

SPECIAL ARTICLE

ITC claim and reversal in special circumstances under GST



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Background

Industry and GST experts are well-versed in the eligibility and ineligibility criteria for Input Tax Credit (for brevity, 'ITC') under Sections 16 and 17 of the Central Goods and Services Tax Act, 2017 (for brevity, 'CGST'). However, beyond these commonly discussed provisions, Section 18 of the CGST Act specifically deals with the availability and reversal of ITC under special circumstances, which is not frequently discussed. This article explores the provisions of Section 18, outlining scenarios when ITC can be claimed or requiring its reversal.

Special circumstances of ITC

1. ITC on goods that are in stock on the date of registration:

A person who applies for registration within 30 days from the date the person becomes liable to registration and has been granted registration is entitled to input tax credit of inputs held in stock and inputs contained in semi-finished or finished goods that are held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the CGST Act¹. This follows the principle that while the person is called upon to pay output tax on all his outward supplies from the date on which he was liable to obtain registration, input credit will also be allowed on all such goods which were held in stock from the same date, but of course, the benefit of ITC is only if the registration is sought within 30 days.

This would be applicable to both, registration to be sought under Section 22 as well as the registration to be sought under Section 24 of the CGST Act (compulsory registration). While the law provides for ITC on inputs, (i) held as such (ii) contained in semi finished goods and (iii) contained in finished goods, it does not provide for credit of GST paid on capital goods and input services procured prior to the date of registration, viz., not even with respect to such procurements in the previous 30 days or even when the capital goods so procured are being used on the date of registration.

¹ Section 18 (1) (a) of CGST Act

It is important to note that the registration should be obtained within 30 days from the date on which he becomes liable to register – however, this time limit does not apply to the purchases in respect of which ITC is eligible to be claimed, viz., even if the inputs that are held in stock (as such, or in SFG or in FG) on the date of registration is older than 30 days, ITC will be eligible to be claimed so long as such goods are in stock and the claim is supported with invoice and other supporting documentation.

This would equally apply to voluntary registrations² as well, except that the time limit of 30 days would not be relevant.

2. Shift from composition scheme to regular scheme of payment of output tax

Where a composition dealer shifts from composition scheme to regular scheme³, the Registered Person (RP) will be eligible to claim credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods that are held in stock on the date of such change.

Additionally, ITC on capital goods in stock / being used will also be eligible to be claimed. This would be determined by reducing 5 percentage points per quarter or part thereof from the date of the invoice².

3. Change in taxability of outward supplies - where supplies hitherto which were exempt become taxable

Where an exempt supply of goods or services or both by a RP becomes taxable⁴, the RP will be entitled to claim credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods that are held in stock on the date of such change. The amount of input tax credit on capital goods to be claimed is to be determined as discussed supra (for composition dealers) – viz., as reduced by 5 percentage points per quarter or part thereof from the date of invoice⁵.

4. Conditions and compliance⁶ for claim of input tax credits for the above

- RP will be eligible to claim input tax credit of inputs only within one year from the date of invoice subject to conditions that the same are yet in stock.
- RP will be required to file a declaration on the common portal in Form GST ITC 01 within 30 days of becoming entitled to credit in the circumstances discussed supra.
- A certificate from a practicing chartered accountant or a cost accountant would be required if the aggregate value of the claim on account of Central tax, State tax, Union territory tax and Integrated tax exceeds Rs. 2 lakhs. The certificate needs to be uploaded along with the Form GST ITC 01.
- In respect of claim of input tax credit in cases where exempt supplies becoming

2 Section 18 (1) (b) of CGST Act

3 Section 18 (1) (c) of CGST Act

4 Section 18 (1) (d) of CGST Act

5 Rule 40 (1) (a) of CGST Rules, 2017

6 Section 18(2) of the CGST Act read with Rule 40 (1) of CGST Rules, 2017

taxable OR shift from composition to regular scheme of taxation, it should be ensured that the supplier has uploaded the invoices in Form GSTR 1 or Form GSTR 4 as the case may be, on the common portal. *Given that this condition would not be fulfilled in the case of new registrations, possibly a certificate from the supplier that tax on such supplies is duly remitted would be sufficient documentation.*

- RP should have a valid invoice from the supplier.
- RP should demonstrate that such inputs are in stock on the date of - registration / shift from composition scheme to regular scheme / exempt to taxable supply (*either as such, or that they are contained in SFG or in FG*), by any of the accepted method of inventory management.
- ITC should be claimed by the RP in his GSTR 3B that would be filed after the registration or the above change.
- In the books of account, the ITC amount should be transferred to current assets from cost of purchases.

5. ITC in case of change in the constitution of an RP - sale, merger, demerger, amalgamation etc.:

When there is a change in the constitution of a RP on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said RP is allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business⁷.

The following are the conditions to be fulfilled for transfer of unutilized input tax credit:

- In case of demerger, out of the unutilised input tax credit, only such amount that is in "proportion" to the value of assets being transferred to the new unit should be transferred. For this purpose, the value of assets would mean, the value of the entire assets of the business, whether or not input tax credit has been availed on the same.
- Transferor to file Form GST ITC-02 with a request for transfer of unutilized input tax credit lying in his electronic credit ledger, electronically on the common portal to the transferee.
- Transferor should also submit a copy of a certificate by a practicing chartered accountant or cost accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision to the transfer of liabilities.
- The transferee should accept, on the common portal, the details so furnished by the transferor and upon such acceptance, the un-utilized credit specified in Form GST ITC- 02 shall be credited to his electronic credit ledger.

⁷ Section 18 (3) of CGST Act read with Rule 41 of CGST Rules, 2017

- The inputs and capital goods so transferred should be duly accounted for by the transferee in his books of account.

Note: While there is no specific time limit for filing of ITC 02 after the date of sale, merger, demerger etc., it should be filed within a reasonable amount of time; and if the registration of the transferor is proposed to be cancelled, prior to such cancellation.

It is important to note that this form can be filed only once; thus, it pre-supposes that the transferor ensures all the credits are claimed and reconciliations are in place, prior to filing of ITC 02.

6. Payment of ITC in case of change in nature of registration / nature of supply:

This is a converse to the case partly referred to in paragraphs 2 and 3 supra – case of transition from regular scheme of taxation to composition scheme OR where the goods which were hitherto taxable, become exempt. A registered person who has availed input tax credit and is paying tax under regular scheme, if he proposes to shift to composition scheme – will be liable to pay an amount that is equivalent to the credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods that are held in stock and the capital goods on the day preceding the date of exercising such option⁸.

The input tax shall be determined in the following manner:

- For the inputs held in stock and inputs contained in semi-finished and finished goods held in stock, the input tax credit shall be calculated proportionately on the basis of the corresponding invoices on which credit has been availed by the registered taxable person on such inputs.
- If tax invoices related to the inputs held in stock are not available, input tax should be determined based on the prevailing market price of the goods on the date of exercising the option. The details should be certified by a practicing chartered accountant or cost accountant.
- Input tax credit of capital goods should be determined on pro rata basis, for the remaining useful life of capital goods (*in proportion to the total useful life of such capital goods which should be considered as 5 years*). The total useful life and balance of useful life should be computed in months, wherein, 'any part' of the month of useful life (if any) should be ignored.
- The amount of input tax so payable should be discharged by way of debit in the electronic credit ledger or electronic cash ledger. Further, upon payment, the balance of input tax credit, if any, lying in his electronic credit ledger would lapse.
- The RP should file Form GST ITC- 03 within 90 days from the day on which such person commences to pay tax under composition levy.

8 Section 18 (4) of CGST Act read with Rule 44 of CGST Rules, 2017

7. Supply of capital goods or plant and machinery:

Where any capital goods or plant and machinery on which input tax credit has been claimed, are supplied or disposed-off, the RP shall pay, the higher of⁹:

- (i) the amount attributable to the balance of the useful life of the said capital goods or plant and machinery by reckoning the total useful life of such goods as 5 years from the date of the relevant invoice (*part of the month of balance of useful life, if any would be ignored*).
- (ii) tax on the transaction value of such capital goods or plant and machinery determined under Section 15.

Exception to the valuation: In case of supply of refractory bricks, moulds and dies, jigs and fixtures as scrap, on which input tax credit is claimed, tax may be paid on the transaction value of such goods, without having to compare with the ITC originally claimed on such goods.

This article is primarily to incite the thoughts of a reader, who could very well have different views on this subject. The above content should neither be regarded as comprehensive nor sufficient for making decisions and no one should act on the information or views provided in this publication without appropriate professional advice.

9 Section 18 (6) of CGST Act, 2017 read with Rule 40 (2) of CGST Rules, 2017