



INPUT TAX CREDIT UNDER THE CGST ACT, 2017

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ITC : Fundamental



CHAMBERS OF SUJIT GHOSH

- **Tax Neutrality**
- **Elimination of Cascading**
- **Pure Consumption tax**
- **Business not to bear taxes – taxes to be borne by consumer**
- **We don't export taxes**

ITC : Eligibility and Restrictions



CHAMBERS OF SUJIT GHOSH

- **Eligibility and conditions to avail Input Tax Credit – Section 16**
 - **Every registered person entitled to take credit of Input Tax charged**
 - **On supply of goods or services**
 - **Used or intended to be used**
 - **In the course or furtherance of business**
- **Apportionment of such credit - Section 17(1)& 17(2)**
- **When goods or services used partly for business and partly for other purposes**
 - **Amount of credit restricted to goods and services used partly for business**
- **When goods or services used partly for taxable supplies (including zero rated supplies) and partly for exempt supplies**
 - **Amount of credit restricted Input Tax attributable to said taxable supplies**

ITC : Eligibility and Restrictions



CHAMBERS OF SUJIT GHOSH

- **Section 17 (5) lists out cases where credit is specifically denied in specified situations: eg**
 - **Motor vehicles for transportation of persons < seating capacity of 13 persons including driver ['Specified Motor Vehicles']**
 - **Vessels & aircrafts**
 - **Food and beverages, Outdoor catering, Beauty treatment, health services, cosmetic and plastic surgery, etc**
 - **Works contract services**
 - When supplied for a construction of immovable property
 - Other than plant and machinery
 - Except when it is an input service for further supply of works contract service

ITC : Eligibility and Restrictions



- Plant & Machinery – defined to mean
 - Apparatus, Equipment & Machinery
 - Fixed to earth by foundation or structural support
 - Used for making outward supply of goods/services
 - Includes such foundation and structural support
 - But excludes -
 - ❑ Land, building or any other civil structure
 - ❑ Telecommunication Towers &
 - ❑ Pipelines laid outside the factory premises

ITC : Eligibility and Restrictions



CHAMBERS OF SUJIT GHOSH

- **Section 17 (5)(g)-**

- Goods or services or both used for personal consumption

- **Section 17 (5)(h)-**

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

Section 17(5) (i) –

- Any tax paid in accordance of Section 74 (determination of tax not paid or erroneously refunded), Section 129 (detention, seizure and release of goods and conveyances in transit), Section 130 (confiscation of goods or conveyances and levy of penalty)

Refund of unutilized credit - Framework



- Refund of tax- Section 54
- Section 54(3) deals with refund of unutilised ITC; reads as under:

*Subject to the provisions of sub-section (10), a registered person may claim refund of any **unutilised input tax credit** at the end of any tax period:*

*Provided that no refund of **unutilised input tax credit** shall be allowed in cases other than—*

- (i) zero rated supplies made without payment of tax;*
- (ii) where the credit has accumulated on account of rate of tax on **inputs** being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:*

Provided further that no refund of un utilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:

Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.

Refund of unutilized credit - Framework



- Rule 89 reads as under :

(5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:-

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} – tax payable on such inverted rated supply of goods and services

Explanation:- For the purposes of this sub-rule, the expressions –

*(a) “**Net ITC**” shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under subrules (4A) or (4B) or both; and*

(b) “Adjusted Total turnover” and “relevant period” shall have the same meaning as assigned to them in sub-rule (4)

The High Court Conundrum

VKC Footsteps India Pvt. Ltd. Union of India & Ors. (Gujarat High Court)

- Challenge to vires of Rule 89(5),
- 'Net ITC' specifies credit only on inputs for purposes of refund under Section 54 (3).
- Observation by High Court
- Rules must make way for provisions of the Act - In case of conflict
- Exclusion of credit of input services contrary to provisions of Section 54(3).
- Section 54(3) allows refund of any unutilized input credit.
- Intention of Legislature not to restrict credit of input services.
- Rule 89(5) read down to the extent 'Net ITC' means Input credit only.

TVL Transtonnelstroy Afcons Joint Venture & Ors. v. Union of India & Ors. (Madras High Court)

- Challenge to Rule 89(5) being ultra-vires Section 54 (3) – alternate plea Section 54 (3) proviso u/v 14 & 19.
- Observation by High Court
- Intention of Legislature is to quantify refund of which unutilized credit is permissible. Section 54(3) qualifies which categories of persons would be eligible for refund.
- Importing 'input services' into the fold of input, would go against the grain of definition clause of input
- The Rule is in conformity with the Act.
- There is no Article 14 violation as goods and services are two sperate class & legislature has grater latitude in matters of classification