of the TNVAT Act makes it evident that no ITC shall be availed by a registered dealer for purchase of goods, if such goods are not sold because of any theft, loss or destruction, for any reason, including natural calamity, and if the dealer has already availed ITC against purchase of such goods, there shall be reversal of tax credit. Herein, the Court held that as the tax has been paid by the dealer on sale of utensils and scrap, therefore, credit is not required to be reversed

Section 17(5)(b)(i)

(b)(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.

Blocked Credits-Section 17(5)

food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred earlier except for exemptions provided therein, life insurance and health insurance

EXCEPTION

A) Used for making outward supply of same category
B) Obligatory for employer to provide under any law

Event Management Services- Not barred
Food and beverages- Specifically barred

Position in case of a single invoice of event management services which includes food also?

AAR-Citius Holidays Private Limited

- The West Bengal Authority for Advance Ruling (AAR) addressed whether a provider of event management services could claim Input Tax Credit (ITC) on food and beverages provided as part of bundled corporate packages,.
- The applicant argued that these services constitute a composite supply where food is an ancillary element of the taxable principal supply of event management, thus falling under the exception to the blocked credit rules in the proviso to Section 17(5)(b)(i)
- The Authority ruled in the affirmative, holding that the applicant is eligible for ITC on food and beverages and that separate invoices from hotel vendors are not required, as individual elements lose their separate identity in a composite supply
- The reasoning centered on the fact that the applicant's outward supply is a taxable 18% service, and the act of re-invoicing with a commercial margin eliminates the "personal consumption" barrier that typically blocks such credits.

Will this ruling apply to end consumer also?

Canteen Services- ITC

Output	Mandatory under Factories Act/Any other law	ITC
No Consideration Charged	Yes	Yes
No Consideration Charged	No	No
Consideration Charged (Rs. 10/100)- GST paid on Rs. 10	Yes	Whether Partial ITC eligible? To what extent?
Consideration Charged (Rs. 10/100)- GST paid on Rs. 100	Yes	Whether ITC eligible? To what extent?
Consideration Charged (Rs. 10/100)- No GST paid	Yes	Whether Partial ITC eligible? To what extent?

Tax Paid voluntarily or under Protest

Section 17(5)(i)

Section 17(5)(i)

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

Rule 36(3)

- No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on account of any fraud, wilful misstatement or suppression of facts

Section 17(5)(i)

Whether ITC can be denied in following cases?

- Penalty paid for equivalent percentage as provided under Section 74, without admission of liability?
- Tax Paid in pursuance of investigation/audit conducted by the department
- Tax Paid in pursuance of Show cause notice conducted by the department
- IGST paid on imports- even in cases involving fraud

ITC of Tax Paid under Protest

Issue Raised

Overseas Group Companies providing manpower supply services to NOSPL?

Northern Operating Decision

Decision

Taxable – Import of Services

- Tax Paid by Taxpayers under Protest?
- No specific provisions for payment under Protest
- ITC availability?

Documents for availing ITC

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) <u>an invoice issued by the supplier</u> of goods or services or both in accordance with the provisions of section 31;

(b) <u>an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31,</u> subject to the payment of tax;

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

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

(e) <u>an Input Service Distributor invoice</u> 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.

Other instances of Differential GST Payment

IGST payment on imported goods subsequent to filing of BOE

- Payment of IGST at the time of surrender of exemption claimed under Advance Authorization consequent to claiming IGST refund due to Rule 96(10)
- Payment of IGST due to non-fulfillment of pre-import condition

ITC eligibility

- Debit note cannot be issued under Sec 34 as there is no corresponding tax invoice
- Payment made vide TR-6 Challan, basis which credit consistently allowed under the erstwhile Cenvat Credit Rules
- Public Notice No. 48/2023 dated 9.6.2023 issued by Commissioner of Customs, clarified the requirement of re-assessing the bill of entry for availing IGST credit

Can credit availed in past basis TR-6 challan be disputed by department?

Circular No. 16/2023-Cus

(a) ICES does not have a functionality for payment of customs duties on a bill of entry (BE) (unless it has been provisionally assessed) after giving the Out-of-Charge (OOC) to the goods. In this situation, duties can be paid only through a TR-6 challan.

(b) Under GST law, the BE for the assessment of integrated tax/ compensation cess on imports is one of the documents based on which the input tax credit may be availed by a registered person. A TR-6 challan is not a prescribed document for the purpose.

ITC claimed on the basis of TR-6 challan or bill of entry

M/S BECTON DICKINSON INDIA PRIVATE LIMITED [2025-VIL-44-AAAR]

Issue 1:

- Whether the applicant can avail the ITC of IGST paid through TR-6 challan under Section 16(2) of the CGST Act, read with Rule 36 of the CGST Rules?

Held:

- TR-6 challan is not a document prescribed under the Customs Act or the rules made thereunder. TR-6 challan is a document prescribed under the 'Treasury Rules of the Central Government', under which any person can pay money into the treasury or Bank on Government Account.
- They are neither similar to a 'Bill of Entry', nor do they fall under the specific category of 'prescribed' documents under the Customs Act, 1962, or the rules made thereunder
- The applicant should have used Bill of Entry-wise re-assessment for seamless ITC availment.

Other Rulings

- AAR Gujarat in the case of M/s Hansaben Jayantibhai Patel [Trishul Die and Engineering Works]-
  - In this case, the Applicant contended that the pre-consultation letter or the duty-paying challan constituted a "similar document" under Rule 36(1)(d) and that ITC was accordingly available. However, the Authority ruled adversely, holding that the "similar document" referred to in Rule 36(1)(d) must be read ejusdem generis with the Bill of Entry, and extends only to documents such as the Courier Bill of Entry and other declarations/forms prescribed under the Customs Act. A pre-consultation letter and a TR-06 Challan do not fall within this category.
- AAR Andhra Pradesh in the case of M/s R.V. Hydraulic Services-
  - Wherein the BoE was in the name of a foreign supplier, and not in the name of the applicant, and the applicant had paid IGST through a TR-06 Challan. The Andhra Pradesh AAR held that ITC is not available where: (a) the BoE is not in the name of the claimant, as Section 16(2)(a) read with Rule 36(1)(d) requires a BoE in the claimant's name to establish ownership and entitlement; and (b) the manual TR-06 Challan used for IGST payment does not fulfil the documentary requirements outlined in Rule 36 of the CGST Rules

Section 16(4)

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

Application of Section 16(4) to BOE

M/S BECTON DICKINSON INDIA PRIVATE LIMITED [2025-VIL-44-AAAR]

Issue 2:

- Whether the eligibility to avail ITC of the import IGST paid via re-assessed Bill of Entry is subject to the time limit prescribed under Section 16(4) of the CGST Act?

Held:

- The Authority held that the availment of ITC on the basis of a Bill of Entry, whether original or re-assessed, is governed by the time limit prescribed under Section 16(4) of the CGST Act. A similar view was taken by the Maharashtra Advance Ruling Authority in the recent case of *In re: M/s Adi Enterprises [2025-VIL-79-AAR]*.

Upheld the decision of AAR

Application of Section 16(4) to BOE

ADI ENTERPRISES- 2025-VIL-79-AAR - MAHARASHTRA AUTHORITY FOR ADVANCE RULING

Issue 1:

- Whether the time limit under Section 16(4) applies to bills of entry?

Held:

- In the case of M/s Adi Enterprises, the Authority for Advance Rulings (AAR) held that the time limit for availing Input Tax Credit (ITC) under Section 16(4) of the CGST Act, 2017, applies equally to IGST paid on imports via a Bill of Entry.
- Although Section 16(4) does not explicitly mention "Bill of Entry," the AAR reasoned that under Section 20(iv) of the IGST Act, the provisions of the CGST Act apply *mutatis mutandis* to IGST, thereby extending the time limit to imported goods as well.
- The Bill of Entry was treated as equivalent to a tax invoice under GST rules, and thus subject to the same ITC conditions.
- Since the applicant failed to claim the ITC by the statutory deadline of November 30, 2023, the AAR ruled that the credit could not be availed in subsequent GSTR-3B returns.

Section 17(5): Blocked credits

SECTION 17(5)(C):

- ITC not available in respect of
  - Works contract service
  - Received for construction of immovable property
- Except:
  - If Immovable property is plant and machinery
  - For further supply of works contract service

SECTION 17(5)(D):

- ITC not available in respect of
  - Goods or services or both
  - Received for construction of immovable property on own account
  - even when used in course or furtherance of business
- Except:
  - If Immovable property is plant or machinery

"Plant and Machinery" vs "Plant or Machinery"

Definition: Plant and machinery

As per Explanation to Section 17, "Plant and machinery" means

- An apparatus, equipment and machinery
- Fixed to earth by foundational or structural support

Includes

- Foundational or structural supports

Excludes

- Land, building or any other civil structures;
- Telecommunication towers; and
- Pipelines laid outside the factory premises

Safari Retreats: Orissa High Court

2019 VIL 223 ORI

M/s Safari Retreats Pvt. Ltd. vs Chief Comm. of CGST

Whether ITC of GST paid on goods or services received for the construction of an immovable property is blocked under Section 17(5)(d), even where renting of such immovable property further attracts GST?

Reasoning and Decision of the Orissa High Court

Section 17(5)(d) should be read down to exclude cases where output GST is paid

- Narrow construction of interpretation of Section 17(5)(d) frustrates the objective of the Act
- If GST is payable on income arising out of the immovable property, ITC shall be available

- The High Court was only dealing with challenge to S. 17(5)(d) and not S.17(5)(c)
- Meaning of “plant and machinery” was not under consideration

Safari Retreats: Supreme Court

2024 INSC 756

Submissions by Assessee

- Section 17(5)(c)/(d) must be read down to the extent ITC is blocked for works contract services, goods or services used for providing taxable output supplies.
- The phrase "on its own account" should be given purposive construction. If immovable property is for used for renting property or supply of hotel accommodation services, it will not qualify as being "on his own account".
- Clause (d) excludes "plant or machinery", while Clause (c) excludes "plant and machinery".
- Functionality or essentiality tests must be applied to decide the meaning of "plant".
- Section 17(5)(c)/(d) are violative of Articles 14, 19(1)(g) and 300A of the Constitution of India.

Submissions by Revenue

- The expression "plant or machinery" must be read as "plant and machinery"
- The use of the word "or" in clause (d) is a mistake of the legislature.
- If "or" is not read as "and", it would be discriminatory as ITC will be restricted on works contracts under clause (c) alone.
- Judgments under Income tax law are not relevant in this regard
- Classification of asessees is based on intelligible differentia which has rational nexus with the object of GST.

Reasoning & Findings: Analysis of Section 17(5)(d)

- Section 17(5)(d) restricts credit on goods and service used for construction of immovable property
- Allows for 2 exceptions to the restriction: Independent or cumulative?
  - If construction of Immovable property qualifies as "plant or machinery"
  - If construction of Immovable property is not "on own account"
- Construction is on "own account" only when
  - Made for personal use and not for provision of service; or
  - When used as a setting for carrying out own business.
- Construction is not on "own account", if intended to be sold or given on lease or license.

Whether this finding is subject to subsequent findings on plant and machinery?

Reasoning & Findings: Analysis of Section 17(5)(d)

- *Anand Theatres*, (2000) 5 SCC 393: Division Bench
  - Held: hotel or cinema theatre building does not qualify as plant.
- *Karnataka Power Corporation*, (2002) 9 SCC 571: Three-judge Bench
  - Held: Hydro-power generating station building is a plant.
- Karnataka Power decision would prevail – Larger Bench
- Functionality test will have to be applied to decide whether a building is a plant.

"52. This Court has laid down the functionality test. This Court held that whether a building is a plant is a question of fact. This Court held that if it is found on facts that a building has been so planned and constructed as to serve an assessee's special technical requirements, it will qualify to be treated as a plant for the purposes of investment allowance. …"

Conclusion: Apex Court Decision

- Sections 17(5)(c) and 17(5)(d) operate in completely different spheres
- The term "plant or machinery" in Section 17(5)(d) – common parlance meaning to be given
  - Functional test to be applied
  - Question of fact: whether mall qualifies as a plant
  - Remanded back to the HC
- Sections 17(5)(c) & (d) – held to constitutionally valid
- Relief for situations falling under 17(5)(c)?
- Section 16(4) – Constitutionally valid

The Two Exceptions: Independent or Cumulative?

"32. ... There are two exceptions in clause (d) ... The first exception is where goods or services or both are received by a taxable person to construct an immovable property consisting of a "plant or machinery". The second exception is where goods and services or both are received by a taxable person for the construction of an immovable property made not on his own account. Construction is said to be on a taxable person's "own account" when (i) it is made for his personal use and not for service or (ii) it is to be used by the person constructing as a setting in which business is carried out. However, construction cannot said to be on a taxable person's "own account" if it is intended to be sold or given on lease or license."

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

Retrospective Amendment of Section 17(5)(d)

- (d) 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

  - w.e.f. 01-07-2017 (Come into force as on w.e.f. 01-10-2025)

Two Stage Analysis with Safari Retreats

Revisit positions – 17(5)(c) and (d) in view of Bharti Airtel and Safari Retreats

Whether movable in view of Bharti Airtel Judgement?

Yes → ITC available [not restricted under 17(5)(c) and (d)]

No ↓

Whether a "Plant" in view of Safari Retreats Judgement?

Yes ↓ ITC not restricted under 17(5)(d)

Whether not on own account in view of Safari Retreats Judgement?

Yes ↓ ITC not restricted under 17(5)(d)

Reversals under Rule 42

Relevant Provisions

- <u>Section 17(2)-</u>

- *"(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.

- For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.

Scope of "Transaction in Securities"

- Her Majesty's Commissioners of Inland Revenue v. Laird Group Plc. [2003] UKHL 54],
- With respect to interpretation of the phrase, 'transaction in securities', the Court held that as a matter of ordinary language, the creation, issue, sale, purchase, exchange, redemption and extinguishment of shares or debentures were all "transactions in securities". In each case the securities themselves were the subject-matter of the transaction. Securities included stocks, shares, debentures and unsecured loans.

- Income and Corporation Taxes Act, 1988 [UK]
- 2) … "transaction in securities includes transactions, of whatever description relating to securities and in particular-
- *(i) the purchase, sale or exchange of securities;*
- *(ii) the issuing or securing the issue of, or applying or subscribing for, new securities;*
- *(iii) the altering, or securing the alteration of, the rights attached to securities…"*

Redemption of Mutual Funds

Whether the term "transaction in securities' is wide enough to cover any transaction related to such security?

Whether the scope of exempted supplies prescribed under Section 17(3) is not restricted only to trading (i.e. buying and selling) of securities or includes any 'transaction' undertaken in respect of securities?

Explanation to Chapter-V

For determining the value of an exempt supply as referred to in sub-section (3) of section 17 -
(a) the value of land and building shall be taken as the same as adopted for the purpose of paying stamp duty; and
(b) the value of security shall be taken as <u>one per cent. of the sale value of such security</u>

- Whether ITC reversal on common services required in case the entity is engaged in trading in shares, mutual fund units, etc? -Possibility of arguing that redemption of securities not covered under above?

Dividend Income

- <u>SCRA Act</u>
- *"(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;*
- *(ii) derivative;*
- *(iii) units or any other instrument issued by any collective investment scheme to the*
- *investors in such schemes;*
- *(iv) security receipt as defined in clause (zg) of Section 2 of the Securitisation and*
- *Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
- *(v) units or any other such instrument issued to the investors under any mutual fund*
- *scheme;*
- *(vi) Government securities;*
- *(vii) such other instruments as may be declared by the Central Government to be*
- *securities; and*
- *(viii) rights or interest in securities.*

Whether Dividend is included under the term "security" or "transaction in securities"?

ITC eligibility on mutual fund expenses

M/S ZYDUS LIFESCIENCES LTD [2025-VIL-42-AAAR]

Issue:

- Whether ITC is admissible on common inputs and input services used in relation to subscription and redemption of mutual funds?

Held:

- The Hon'ble Gujarat AAAR held that ITC is available on such common inputs and input services subject to Section 17(2) conditions.
- Redemption of mutual funds amounts to sale of securities, not a taxable supply. Thus, the value of mutual fund transactions must be included in exempt supplies under Section 17(3).
- Gujarat AAR ruling was upheld and the appeal was dismissed.

No ITC on expenses for buyback of shares

M/S GUJARAT NARMADA VALLEY FERTILIZERS & CHEMICALS LTD (GNFC) [2025-VIL-41-AAAR]

Issue:

- Whether ITC is available on expenditure incurred for buyback of shares and whether ITC on common inputs/services attributable to such expenditure needs to be reversed?

Held:

- ITC on buyback-related expenditure is not admissible.
- Shares are "*securities*", and are neither goods nor services. Hence, the transactions therein are not supplies under GST. Section 17(2) restricts ITC to taxable supplies. Thus, the tax paid on inputs/services used for buyback (a non-taxable activity) is not creditable.
- Under Section 17(3), value of securities forms part of exempt supplies, mandating reversal of ITC on common inputs and input services.
- Gujarat AAR ruling was upheld and the appeal was dismissed.

Q&A

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THANK YOU!

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- KNOWLEDGE
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INDIRECT TAX: GST, CUSTOMS, EXCISE, VAT

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