

Input Tax Credit (ITC)

9.1 ITC is core provision of GST

Input Tax Credit (ITC) is the core concept of GST as GST is destination based tax. ITC avoids cascading effect of taxes and ensures that tax is collected in the State in which goods or services or both are consumed.

“Input tax credit” means credit of ‘input tax’- section 2(63) of CGST Act.

Wide definition of input, input services and capital goods - Definition of input (goods), input services and capital goods is very wide. Any goods (and also capital goods) and any input service used or intended to be used by supplier (of goods or services or both) in the course of or furtherance of business is eligible for input tax credit [except ‘blocked credit’ as specified in section 17(5) of CGST Act].

Burden of proof on taxable person availing input tax credit - 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 - section 155 of CGST Act.

Input Tax Credit is in nature of benefit/concession can be only as per provisions of statute - Input Tax Credit is in nature of benefit extended to dealer under the statutory scheme. The concession can be received by beneficiary only as per the scheme of statute - *ALD Automotive (P) Ltd. v. CTO* (2018) 70 GST 751 = 99 taxmann.com 202 (SC) – same view in *CCGST v. Safari Retreats (P) Ltd.* [2024] 167 taxmann.com 73 = 106 GST 250 = 23 Centax 62 = 90 GSTL 3 (SC).

Accumulated Cenvat credit (now ITC) cannot lapse in absence of statutory provision - *CCE v. Annapurna Industries* (2010) 255 ELT 197 (Guj HC DB).

ITC available is as good as tax paid - Cenvat credit (now ITC) available is as good as tax paid - *CCE v. New Swadeshi Sugar Mills* (2016) 1 SCC 614 = 323 ELT 222 (SC).

9.1-1 Input Tax

Section 2(62) of CGST Act defines ‘input tax’ as follows—

“Input tax” in relation to a registered person, means the Central tax (CGST), State tax (SGST), Integrated tax (IGST) or Union territory tax (UTGST) 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 [reverse charge of CGST]

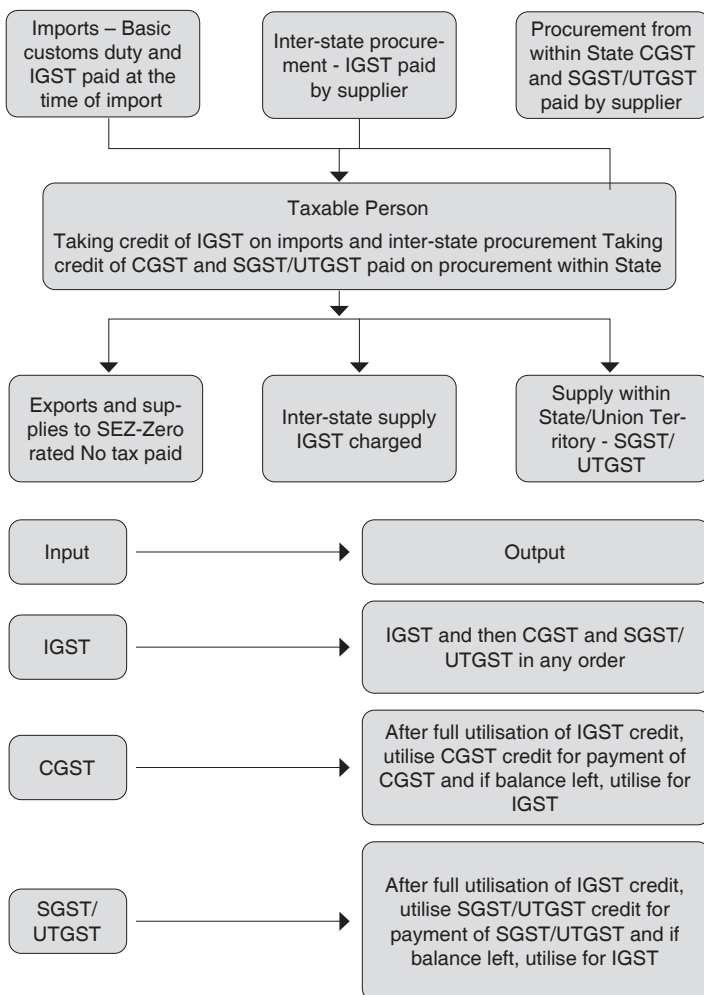
- (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act [reverse charge of IGST]
- (d) the tax payable under the provisions of sub-section (3) and sub-section (4) of section 9 of the respective State Goods and Services Tax Act [reverse charge of SGST] or
- (e) the tax payable under the provisions of sub-section (3) and sub-section (4) of section 7 of the Union Territory Goods and Services Tax Act [reverse charge of UTGST],

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

Input Tax Credit is eligible only when it is credited to electronic credit ledger of taxable person.

Distinction between Input and Raw Material – The term ‘input’ is much broader than the term ‘raw material’. In *State of Jharkhand v. Linde India Ltd.* (2023) 383 ELT

Flow of Input Tax Credit



3 = 1 Centax 41 (SC), relying on *Dy Commissioner, Sale Tax v. Thomas Stephen Co. Ltd.* (1988) 34 ELT 412 = 1988 taxmann.com 815 (SC), it has been held that goods used for ancillary purposes in manufacture of final product cannot be said to be raw material for finished goods. In this case, it was held that Oxygen gas, used for ancillary purposes, cannot be said to be raw material for manufacture of steel.

9.1-2 Whether expenditure is ‘in the course of or furtherance of business’ is for businessman to decide, not revenue

A catena of judgments has held that commercial expediency has to be adjudged from point of view of the assessee and that income tax department cannot enter into thicket of reasonableness of amounts paid by assessee - *Shiv Raj Gupta v. CIT* (2020) 272 Taxman 391 = 117 taxmann.com 671 (SC 3 member bench).

In applying test of commercial expediency for determining whether the expenditure was wholly and exclusively laid out for the purpose of business, reasonableness of expenditure has to be judged from the point of businessman and not of the revenue - *CIT v. Walchand & Co.* (1967) 65 ITR 381 = AIR 1967 SC 1435 - quoted with approval in *J K Woollen Manufacturers v. CIT* (1969) 1 SCR 525 - similar view in *S A Builders v. CIT* (2007) 1 SCC 781.

‘For the purpose of business’ is wider in scope than the expression ‘for the purpose of earning profit’ - *Hero Cycles v. CIT* (2015) 16 SCC 359.

9.2 Manner of taking input tax credit

Every registered taxable person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49 of CGST Act, 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 - section 16(1) of CGST Act.

Electronic Credit Ledger means the electronic credit ledger referred to in section 49(2) of CGST Act - section 2(46) of CGST Act.

“Electronic Credit Ledger” is the input tax credit ledger in electronic form maintained at the common portal for each registered taxable person. This credit can be utilized for GST liability as specified in section 49(4) of CGST Act.

“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(59) of CGST Act.

“Input Service” means any service used or intended to be used by a supplier in the course or furtherance of business - section 2(60) of CGST Act.

“Outward supply” in relation to a person, means supply of goods or services, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business - section 2(83) of CGST Act.

Input tax credit available only if supplier of goods and services has deposited the tax with Government - As per section 16(2)(c) of CGST Act, the recipient of goods and services can avail ITC only if supplier has deposited the tax with Government either in cash or through utilisation of Input Tax Credit. This is subject to section 41 *and section 43A* of CGST Act, which provides that the registered person can take ITC on self-assessment basis, which will be credited on a provisional basis to his electronic credit ledger [The words in italics inserted vide GST (Amendment) Act, 2018, but not notified on 1-2-2019 when other provisions were notified. After introduction of revised procedure of returns under section 43A of CGST Act, this provision will be subject to section 43A of CGST Act also].

No mechanism to know whether supplier of goods or services has paid the tax - At present, there is no mechanism to know whether the supplier of goods or services has paid the tax to Government.

9.2-1 Documentary requirements and conditions for claiming input tax credit

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 - Rule 36 of CGST and SGST Rules, 2017 :

- (a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31 [Invoice of supplier of goods or services or both]
- (b) an invoice issued in accordance with the provisions of section 31(3)(f), subject to payment of tax [tax paid on reverse charge basis]
- (c) a debit note issued by a supplier in accordance with the provisions of section 34.
- (d) a bill of entry or similar document prescribed under Customs Act or Rules for assessment of IGST
- (e) an invoice or credit note issued by an Input Service Distributor in accordance with rule 54(1) of CGST Rules, 2017.

Input Tax Credit available if tax invoice contains minimum specified details, even if it does not contain all required details - Rule 36(2) of CGST Rules provides that Input Tax Credit shall be availed by a registered person only if all the applicable particulars as prescribed in Invoice Rules are contained in the said document – amended w.e.f. 1-10-2022 by removing reference to return in form GSTR-2 as provision of that return never came into effect.

However, it is possible that there may be some omissions.

Hence, it is 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 – *Proviso* to rule 36(2) of CGST Rules inserted w.e.f. 4-9-2018.

Good and practical relaxation indeed.

Practically, this rule has become meaningless as now ITC credit is available only if details of tax invoice of supplier appear in GSTR-2B of the recipient.

9.2-2 Input tax credit cannot be taken after November of subsequent financial year

A taxable 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 *30th day of November* (*) following the end of financial year to which such invoice or debit note pertains or filing of the relevant annual return, whichever is earlier – section 16(4) of CGST Act amended *vide* Finance Act, 2022 w.e.f. 1-10-2022.

* The earlier words were – ‘due date of furnishing of the return under section 39 of CGST Act for the month of September’. These are substituted by words in italics *vide* Finance Act, 2022 w.e.f. 1-10-2022.

Provision of time limit for taking ITC under section 16(4) of CGST Act is valid as ITC is a concession/rebate/benefit and not a constitutional or statutory right - *Thirumalakonda Plywoods v. Assistant Commissioner - State Tax, Circle-I* [2023] 152 taxmann.com 640 = 8 Centax 276 = 76 GSTL 172 = 99 GST 232 (AP HC DB) * *Gobinda Construction v. UOI* (2023) 154 taxmann.com 311 = 99 GST 918 - 77 GSTL 483 = 10 Centax 196 (Pat HC DB) – SLP admitted by SC and notices issued – *Shanti Motors v. UOI* (2024) 104 GST 679 = 163 taxmann.com 369 (SC) * *Gobinda Construction v. Union of India* [2024] 165 taxmann.com 377 (SC).

Provisions of section 16(4) of CGST Act have been held valid in *Jain Brothers v. UOI* (2024) 101 GST 446 = 157 taxmann.com 403 (Chhattisgarh HC DB).

The time limit applies to IGST paid on imported goods through Bill of Entry also, as the term ‘invoice’ applies to any valid document evidencing tax payment – *Adi Enterprises In re* (2025) 175 taxmann.com 652 = 31 Centax 431 (AAR-Mah).

ITC in respect of FYs 2017-18 to 2020-21 can be taken any time upto 30-11-2021 – *Relaxation has been given in respect of period upto FY 2020-21, as follows -Notwithstanding anything contained in section 16(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 upto the thirtieth day of November, 2021* – section 16(5) of CGST Act inserted *vide* Finance (No. 2) Act, 2024 w.r.e.f. 1-7-2017. In any case, refund will not be available if tax was paid or ITC was reversed, as per section 150 of Finance (No. 2) Act, made effective on 27-9-2024.

If demand has been confirmed in original or in appeal but if further appeal has not been filed, application for rectification should be made. Procedure for making rectification application has been specified in Notification No. 22/2024-CT, dated 8-10-2024. Application for rectification shall be made with details as specified in

Annexure A to this notification. Order for rectification shall be made in form GST DRC-08 or GST APL-04 as applicable. Principles of natural justice are required to be followed.

Detailed instructions and provisions in case of various situations have been given in CBIC Circular No. 237/31/2024-GST, dated 15-10-2024, as amended by corrigendum on 25-10-2024. GSTN has made provisions for filing of rectification application – GSTN updated dated 7-1-2025.

ITC during period of cancellation of GST Registration and its revocation - 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 section 16(4) on the date of order of cancellation of registration, the said 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 of CGST Act - (i) filed upto 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 – section 16(6) of CGST Act inserted vide Finance (No. 2) Act, 2024 w.r.e.f. 1-7-2017. In any case, refund will not be available if tax was paid or ITC was reversed, as per section 150 of Finance (No. 2) Act, made effective on 27-9-2024.

If demand has been confirmed in original or in appeal but if further appeal has not been filed, application for rectification should be made. Procedure for making rectification application has been specified in Notification No. 22/2024-CT, dated 8-10-2024. Application for rectification shall be made with details as specified in Annexure A to this notification. Order for rectification shall be made in form GST DRC-08 or GST APL-04 as applicable. Principles of natural justice are required to be followed.

Detailed instructions and provisions in case of various situations have been given in CBIC Circular No. 237/31/2024-GST, dated 15-10-2024, as amended by corrigendum on 25-10-2024.

No refund of tax paid or ITC reversed even if section 16(5) and section 16(6) amended with retrospective effect - 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 of Finance (No. 2) Act, 2024 been in force at all material times - - section 150 of Finance (No. 2) Act, 2024 effective from 27-9-2024.

Note that section 118 of Finance (No. 2) Act, 2024 makes provisions for retrospective insertion of section 16(5) and section 16(6) of CGST Act.

Input tax credit when GST paid under reverse charge beyond November of next financial year – GST is payable under reverse charge in specified cases. In case of supplies where the supplier is unregistered and recipient is registered and the tax has to be paid by the recipient on RCM basis, the recipient is required to issue invoice in terms of the provisions of section 31(3)(f) of CGST Act and pay the tax on the same in cash under RCM. As per section 31(3)(f) of CGST Act, a registered person, who is liable to pay tax under reverse charge shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both.

ITC cannot be availed by a registered person in respect of any supply of goods or services or both received by him, as per the provisions of section 16(2)(a) of CGST Act, unless he is in possession of a tax invoice or debit note or such other tax paying documents as may be prescribed.

Hence, CBI&C circular No. 211/5/2024-GST dated 26-6-2024 has clarified that if invoice is issued by recipient late *i.e.* beyond November of next financial year, he is still eligible to take Input Tax Credit. However, interest is payable for late issue of invoice and penalty provisions under section 122 of CGST Act will apply.

ITC not available if tax invoice issued beyond November of next year - ITC not available if tax invoice issued beyond November of next year – *Vishnu Chemicals Ltd. In re* (2022) 93 GST 545 = 140 taxmann.com 616 (AAR-AP). - - In this case, service was supplied in FY 2018-19 but tax invoice was issued in financial year 2020-21.

Debit note with GST can be issued in any subsequent financial year also – In section 16(4), the earlier words were ‘invoice relating to such debit note’. The words ‘invoice relating to’ have been omitted w.e.f. 1-1-2021. The effect of the amendment is that date of debit note and date of underlying invoice have been de-linked. Thus, debit note with GST in respect of an invoice can be raised even after 30th November following end of financial year to which the invoice pertains.

Financial year in which the debit note issued is relevant for ITC and not date of underlying invoice - CBI&C, *vide* circular No. 160/16/2021-GST dated 20-9-2021 has clarified that w.e.f. 1-1-2021, in case of debit notes, the date of issuance of debit note (not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of the CGST Act. The availment of ITC on debit notes in respect of amended provision shall be applicable from 1-1-2021. Accordingly, for availment of ITC on or after 1-1-2021, in respect of debit notes issued either prior to or after 1-1-2021, the eligibility for availment of ITC will be governed by the amended provision of section 16(4), whereas any ITC availed prior to 1-1-2021, in respect of debit notes, shall be governed under the provisions of section 16(4), as it existed before the said amendment on 1-1-2021.

Input Tax Credit on basis of debit note if with GST - Input Tax Credit can be taken on the basis of debit note, if with GST. There is no time limit for issuing such debit note. Hence, in my view, ITC can be taken on such GST even if issued in subsequent year/s.

However, in *I-tech Plast India P Ltd., In re* (2021) 86 GST 320 = 127 taxmann.com 45 (AAR-Gujarat), even if debit note has been de-linked from the underlying invoice, it is not an independent document. Hence, input tax credit of GST charged in such debit note can be taken only if such debit note is issued within six months from close of financial year, in view of section 16(4) of CGST Act [Really, with such interpretation, the amendment to section 16(4) of CGST Act w.e.f. 1-1-2021 becomes meaningless. A condition not specified in Act cannot be put on ITC].

Statute can prescribe time limit for availing Input Tax Credit - Input Tax Credit is in nature of benefit extended to dealer under the statutory scheme. The concession can be received by beneficiary only as per the scheme of statute. Law can provide for time limit in availing ITC - *ALD Automotive (P) Ltd. v. CTO* (2018) 70 GST 751 = 99 taxmann.com 202 (SC).

9.2-3 No Input tax credit if GST was paid by supplier on advance paid to him

Normally, ITC is taken on basis of 'Electronic Credit Ledger'.

If advance payment was made to supplier of services before supply of services, the supplier is required to issue receipt voucher and pay tax to Government.

However, at that stage the supplier cannot issue tax invoice and hence recipient cannot take ITC. Input tax credit cannot be taken as services are not received and tax invoice is not issued by supplier.

Presently, GST is payable on receipt of advance in case of services and not in case of goods.

Input Tax Credit on basis of receipt voucher? – In *L&T IHI Consortium v. UOI* (2024) 24 Centax 353 = 92 GSTL 403 = 107 GST 261 = 168 taxmann.com 595 (Bom HC DB), it was held that the words 'intended to be used in the course' and 'furtherance of business' would include deferred receipt of goods and services and hence ITC can be taken on basis of receipt voucher [issue debatable. In any case, the details will not appear in GSTR-2B of recipient and hence availing ITC on basis of receipt voucher seems difficult and litigation prone].

9.3 Requirements for availing Input Tax Credit

As per section 16(2) of CGST Act, registered taxable person shall not be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless following conditions are satisfied :

- (a) he is in possession of a tax invoice or debit note issued by a supplier registered under GST Act or such other taxpaying document as may be prescribed,
- (aa) 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 [GSTR-1] and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37 of CGST Act [in GSTR-2B of recipient] [this clause inserted *vide* Section 109 of Finance Act, 2021 w.e.f. 1-1-2022]

- (b) he has received the goods or services or both,
- (ba) *the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted*[The clause has been inserted vide Finance Act, 2022 w.e.f. 1-10-2022]. [section 38 of CGST Act has been inserted vide Finance Act, 2022 w.e.f. 1-10-2022, to make provision for communication of details of inward supplies and details of supplies where ITC cannot be taken by recipient]
- (c) Subject to section 41 (*) of CGST Act, the tax charged in respect of such supply has been actually paid to the credit of the appropriate Government, either in cash or through utilization of input tax credit admissible in respect of the said supply [(a) section 41 of CGST Act allows taking input tax credit in electronic credit ledger on self assessment basis. (b) * - The words were 'Section 43A' of CGST Act which allowed ITC on basis of invoices uploaded by the supplier. These words were inserted *vide* CGST (Amendment) Act, 2018, but never notified and never made effective and now omitted *vide* Finance Act, 2022 w.e.f. 1-10-2022] and
- (d) he has furnished the return under section 39 [every taxable person is required to file electronic return every month as per section 39 of CGST Act].

Inputs or capital goods received in instalments - Where the goods against an invoice are received in lots or instalments, the registered taxable person shall be entitled to the credit upon receipt of the last lot or instalment - first *proviso* to section 16(2) of CGST Act.

ITC eligible only if supplier uploads details of his outward supply in his GSTR-1 and these appear in GSTR-2B of the recipient - ITC will be eligible only if supplier uploads details of his outward supply (invoices, debit note, credit note and revised invoice) in his GSTR-1. Recipient will get these details in his GSTR-2B. As per section 16(2)(aa) of CGST Act inserted w.e.f. 1-1-2022, registered person shall not be entitled to avail input tax credit, unless the details of the invoice or debit note has been furnished by the supplier in the statement of outward supplies [GSTR-1] and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37 of CGST Act [i.e. in GSTR-2B of recipient].

No ITC if supplier does not upload his invoice in his GSTR-1 or GSTR-1A and/or invoice details do not appear in GSTR-2B of recipient - 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 section 37(1) of CGST Act unless - (a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in form GSTR-1 *as amended in FORM GSTR-1A if any*, or using the invoice furnishing facility; and (b) the details of input tax credit in respect of such invoices or debit notes have been communicated to the registered person in form GSTR-2B under rule 60(7) of CGST Rules – rule 36(4) of CGST Rules. Words in italics inserted w.e.f. 10-7-2024.

Provision for financial years 2017-18 and 2018-19 – During financial years 2017-18 and 2018-19, the system of GSTR-2A was not established properly. Provision in respect of limit of ITC on basis of GSTR-2A was introduced only on 9-10-2019, but system was not fully established for some time. Hence, for the financial years 2017-18 and 2018-19, insistence of matching of GSTR-2A and Input Tax Credit availed by recipient will not be insisted. Procedure for allowing ITC in years 2017-18 and 2018-19 has been specified in CBI&C, vide Circular No. 183/15/2022-GST dated 27-12-2022. The issue has been discussed in a later paragraph.

Provision as applicable during 9-10-2019 to 1-1-2022 - The ITC availed by recipient on basis of tax invoices or debit notes (which have been received by recipient) not *furnished* by supplier under section 37(1) [i.e. in his GSTR-1] shall not exceed 5% of eligible credit available in respect of invoices and debit notes which have been *furnished* by supplier in his GSTR-1 return under section 37(1) of CGST Rules – rule 36(4) of CGST Rules, inserted w.e.f. 9-10-2019 and amended w.e.f. 1-1-2021 [The limit was 20% during 9-10-2019 to 1-1-2020 and 10% during 1-1-2000 to 31-12-2020. It was 5% w.e.f. 1-1-2021 and now Nil]. The word ‘uploaded’ have been changed to ‘furnished’ w.e.f. 1-1-2021.

Input tax credit available only if supplier of goods and services has deposited the tax with Government – As per section 16(2)(c) of CGST Act, the recipient of goods and services can avail ITC only if supplier has deposited the tax with Government either in cash or through utilisation of Input Tax Credit. This is subject to section 41 of CGST Act, which provides that the registered person can take ITC on self-assessment basis, which will be credited to his electronic credit ledger. If the supplier has not paid the tax, the recipient is required to reverse ITC and pay interest [The words ‘section 43A’ were inserted vide GST (Amendment) Act, 2018, but never notified. Now, section 43A of CGST Act has been omitted vide Finance Act, 2022 w.e.f. 1-10-2022]. In *CTT, Delhi v. Shanti Kiran India* (2025) 35 Centax 22 (SC), it has been held that a *bona fide* purchaser is eligible for ITC even if registration of supplier was later cancelled later as he did not deposit the tax [surely there will be lot of litigation on basis of this judgment].

In *McLeod Russel India v. UOI* (2025) 172 taxmann.com 663 = 109 GST 180 (Gau HC DB), it was held that this provision is inequitable. It was held that department can proceed against defaulting selling dealer and purchasing dealer cannot be denied ITC – relying on *National Plasto Moulding v. State of Assam* (2024) 165 taxmann.com 255 = 105 GST 693 = 89 GSTL 82 (Gau HC).

However, the provision has been held valid in *Aastha Enterprises v. State of Bihar* (2023) 77 GSTL 372 = 9 Centax 270 (Pat HC DB), *Muhammed Abdul Saini v. State Tax Officer* [2025] 170 taxmann.com 252 (Kerala HC DB), *Baby Marine v. UOI* (2025) 111 GST 504 = 177 taxmann.com 135 (Mad HC DB).

In any case, it is unfair to penalise *bona fide* buyer for no fault of his.

The recipient cannot immediately know whether supplier had deposited tax with Government and he will know only after department informs the buyer and ask him to pay GST.

Provision applies to previous seller also? - In *Vimal Alloys P Ltd. In re* (2023) 73 GSTL 418 = 4 Centax 199 (AAR-Punjab), it was held that this provision applies to preceding seller (*i.e.* seller's seller) also, *i.e.* ITC is not available if seller's seller has not paid GST. This is really unlimited liability and really seller's seller is not the supplier of person who is availing ITC.

Delivery to transporter or any person on direction of recipient by supplier is sufficient to take input tax credit - For the purpose of section 16(2)(b) of CGST Act, it shall be deemed that the taxable 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 – *Explanation* (i) to section 16(2)(b) of CGST Act. [The *Explanation* has been re-numbered as *Explanation* (i) *vide* CGST (Amendment) Act, 2018, w.e.f. 1-2-2019]. Thus, in case 'bill to ship to' transactions, the intermediary can take ITC when documents of title (*i.e.* LR or Consignment Note) is endorsed in his favour.

The goods can be 'received' by recipient anywhere, need not be in factory or godown or showroom - There is no reference in section 16(2)(b) of CGST Act of any particular place where goods are required to be "received" by the registered person. This is in contrast to the erstwhile Central Excise regime, where the provisions contemplated physical receipt of the goods at the factory of the manufacturer for taking CENVAT credit on the said goods. In most of the State VAT Acts, the provisions related to credit of the input tax did not have any explicit mention of physical receipt of goods at any particular place and input tax credit was allowed on purchase of goods. Thus, so long as goods are 'received' at any place (*i.e.* property in goods is transferred) (like ex-works contracts), ITC is eligible – CBIC Circular No. 241/35/2024-GST, dated 31-12-2024.

Delivery of goods to transporter by suppliers delivery to the recipient - Section 39(1) of Sale of Goods Act states that delivery of goods to carrier is *prima facie* delivery to buyer.

As per section 23(2) of Sale of Goods Act, if, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee, for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract. It does not make difference whether the bailee or buyer was named by buyer or not.

In *Manwar Tent Factory v. UOI* AIR 1990 SC 1735, it was held that when contract stipulates for delivery of goods F.O.R. basis at place of despatch, risk passes from consignor to consignee as soon as goods are loaded at the place of despatch.

Thus, transporter is agent of buyer for collection of goods. Hence, in my view, delivery to transporter is delivery to agent and ITC can be taken even if goods do not physically reach the place of taxable person.

Of course the supplier has to upload the invoice in his GSTR-1 and the recipient has to accept it and include it in his GSTR-2.