

# ITC Provisions under GST

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# Enabling Provisions

## **S 16. Eligibility and conditions for taking input tax credit. —**

(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 - Section 2 (62)

*(62) “input tax” in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—*

- (a) the integrated goods and services tax charged on import of goods;*
- (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;*
- (c) the tax payable under the provisions of sub-section (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;*
- (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; 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,*  
*but does not include the tax paid under the composition levy;*

# Issue

- A director of a company registered in Maharashtra travels to Delhi for business purposes and stays in a hotel there. He provides the Maharashtra GSTIN of the company at the hotel and the hotel issues the invoice showing recipient as company in Maharashtra and POS as Delhi.
- Can the company claim the credit of this invoice?

# Conditions

- (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 – Rule 36
  - (b) he has received the goods or services or both (Explanation)
  - (c) subject to the provisions of section 41 *or section 43A*, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply
  - (d) he has furnished the return under section 39

# Prescribed documents for claiming credit ...

- Tax invoice issued by supplier u/s 31
- Self generating invoice issued by recipient u/s 31 (3) (f)
- DN issued by a supplier in accordance with section 34
- Bill of entry or similar document prescribed under Customs Act, 1962 or made thereunder
- An ISD invoice or Credit note or any document issued in accordance with provisions of Rule 54 (1)

# Received the goods or services

*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*

# Additional Conditions

- Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:
- Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed: (Rule 37)
- Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon:



# Non-payment of consideration

- If only tax component is paid to the vendor and the principal value of the supply is not paid, will the provision apply?
- No bar on re-credit on subsequent payment – rule 37 (4)
- Interpreting “fails to pay”
- Retention money – whether can be treated as non-payment?
- Will the condition apply in case of import of goods?
- Interest from the date of availing credit till the date of addition of amount to output liability
  - Relevant Date – books vs. credit ledger?
  - Interest applicable if credit not utilized?

# Additional Conditions

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

S 16. (4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

# Restrictions

S 17. (1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

S. 17. (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.

# Credit Restrictions – Issues

- Yardstick for determining business vs. non-business
  - Allowance of expenses under Income Tax?
  - Direct vs. Indirect co-relation
    - Sponsorship of social events, like marathons, literature festivals, etc.
    - CSR expenses – deemed to be non-business as per CSR Rules
- Exempt Supplies
  - Value of land & building – stamp duty value
  - Value of securities – 1% of sale value
  - Supplies attracting lower rate subject to condition of no credit – for ex., restaurants – treated as exempt supplies

# Exempt Supplies

S 2. (47) “exempt supply” means supply of any goods or services or both which attracts *nil rate of tax* or which may be *wholly exempt* from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes *non-taxable supply*

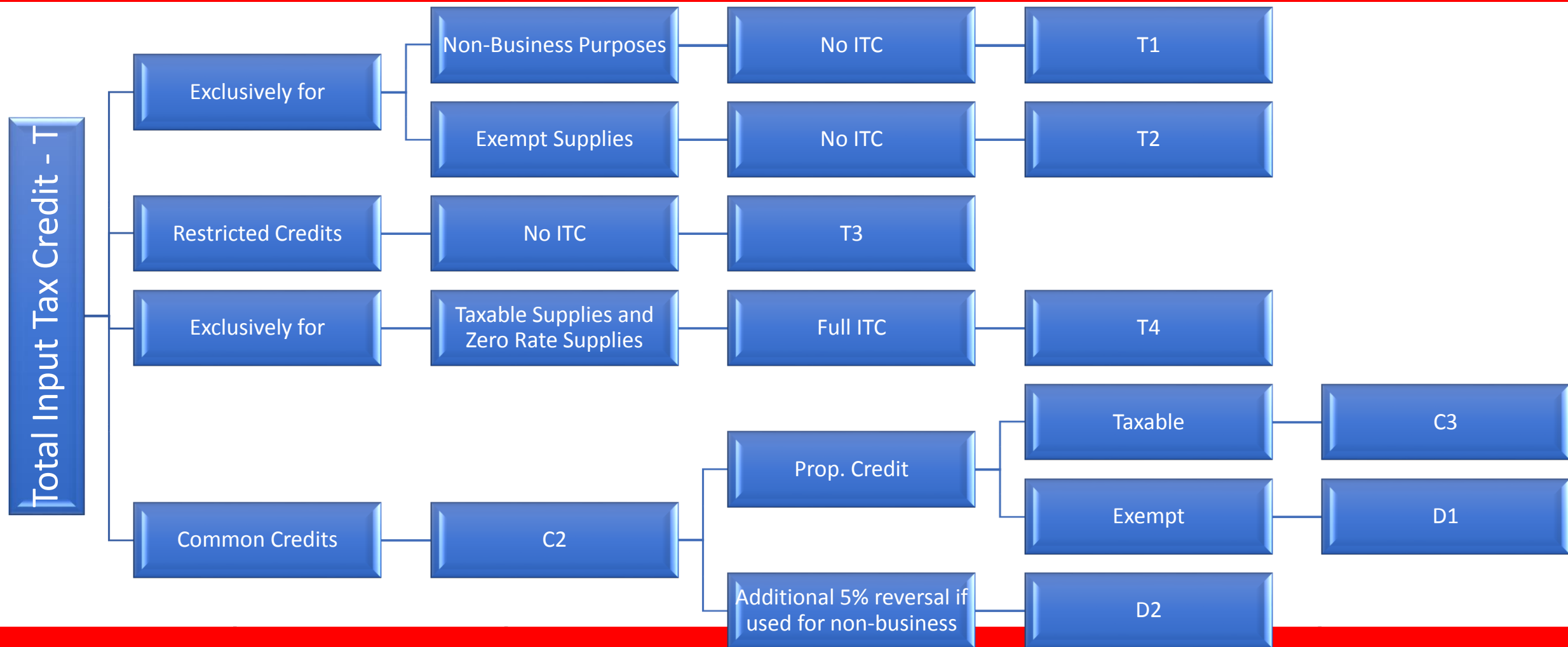
S 2. (78) “non-taxable supply” means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act

# Value of Exempt Supply

S 17. (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.

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

# Method of apportionment



# Blocked credits – Pre-amendment

17. (5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available **in respect of** the following, namely:—

*“in respect of the goods” in r. 5(1)(i) means only on the goods, and cannot take in the raw material out of which the goods were made - State of Madras vs. Swastik Tobacco Factory (1966) 3 SCR 79 (SC) wherein it was held that the expression*



# Motor cars

- (a) motor vehicles and other conveyances except when they are used—
  - (i) for making the following taxable supplies, namely:—
    - (A) further supply of such vehicles or conveyances ; or
    - (B) transportation of passengers; or
    - (C) imparting training on driving, flying, navigating such vehicles or conveyances;
  - (ii) for transportation of goods;

# Inherent personal consumption ??

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

- (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;
- (ii) membership of a club, health and fitness centre;

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

- (A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or
  - (B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward supply of same category of goods or services or both or as part of a taxable composite or mixed supply; and
- (iv) travel benefits extended to employees on vacation such as leave or home travel concession;

# Issue

A film producer, incurs following cost in the course of production of the film:

1. Staff food and beverages – paid to outdoor caterer
2. Staff food and beverages – purchased raw materials locally and prepares the food at the set
3. Arranges for vanity van for the star cast of the film
4. Arranges for beautician and dresser for the crew acting in the film
5. Arranges for travel to and fro facilities to the crew by tying up with Ola for corporate billing
6. Hires cabs to use in the shooting of the film

# Capex vs. revenue

(c) Works contract services when supplied for construction of an immovable property (other than plant & machinery) except where it is an input service for further supply of works contract service

(d) Goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business

Explanation – For the purpose of clauses (c) & (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs to the extent of capitalization to the said immovable property

# Plant & Machinery vs. Immovable Property

Explanation. - For the purpose of this Chapter and Chapter VI, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural support but excludes:

- (i) Land, building or any other civil structure
- (ii) Telecommunication towers
- (iii) Pipelines laid outside the factory premises

# Other blocked credits

- (e) Goods or services or both on which tax has been paid u/s 10
- (f) Goods or services or both received by a non-resident taxable person except on goods imported by him
- (g) Goods or services or both used for personal consumption
  - Exclusion clause under service tax which specifically provided that services used for personal consumption of employees were excluded
- (h) Goods lost, stolen, destroyed, written off or disposed of by way of gift or free supplies;
  - In case of manufacturer, separate treatment for inputs and Finished Goods?
  - Normal vs. abnormal loss principle to be applied for transit loss?
  - Gift vs. Gratitude
  - Free supplies vs. sales promotion
- (i) any tax paid in accordance with the provisions of section 74, 129 and 130

# Special provisions for Banking Cos

(4) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:

Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:

Provided further that the restriction of fifty per cent. shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number:

Thank you !!