

Controversial Issues in ITC, AAR and Recent Update in GST

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Controversial Issues in ITC

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RELEVANT SECTIONS AND RULES FOR INPUT TAX CREDIT

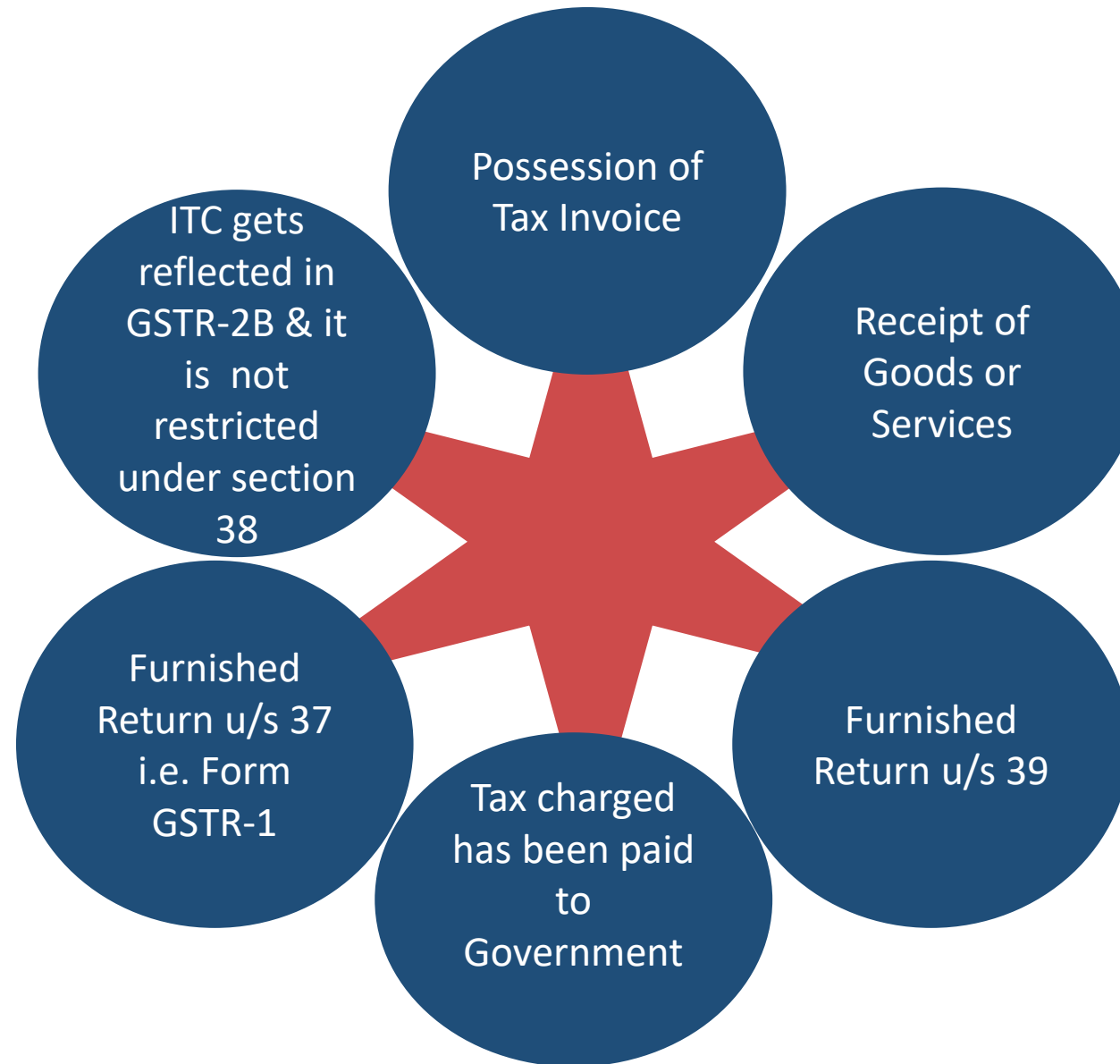
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| Rule | Particulars |
|------|---------------------------------------------------------------------------------------------------------------|
| 36 | Documentary requirements and conditions for claiming input tax credit |
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| 44 | Manner of reversal of credit under special circumstances |
| 45 | Conditions and restrictions in respect of inputs and capital goods sent to the job worker |

Eligibility of Input Tax Credit

- Sub Section : 1 - Who is eligible?
- Sub Section : 2 - Conditions
- Sub Section : 3 - Benefit of Depreciation on the Tax Component
- Sub Section : 4 - Time limit for availing ITC

- ❖ “Every registered person, 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”.
- Can a taxable person who is not registered under the GST law be allowed to avail input tax credit?
- ❖ “Goods or Services procured are to be used or intended to be used in the course or furtherance of Business”
- A Company has Branch-A which is a registered taxable person in Gujarat conducts conference in a hotel in Lonavla (Maharashtra) where CGST-SGST is charged by the hotel. This Company also has Branch-M which is a registered taxable person in Mumbai? Whether Branch M can avail ITC ?
- Air Conditioner installed in the cabin of the Managing Director, Maharashtra has no correlation with the car manufactured at the Company Plant in Gujarat but the credit of tax relating to such air conditioner would be available since the air conditioner has been installed for the purpose of business.



Depreciation claimed on Tax
Component of the Cost of
Capital Goods under IT Act

ITC not available

Example:
Cost of Asset : Rs 100
IGST : Rs 18
Total Cost : Rs 118

If depreciation charged
on Rs 100
ITC AVAILABLE

If depreciation charged
on Rs 118
ITC NOT AVAILABLE

Section 16(4) of the CGST Act, 2017 according to which “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 invoice relating to such debit note pertains **or furnishing of the relevant annual return, whichever is earlier.”**

** As per press release dated 04th October 2022, amendment of 30th November shall be **applicable from FY 2021-22 onwards**. It was also clarified that **no extension of due date** of filing monthly return/ statement for the month of October.*

- After insertion of Rule 36(4) of CGST Rules, 2017; the provisional ITC amount was earlier restricted to the extent of 20% of the total eligible ITC amount reflected in the Form GSTR-2A/2B for such period. The said limit was subsequently reduced to 10%, 5% & 0% respectively, of total eligible ITC amount populated in Form GSTR-2A. The changes in said limit made for different period is tabulated as under:

| 0% ITC restriction from 01.07.2017 to 09.10.2019 | | | |
|---------------------------------------------------|-----------------------------------|----------------------------|---------------------|
| ITC as per Books | Eligible ITC populated in GSTR-2B | ITC restricted up to @ 0% | Total ITC available |
| 50,000/- | 35,000/- | - | 50,000/- |
| 1,00,000/- | 70,000/- | - | 1,00,000/- |
| 20% ITC restriction from 10.10.2019 to 31.12.2019 | | | |
| ITC as per Books | Eligible ITC populated in GSTR-2B | ITC restricted up to @ 20% | Total ITC available |
| 50,000/- | 35,000/- | 7,000/- | 42,000/- |
| 1,00,000/- | 70,000/- | 14,000/- | 84,000/- |
| 10% ITC restriction from 01.01.2020 to 31.12.2020 | | | |
| ITC as per Books | Eligible ITC populated in GSTR-2B | ITC restricted up to @ 10% | Total ITC available |
| 50,000/- | 35,000/- | 3,500/- | 38,500/- |
| 1,00,000/- | 70,000/- | 7,000/- | 77,000/- |
| 5% ITC restriction from 01.01.2021 Onwards | | | |
| ITC as per Books | Eligible ITC populated in GSTR-2B | ITC restricted up to @ 5% | Total ITC available |
| 50,000/- | 35,000/- | 1,750/- | 36,750/- |
| 1,00,000/- | 70,000/- | 3,500/- | 73,500/- |



- *Before insertion of said Rule, taxpayer was claiming ITC on a self-declaration basis in Form GSTR-3B. The amount of ITC which is not reflected in Form GSTR-2A/2B was treated as provisional credit.*
- *However, after insertion of Rule 36(4) of CGST Rules, 2017; the provisional ITC amount is restricted only to the extent of the total eligible ITC amount reflected in the Form GSTR-2B for such period.*

GSTR-2B RECONCILIATION PROCESS

➤ GSTR-1/IFF Return/ GSTR-3B Due date:

Before starting ITC verification process on GST portal, please note that due date of filing Form GSTR-1/IFF/Form GSTR-3B is as below:

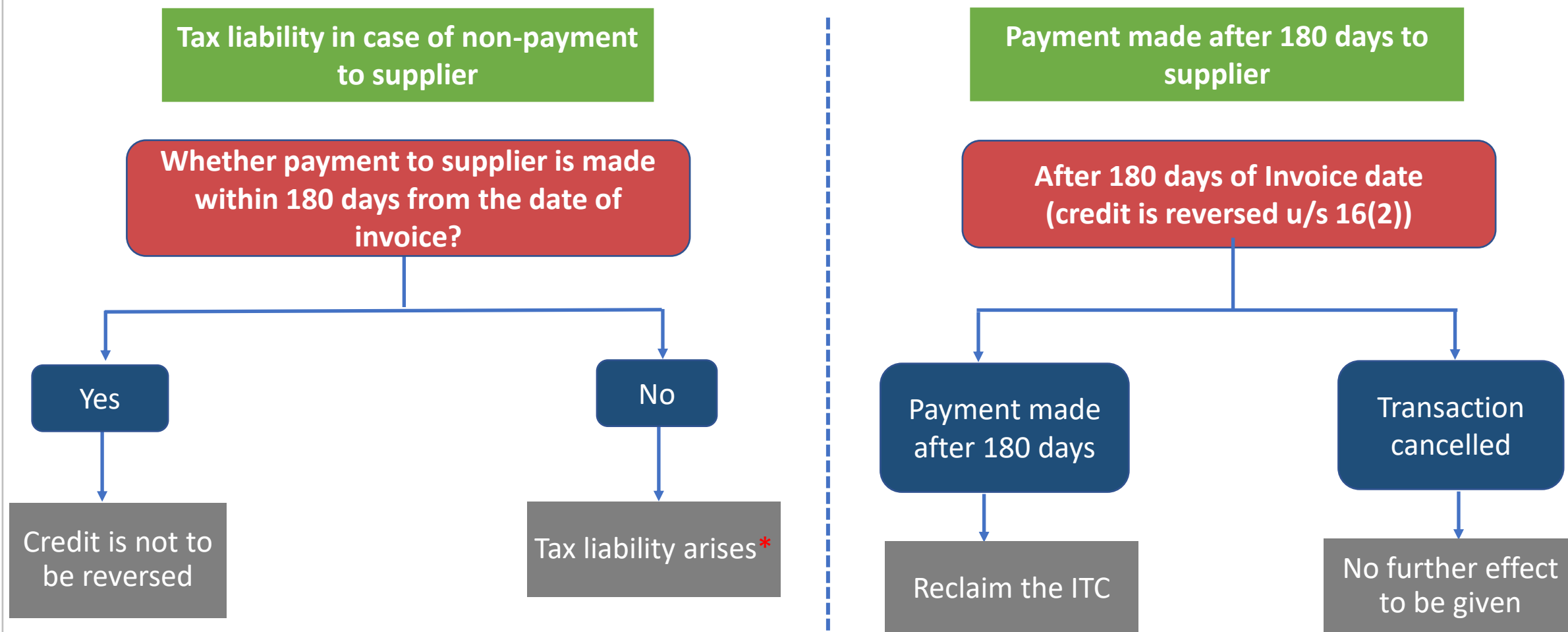
| Outward Return Type | Outward Return Due Date |
|-------------------------------|------------------------------------------|
| Monthly GSTR-1 | 11 th of the succeeding month |
| IFF Return & Quarterly GSTR-1 | 13 th of the succeeding month |

- Form GSTR 2B is an auto-drafted document that will act as an Input Tax Credit (ITC) statement for taxpayers. It is static in nature. The statement is finalized every month and details cannot be changed afterward based on the actions of suppliers or recipients. While filing returns in Form GSTR 3B, the auto drafted GSTR-2B statement can be used as a basis for calculating ITC claims.
- Form GSTR-2B shall be reflected on **14th of the succeeding month** and it shall remain static.

Difference between Form GSTR-2A and Form GSTR-2B is explained as under:

| Parameters for Comparison | GSTR-2A | GSTR-2B |
|------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ➤ Nature of the statement | Dynamic, as it changes from day to day, as and when a supplier uploads the documents. | GSTR-2B is static in nature, i.e., it contains all purchases uploaded & filed between 14 th of the month till 13 th of the following month irrespective of month of return and date of invoice. |
| Use for the purpose of availing ITC | GSTR-2A can be utilised for the purpose of claiming ITC subject to certain adjustment. | Data auto-populated in GSTR-2B is to be used for claiming ITC in GSTR-3B. ITC appeared in GSTR-2B auto-populates in GSTR-3B while filing. |
| When will ITC entries get reflected from various sources? | GSTR-1: Saved/filed/submitted, GSTR-6: Submitted GSTR-7 and GSTR-8: Filed then ITC entries get reflected. | After filing of GSTR-1, GSTR-5, or GSTR-6, ITC entries get reflected. |
| Inclusion of SEZ unit's data | The data for SEZ units will not be included in this return. | SEZ unit data will be included in GSTR-2B. |
| Bifurcation | GSTR-2A does not bifurcate the ITC between eligible and Ineligible. | GSTR-2B bifurcates the ITC into eligible and ineligible ITC. |

Rule 37 : Non – payment to supplier within 180 days



** The 2nd proviso to section 16(2) is proposed to be amended that instead of adding to output tax liability, the taxpayer will have to **reverse ITC** so availed by him along with interest u/s 50 of CGST Act (Amended through Finance Bill, 2023).*

To provide for reversal of input tax credit, in terms of 2nd proviso to Sec: 16 of CGST Act, w.e.f. 01.10.2022 only **proportionate to the amount not paid to the supplier vis a vis the value of the supply**, including tax payable is required to be reversed. Means ITC reversal is to be done only on a proportionate basis. i.e., in proportion to the amount unpaid to the supplier, instead of previous provision which requires reversal of entire ITC in such a case

| Particulars | Invoice value | Taxable | GST |
|---------------------------------------------|---------------|----------|--------|
| Purchase of Goods on 01.05.2022 | 1,18,000 | 1,00,000 | 18,000 |
| ITC availed in GSTR-3B (May'22) | - | - | 18,000 |
| Payment made up to 27.10.2022 | 70,000 | - | - |
| ITC reversal in GSTR-3B (Oct'22) [Old] | - | - | 18,000 |
| ITC reversal in GSTR-3B (Oct'22) [New] | - | - | 7322 |
| $[(1,18,000 - 70,000) / 1,18,000] * 18,000$ | | | |

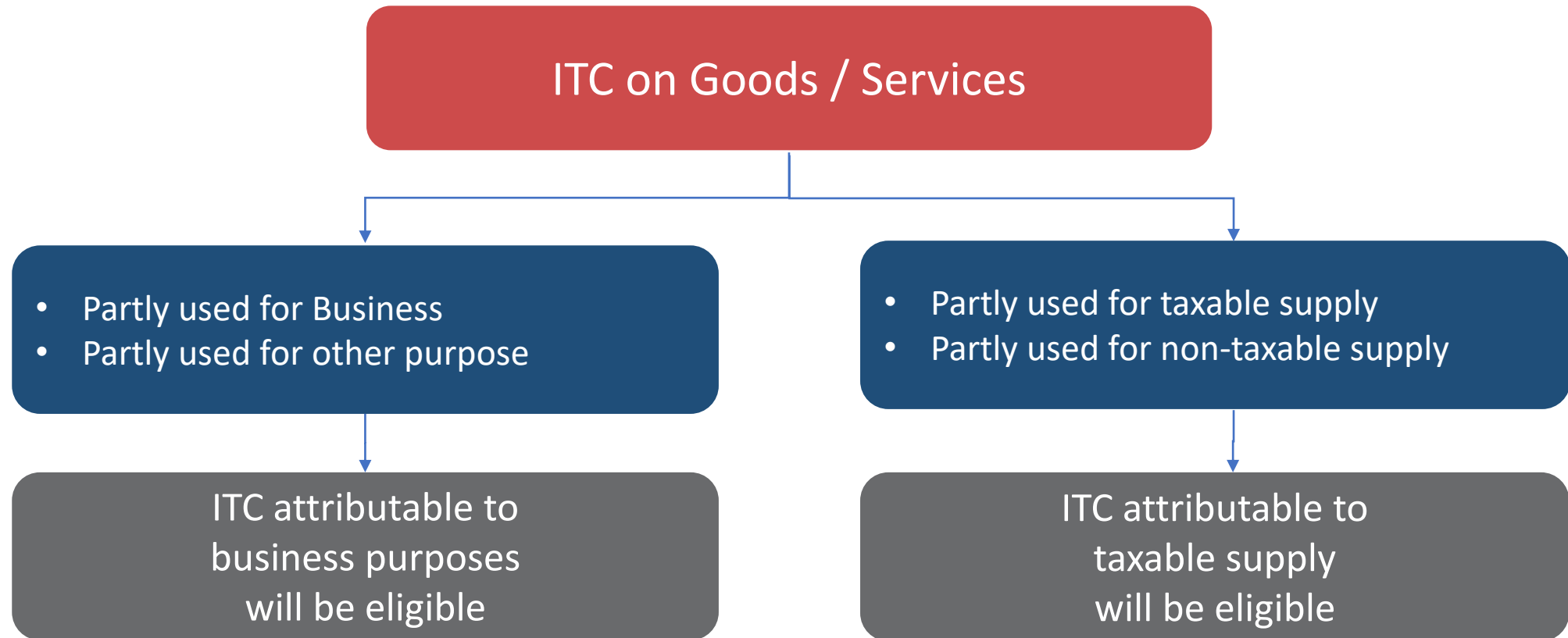
- Rule 37A inserted in Rules w.e.f. 26.12.2022 which requires reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment thereof for compliance with clause (c) of Section 16(2).
- Where the supplier has declared an invoice in GSTR-1 but has not filed GSTR 3B for that period till 30th September of the following FY in which the recipient has availed the ITC, the recipient would be required to reverse the ITC availed in GSTR 3B, filed on or before 30th November of following the end of the year in which ITC is claimed.
- Non-reversal of ITC by a recipient as above within stipulated time period would require the recipient to repay the ITC availed along with the interest payable under Section 50.
- The recipient can re-avail the ITC in form GSTR-3B once the supplier has furnished the return in GSTR 3B for the said tax period.

Section 16(2) – Timeline of ITC Availability



| Period | 01-Jul-2017 to 08-Oct-2019 | 09-Oct-2019 to Dec-2020 | 01-Jan-2021 to 01-Jan-2022 | 01-Jan-2022 onwards |
|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|-------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| Legal provision | Section 16(2)(c) | Rule 36(4) | GSTR-2B Introduced | Section 16(2)(aa) |
| Interpretation | The tax charged on supply should be actually paid to Government to avail ITC. GSTR 2A was prevalent however, no mandate to avail ITC post reconciliation | Provisional credit to the extent 20%/10% and 5% allowed in excess of credit reflected in GSTR 2A | GSTR 2B referred instead of GSTR 2A | Rule 36(4) was amended, and Section 16(2)(aa) was introduced so as to allow ITC only to the extent of ITC reflected in GSTR-2B |

Apportionment of credit and Blocked Credits



EXEMPT SUPPLY shall include:

- (i) Supplies on which recipient is liable to pay tax under RCM
- (ii) Sale of Land and transactions in Securities
- (iii) Sale of Building where entire consideration is received after BU or after its first occupation.

Shall Exclude:

Interest or discount except in case of banking company or financial institution including NBFC

1. Purchase of Motor Vehicles & Services of General Insurance, Servicing and Repairs & Maintenance of Motor Vehicles – Sec 17(5)(a)/(ab)

| Sr. No. | Motor Vehicles for | Seating capacity (incl. driver) | Used for | Credit Eligibility – Motor Vehicles | Credit Eligibility – Related Services |
|---------|------------------------------------------------------------------------------|----------------------------------|---------------------------------|-------------------------------------|---------------------------------------|
| 1 | Transportation of Person | More than 13 persons | Any purpose | Yes | Yes |
| 2 | Transportation of Person | Less than or Equal to 13 persons | Further supply of motor vehicle | Yes | Yes |
| | | | Transportation of passenger | Yes | Yes |
| | | | Training on driving | Yes | Yes |
| | | | Purpose other than above | No | No* |
| 3 | Transportation of Goods | NA | NA | Yes | Yes |
| 4 | Other special purposes, such as Dumpers, Work trucks, Fork-lift trucks, etc. | NA | NA | Yes | Yes |

*But credit shall be available if received by:

- Manufacturer of such motor vehicles
- Supplier of General insurance services of such motor vehicles

2. Purchase of Vessels and Aircrafts & Services of General Insurance, Servicing and Repairs & Maintenance –Sec 17(5)(aa)/(ab)

| Sr. No. | Vessels & Aircrafts used for | Credit Eligibility – Vessel/Aircraft | Credit Eligibility – Related services |
|---------|--------------------------------------|--------------------------------------|---------------------------------------|
| 1 | Further supply of vessel or aircraft | Yes | Yes |
| 2 | Transportation of passengers | Yes | Yes |
| 3 | Training on navigating/flying | Yes | Yes |
| 4 | Transportation of Goods | Yes | Yes |
| 5 | Purposes other than above | No | No* |

*But credit shall be available if received by:

- i. Manufacturer of such vessels or aircrafts
- ii. Supplier of General insurance services of such vessels or aircrafts

3. Food and Beverages, Outdoor catering, Beauty treatment, Health services, Cosmetic and Plastic surgery, Life Insurance and Health Insurance –Sec 17(5)(b)

| Sr. No. | Purpose | Condition | Credit Eligibility |
|---------|---------------------------------|---------------------------------------------------------|--------------------|
| 1 | Similar line of Business | Not Applicable | Yes |
| 2 | Not in Similar line of Business | Obligatory for Employer to provide to its Employees | Yes |
| | | Not Obligatory for Employer to provide to its Employees | No |

4. Membership of a club, health & fitness center & Travel benefits extended to employees – Sec 17(5)(b)

| Sr. No. | Type of Inward supply | | Condition | Credit Eligibility |
|---------|-----------------------------------------------|------------------------------------------------------|---------------------------------------------------------|--------------------|
| 1 | Membership of club, health and fitness centre | | Obligatory for Employer to provide to its Employees | Yes |
| | | | Not Obligatory for Employer to provide to its Employees | No |
| 2 | Travel Benefits extended to employees | On vacation, such as leave or home travel concession | Obligatory for Employer to provide to its Employees | Yes |
| | | | Not Obligatory for Employer to provide to its Employees | No |
| | | For Business trip | Not Applicable | Yes |

5. Leasing, Renting or Hiring of Motor Vehicles, Vessels or Aircrafts –Sec 17(5)(b)

| Sr. No. | Type of Conveyance | Used for | Credit Eligibility |
|---------|---------------------|-------------------------------------------------------------|--------------------|
| 1 | Motor Vehicles | Further supply (rental, lease, etc.) of motor vehicle | Yes |
| | | Transportation of passenger | |
| | | Training on driving | |
| | | Purpose other than above | No* |
| 2 | Vessels / Aircrafts | Further supply (rental, lease, etc.) of vessels or aircraft | Yes |
| | | Transportation of passengers | |
| | | Training on navigating/flying | |
| | | Transportation of goods | |
| | | Purposes other than above | No* |

*But credit shall be available if it is obligatory for the employer to provide the same to its employees.

Name of Applicant: M/s United Mining Corporation

Issue Addressed – Availability of ITC of GST charged by contractor for hiring of buses/cars for transportation of employees.

In the above advance ruling Haryana AAR holds that applicant is not eligible to take ITC on GST charged by the Contractor for hiring of buses/cars for transportation of employees in view of restriction contained u/s 17(5)(b)(iii) of CGST Act, 2017; AAR rejects applicant's contention that buses which can carry large number of passengers would not qualify under "rent-a-cab" observing that any commercial vehicle hired for passenger transportation is covered by such phrase; States that words 'rent' and 'hire' being synonyms, services of applicant qualify as 'rent-a-cab' services. It also observes that nothing has been brought on record to suggest that the service is not a service which is obligatory for an employer to provide to its employees under any law for the time being in force, or that such inward supply of services is used by the applicant for making an outward taxable supply of the same category of services or as a part of taxable composite or mixed supply.

5. Works contract services, Goods or services received for Construction of Immovable Property – Sec 17(5)(c)/(d)

| Sr. No. | Type of Inward supply | Type of Property | Use of the Property for | Type of Expenditure | Credit Eligibility |
|---------|-------------------------|--------------------------------|------------------------------------------------------|---------------------|--------------------|
| 1 | Works Contract Services | Immovable Property | Own use | Capital | No |
| | | | | Revenue | Yes |
| | | | Further supply of Works Contract service | Capital | Yes |
| | | | | Revenue | Yes |
| | | Plant & Machinery [#] | Further supply of other service (e.g. Renting, etc.) | Capital | No |
| | | | | Revenue | Yes |
| 2 | Goods or services | Immovable Property | Own use | Capital | No |
| | | | | Revenue | Yes |
| | | | Further supply in course or furtherance of business | Capital | No |
| | | | | Revenue | Yes |
| | | Plant & Machinery [#] | - | - | Yes |
| | | | | - | Yes |

[#]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 supports but excludes—

- land, building or any other civil structures;
- telecommunication towers; and
- pipelines laid outside the factory premises.

6. Miscellaneous Clause – Sec 17(5)(e) to (i)

| Sr. No. | Type of Inward supply | Situation | | Credit Eligibility |
|---------|---------------------------|-------------------------------------------------------------------------------------------|--------------------------------------------|--------------------|
| 1 | Goods or services or both | Outward tax paid u/s 10, i.e. Composition Scheme | | No |
| | | Received by Non-Resident Taxable Person | Goods Imported | Yes |
| | | | Goods Procured from within India | No |
| | | | Services received from India/outside India | No |
| | | Used for Personal consumption | | No |
| 2 | Goods | lost/ stolen/ destroyed/ written off disposed by way of gift/ distributed as free samples | | No |
| 3 | - | Any tax paid u/s 74, 129, 130. | | No |

Scope of Exempt Supply for Reversal under Section 17(2) of CGST Act, 2017:

- Section 17(2) of CGST Act, 2017 read with Rule 42 of CGST Rules, 2017 requires proportionate reversal of ITC where there is taxable supplies along with exempt supplies.
- As Schedule III provides a list of “No Supplies”, these ITC reversal provisions do not apply to such list.
- However, **w.e.f. notified date**, it is proposed to add transaction specified in Para 8(a) of Schedule III i.e., “Supply of warehoused goods to any person before clearance for home consumption”. Hence, ITC will be required to be reversed in case of supply of customs bonded warehoused goods sold to any person before clearance for home consumption considering the same as exempt supply.
- It must be noted that even after such amendment, Para 8(b) of Schedule III i.e., ‘high sea sale’ and Para 7 of Schedule III i.e., ‘out and out supply’ is not be treated as an Exempt supply for purpose of ITC Reversal.

Restriction of ITC in relation to obligation under CSR:

Service Tax Regime:

Essel Propack Ltd. vs. Commissioner of CGST, Bhiwandi:

- CSR being a statutory obligation are connected with the business and it has got a direct bearing on the manufacturing activity of the company.
- Since CSR was a mandatory requirement for various companies, the production and sustainability of the company itself would be at stake". Hence, CENVAT credit was allowed.

GST Regime (Before Budget Proposal):

Advance Ruling on ITC availability on CSR Expenditure in GST so far:

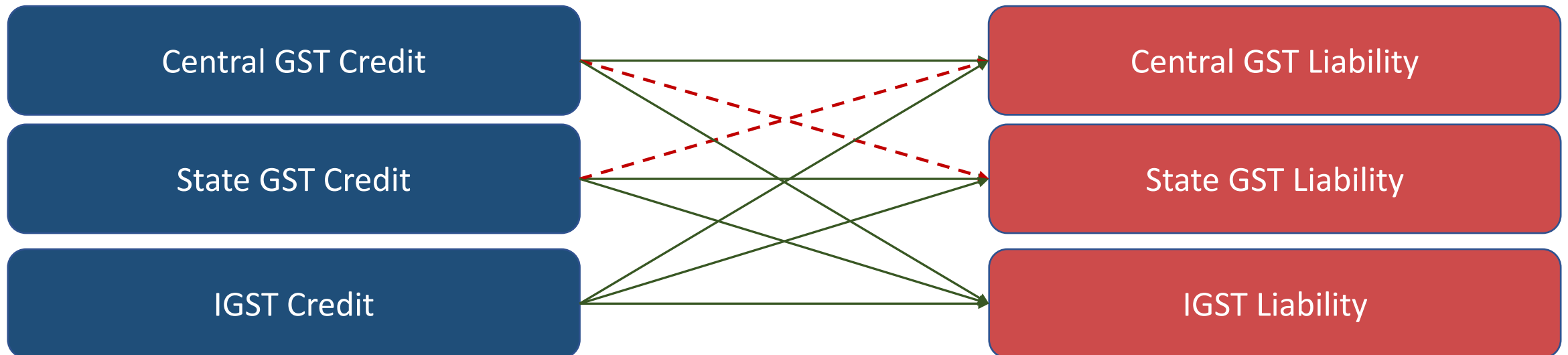
| State Name | Applicant Name | Whether ITC Available? |
|---------------|-----------------------------------------|------------------------|
| Uttar Pradesh | Dwarikesh Sugar Industries Ltd. | Yes |
| Kerala | Polycab Wires Pvt. Ltd. | No |
| Telangana | Bambino Pasta Food Industries Pvt. Ltd. | Yes |

Amendment through Finance Act,2023:

- ITC on goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under Corporate Social Responsibility (CSR) referred to in Section 135 of Companies Act,2013 will be **blocked under Section 17(5)(fa)** of CGST Act,2017 **with effect from notified date**.
- As this amendment is prospective, thus, ITC already availed before such amendment gets notified shall be considered as eligible ITC.
- **If ITC is already reversed by taxpayer either voluntarily or under the instruction of the department, then such ITC can be re-availed in accordance with Section 16 of CGST Act,2017.**

Utilization of Input Tax Credits

| To be Setoff in the same order | Credit of CGST | Credit of SGST | Credit of IGST |
|--------------------------------|----------------|----------------|----------------|
| 1 | CGST Liability | SGST Liability | IGST Liability |
| 2 | IGST Liability | IGST Liability | CGST Liability |
| 3 | X | X | SGST Liability |



➤ New Rule 88A: Order of utilization of Input Tax Credit

| Particulars | IGST ITC | CGST ITC | SGST ITC |
|----------------|----------------------------------------------------|----------------------------|----------------------------|
| IGST Liability | 1 st Preference | 2 nd Preference | 3 rd Preference |
| CGST Liability | Option available to use remaining ITC in any order | 1 st Preference | |
| SGST Liability | | | 1 st Preference |

THE ONLY CONDITION IS THAT IGST MUST BE UTILIZED FULLY.

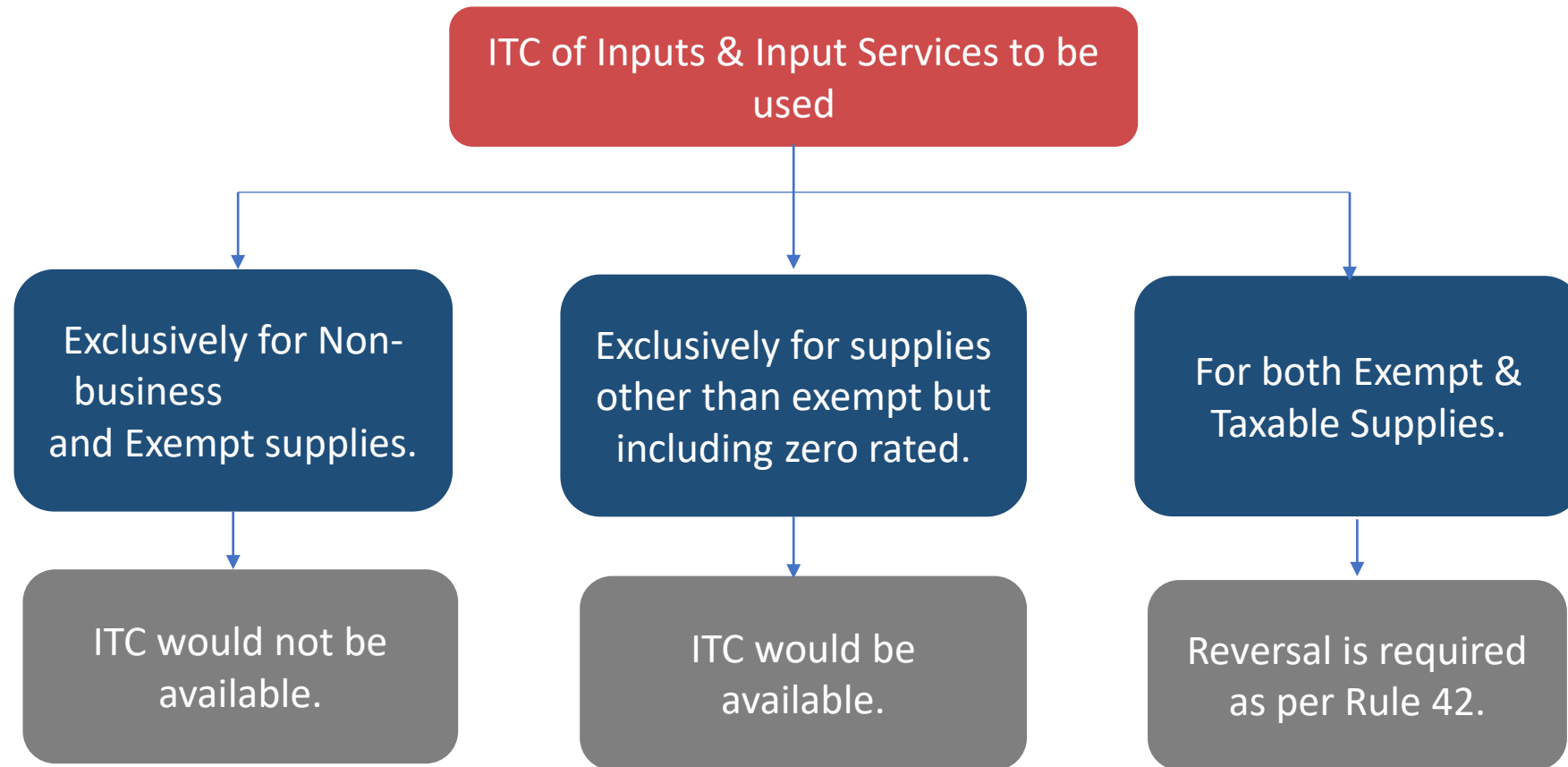
| Credit Liability | Gujarat SGST | Gujarat CGST | Gujarat IGST | Maharashtra SGST | Maharashtra CGST | Maharashtra IGST |
|-----------------------------------|-------------------------|-------------------------|-------------------------|-----------------------------|-----------------------------|-----------------------------|
| Gujarat SGST | ✓ | X | ✓ | X | X | X |
| Gujarat CGST | X | ✓ | ✓ | X | ✓ | X |
| Gujarat IGST | ✓ | ✓ | ✓ | X | X | ✓ |
| Maharashtra SGST | X | X | X | ✓ | X | ✓ |
| Maharashtra CGST | X | ✓ | X | X | ✓ | ✓ |
| Maharashtra IGST | X | X | ✓ | ✓ | ✓ | ✓ |

- ▶ As proposed in Finance Act, 2022, balance amount available in Electronic Cash Ledger (ECL) under CGST and IGST shall be allowed to be transferred via Form GST PMT-09 between distinct persons (entities having same PAN but registered in different States or same state).

Proviso to Rule 36(2)

- Government has inserted the new proviso; according to it following particulars must be there to avail ITC by recipient:
 - *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*
 - *GSTIN of the recipient*
 - *place of supply in case of inter-State supply*
- Meaning thereby even if all the particulars specified in Rule 46 of CGST Rules are not there on the face of Tax invoice; still ITC can be claimed if aforementioned 6 particulars are specified on the Tax invoice. This is a welcome change and will be a major relief to recipient while claiming ITC.

ITC Reversal as per Rule 42 and 43



EXEMPT SUPPLY shall include:

- (i) Supplies attracts Nil rate of tax.
- (ii) Non Taxable Supplies.

Taxable supply shall include zero rated supply but excludes exempted supply

Formula for reversal of ITC - $D_1 = (E / F) \times C_2$

D_1 = Amount of common credit attributable towards exempt supply

E = Aggregate value of exempt supplies, made, during the tax period.

F = Total Turnover of the registered person during the tax period.

$C_2 = C_1 - T_4$

$C_1 = T - (T_1 + T_2 + T_3)$

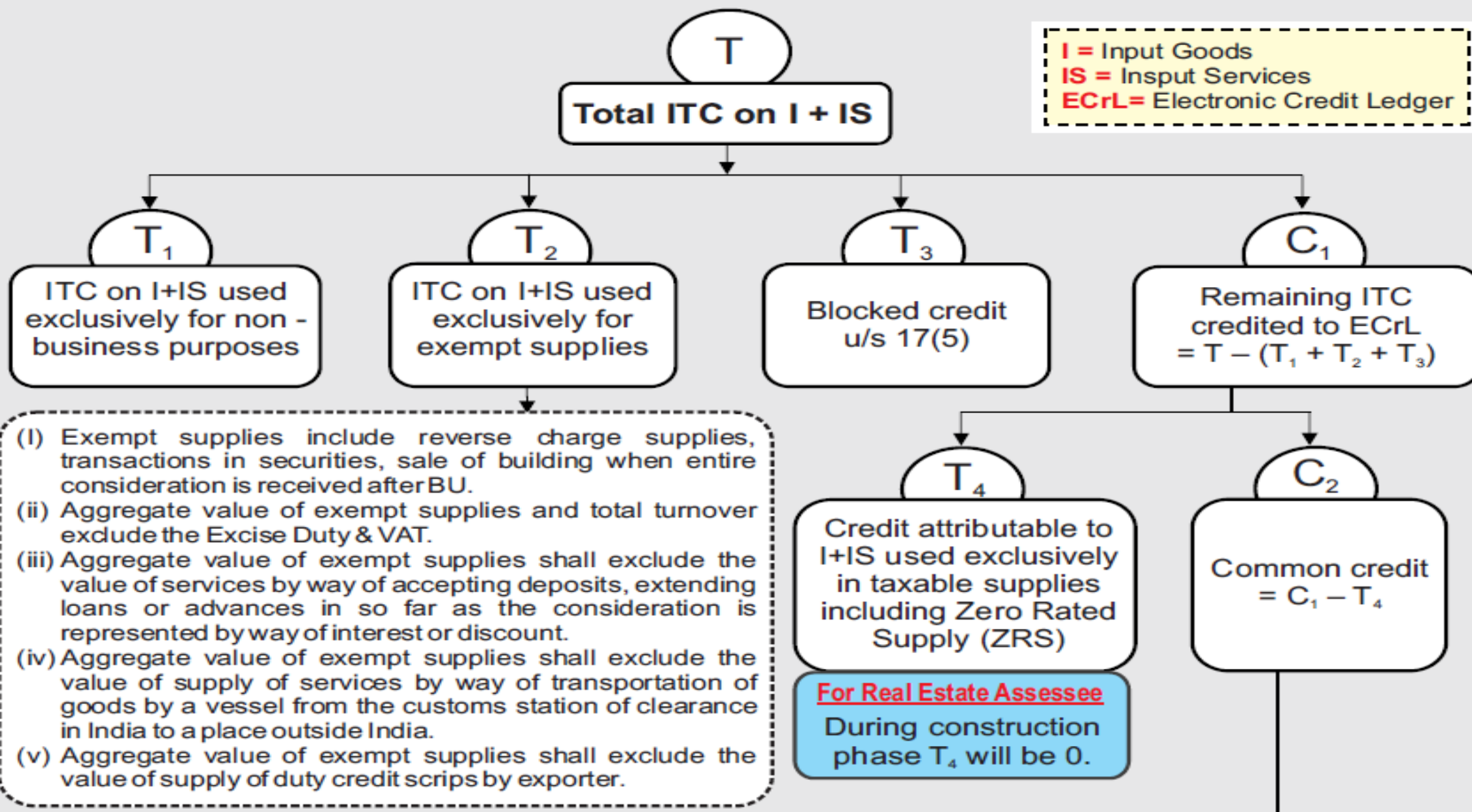
T_4 = ITC to be used exclusively for Effecting supplies other than Exempted + Zero Rated Supplies

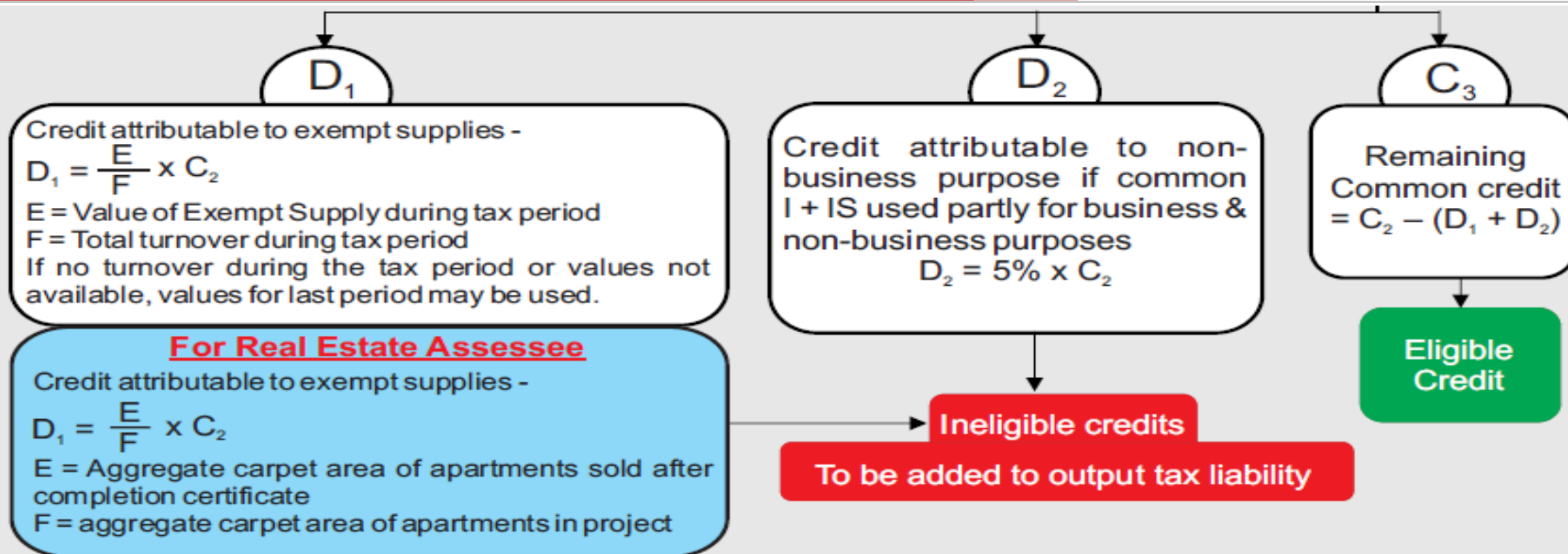
T = Total Input tax involved on Inputs & Inputs Services in a Tax Period

T_1 = ITC intended to be used exclusively for the purpose other than business.

T_2 = ITC intended to be used exclusively for effecting exempt supplies.

T_3 = Input tax of Inputs & Inputs Services on which credit is not available u/s 17(5)





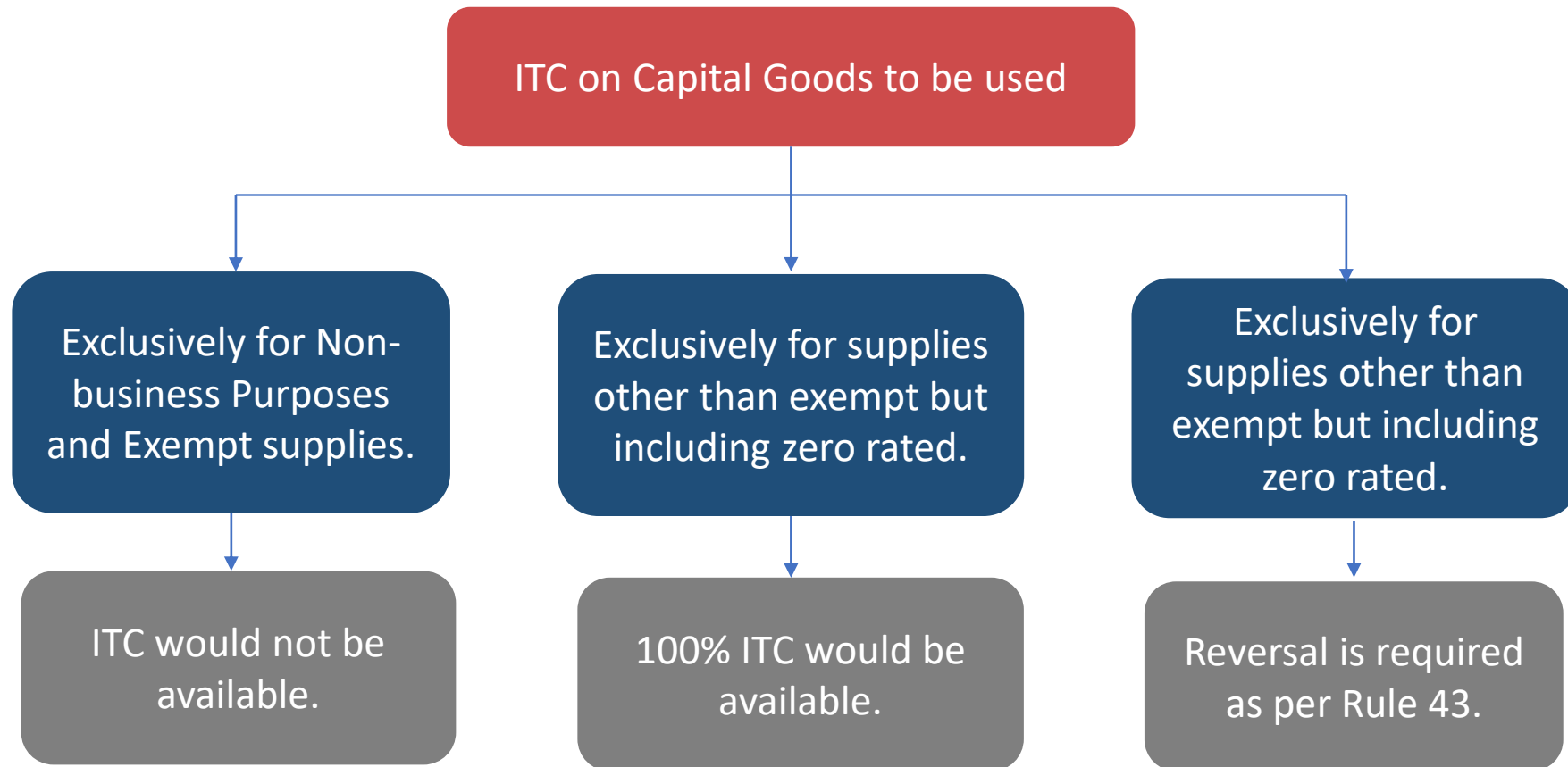
Note:

- "For Real Estate Assessee" part is applicable only to builders who commences New project after 01.04.2019 **AND** in case of Ongoing Projects who has opted for Old Rates in which completion Certificate is received on or after 01-04-2019.
- C₃ will be computed separately for ITC of CGST, SGST/ UTGST and IGST.
- D₁ & D₂ will be computed for the whole financial year, by taking exempted turnover and aggregate turnover for the whole financial year. If this amount is more than the amount already added to output tax liability every month, the differential amount will be added to the output tax liability in any of the month till September of succeeding year along with interest @ 18% from 1st April of succeeding year till the date of payment.
- If this amount is less than the amount added to output tax liability every month, the additional amount paid has to be claimed back as credit in GSTR-3B or any month till September of the succeeding year.

Reversal of ITC under Rule 42



| Particulars | | IGST | CGST | SGST | CESS |
|-----------------------------------------------------------------------------------------------------------|-----------|------------|------------|------------|------------|
| Total Input Tax on Inputs and Input Services | T | 220,500 | 57,00,000 | 57,00,000 | 1,90,000 |
| Input Tax Credits which are exclusively used for purpose other than business | T1 | 32,000 | 20,000 | 20,000 | - |
| Input Tax Credits which are exclusively used for effecting exempt Supplies | T2 | 11,000 | 29,000 | 29,000 | |
| Credit not available as per section 17(5) | T3 | 500 | 1,000 | 1,000 | |
| | | | | | |
| Net Credit Available | C1 | 1,77,000 | 56,50,000 | 5,650,000 | 1,90,000 |
| | | | | | |
| Input Tax credits which are exclusively used for effecting Taxable supplies including Zero Rated Supplies | T4 | - | 5,350,000 | 5,350,000 | 190,000 |
| | | | | | |
| COMMON CREDIT $C2 = \{ C1 - T4 \}$ | C2 | 1,77,000 | 3,00,000 | 3,00,000 | - |
| | | | | | |
| ITC related to Exempt supplies i.e., Ineligible ITC $D1 = (E \div F) \times C2$ | D1 | 11,328 | 19,200 | 19,200 | - |
| | | | | | |
| E = Aggregate value of Exempt Supplies during the tax period | E | 1,600,000 | 1,600,000 | 1,600,000 | 1,600,000 |
| F= Total Turnover in the state of the Registered person during the tax period | F | 25,000,000 | 25,000,000 | 25,000,000 | 25,000,000 |
| | | | | | |
| CREDIT AVAILABLE $C3 = C2 - D1$ | C3 | 1,65,672 | 2,80,800 | 2,80,800 | - |



EXEMPT SUPPLY shall include:

- (i) Supplies on which recipient is liable to pay tax under RCM
- (ii) Sale of Land and Securities
- (iii) Sale of Building where entire consideration is received after BU or after its first occupation.

Taxable supply shall include zero rated supply but excludes exempted supply

Asset initially used for Taxable supply and then used for both taxable as well as exempt supply

Formula for reversal of ITC - $T_e = (E / F) \times T_r$

T_e = Amount of common credit attributable towards exempt supply

E = Aggregate value of exempt supplies, made, during the tax period.

F = Total Turnover of the registered person during the tax period.

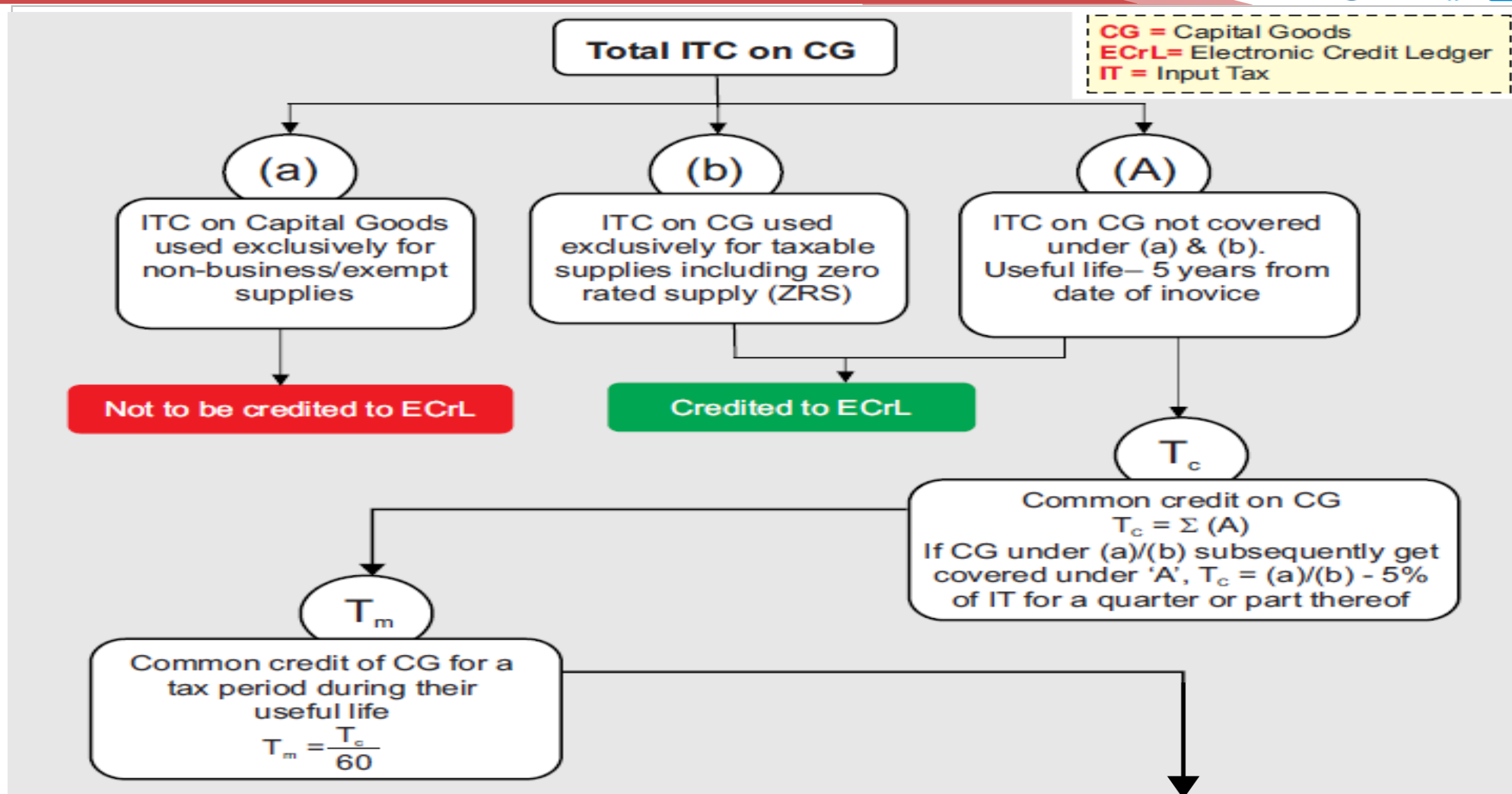
T_r = Total of **T_m**

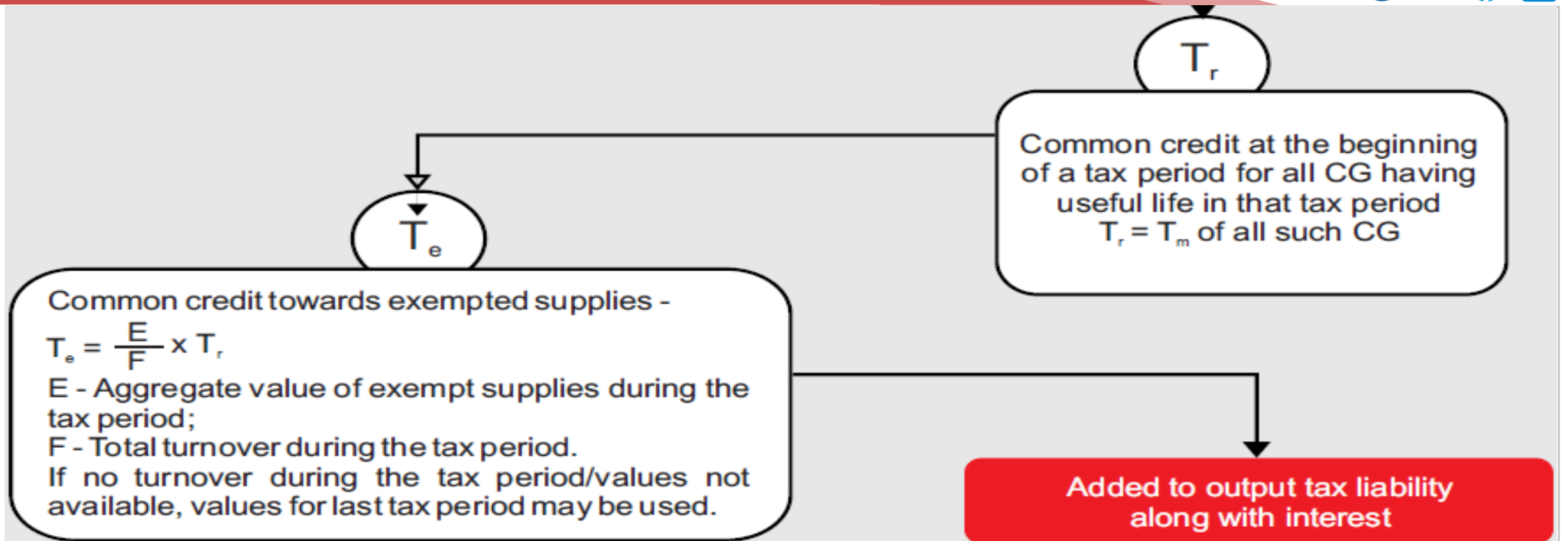
T_m = **T_c** / 60

T_c = Common Credit + **B**

B = Amount of ITC derived after reducing ITC at the rate of 5% for every quarter or part thereof

🍲 Food for thought : Unlike Rule 42 which mandates determination of the actual amount of reversal on the completion of the financial year, Rule 43 does not prescribe any recomputation at the end of the financial year.





Note:

- T_e will be computed separately for ITC of CGST, SGST/UTGST and IGST.
- Exempt supplies include reverse charge supplies, transactions in securities, sale of land and sale of building when entire consideration is received after completion certificate.
- Aggregate value of exempt supplies and total turnover excludes the Excise duty & VAT.
- Aggregate value of exempt supplies shall exclude the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount.
- Aggregate value of exempt supplies shall exclude the value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India.
- Aggregate value of exempt supplies shall exclude the value of supply of duty credit scrips by exporter.

Situation 1 – Taxable Supply to Mix Supply (Taxable + Exempt)



| Particulars | Amount |
|--------------------------------------------------------------------------------------------------------|---------------|
| Asset Purchased on 01/04/2018 used for taxable supplies only | |
| ITC Amount : Asset 1 (A) | 60,00,000/- |
| | |
| From 01/05/2020 used for taxable supply as well as exempt supply | |
| Reduction in ITC for Asset 1 by 5% per Quarter or part thereof = (Rs. 60 Lacs * 5%* 9 Quarters) (B) | 27,00,000/- |
| | |
| (A) - (B) = (C) | 33,00,000/- |
| | |
| Tm=Tr (Rs. 33 Lacs / 60) | 55,000/- |
| | |
| E = Exempt Supplies | 1,00,00,000/- |
| | |
| F = Total Turnover | 6,00,00,000/- |
| | |
| Te = ITC to be reversed in May 2020 | 9,167/- |
| [Tr * (E/F)] | |

Situation 2 – Taxable Supply to Exempt Supply



| Particulars | Amount |
|--------------------------------------------------------------------------------------------------------|---------------|
| Asset Purchased on 01/04/2018 used for taxable supplies only | |
| ITC Amount : Asset 1 (A) | 60,00,000/- |
| | |
| From 01/05/2020 used for exempt supply | |
| Reduction in ITC for Asset 1 by 5% per Quarter or part thereof = (Rs. 60 Lacs * 5%* 9 Quarters) (B) | 27,00,000/- |
| | |
| (A) - (B) | 33,00,000/- |
| | |
| Tm=Tr (33 Lacs/60) | 55,000/- |
| | |
| E = Exempt Supplies | 6,00,00,000/- |
| | |
| F = Total Turnover | 6,00,00,000/- |
| | |
| Te = ITC to be reversed in May 2020 | 55,000/- |
| [Tr * (E/F)] | |

Clarification to deal with Difference in ITC between GSTR-3B VS GSTR-2A for FY 2017-18 & 2018-19

- Recently, there has been large amount of notice issued by GST department on account of difference of ITC availed in GSTR-3B and ITC populated in GSTR-2A / 2B. Such notices are also issued for FY 2017-18 and FY 2018-19 where mechanism of GSTR-2A was not available, and Rule 36 (4) was not applicable in said years. Now, to ensure uniformity in treatment of difference of ITC during FY 2017-18 and 2018-19, CBIC has issued this circular providing the manner in which such differences of ITC must dealt with for FY 2017-18 and FY 2018-19.
- As per the circular, following 4 situations have been identified for reasons of differences of ITC in GSTR-3B and GSTR-2A:

| Scenarios related to returns filed by Supplier | Clarification |
|------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|
| Filed GSTR-3B but failed to file GSTR-1 for the said tax period | Difference in ITC claimed by the registered person between GSTR-3B vs. GSTR-2A may be handled by following the procedure given below: |
| Filed GSTR-1 and GSTR-3B for a tax period but failed to report a particular invoice in GSTR-1 | |
| Filed GSTR-1 and GSTR-3B, invoice was also correctly issued but B2B transactions was wrongly declared as B2C in GSTR-1 | |
| Filed GSTR-1 and GSTR-3B, invoice was also correctly issued but was reported under wrong GSTIN in GSTR-1 | |

STEP # 1

(a) The proper officer shall:

- Obtain all the invoices on which ITC has been availed by the registered person in his GSTR-3B, but which are not reflecting in his GSTR-2A;

STEP # 2

(a) Ascertain fulfillment of the conditions for availment of ITC as stated in Sec: 16 viz.

1. Taxpayer is in possession of the Invoice or debit note issued by the supplier;
2. Taxpayer has received the goods or services or both;
3. Taxpayer has made payment of the amount towards the value of supply and tax to supplier;

(a) Also ascertain the eligibility of ITC in accordance with Section 17 and 18 of the CGST Act, 2017

STEP # 3

Now for ascertaining the fulfillment of the condition about whether GST on mismatched invoices has been paid by the supplier, the following process is required to be followed by the proper officer:

| Particulars | Certificate to be produced |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Where the Difference of ITC i.e., the mismatched amount between GSTR-3B & GSTR-2A in respect of a supplier during the financial year is <u>upto Rs. 5,00,000/-</u> | The Taxpayer will be required to produce a Certificate from such supplier that said supplies have actually been made by him to the said registered person and Tax on said supplies has been paid in GSTR-3B. |
| Where the Difference of ITC i.e., the mismatched amount between GSTR-3B & GSTR-2A in respect of a supplier during the financial year is <u>exceeds Rs. 5,00,000/-</u> | The Taxpayer will be required to produce Certificate from CA or CMA for such supplier, certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and Tax on such supplies has been paid in GSTR-3B. |

It must be noted that certificates in above manner will have to be obtained for each supplier separately where there is mismatch in ITC claimed by the taxpayer.

This process given in this circular will **not be applicable** in following cases:

- a) This circular will not apply in case recipient claimed ITC of **FY 2017-18 in GSTR-3B of Oct'18 to Mar'19**; & supplier has not reported subject invoices in its GSTR-1 till the due date of furnishing GSTR-1 for the month of Mar'19.

- a) This circular will apply only to the ongoing proceedings in scrutiny/audit/investigation, etc. for FY 2017-18 and 2018-19 and **not to the completed proceedings**. However, this instruction will apply in those cases where any adjudication or appeal proceeding are still pending.

Controversial issues in Input Tax Credit

- **Is E-invoice a necessary document to avail ITC as per Rule 36 of CGST Rules 2017**

As per Rule 48(5) of CGST Rules 2017 , Every invoice issued by a person to whom sub-rule (4) applies in any manner other than manner specified in the said sub-rule shall not be treated as an invoice.

Vide Sub-rule (4), government has notified the class of registered person having aggregate turnover more than 10 crores in any previous financial year.

Issue: In a case, if registered supplier has not issued E-invoice, but the disclosed liability in GSTR-01 & paid the relevant liability in GSTR-3B, then recipient is eligible to avail ITC or not ?

- **ITC credit “charged” and not payable :**

Chapter V – Section 16 Eligibility and condition for taking input tax credit.

Section 16(1) of CGST Act 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.

- **Availment of ITC for tax paid under RCM:**

Sometimes it is seen that payment of tax pertaining RCM liability for FY 2017-18 or 2018-19 is paid during FY 2021-22 or FY 2022-23. Whether taxpayer can avail ITC for such payment of tax made under RCM?

- **Availability of ITC in case of supplies received to fulfil warranty**

A customer has approached car dealer for change in some of the parts of car within warranty period of car. Now, whether ITC of such parts is available to the car dealer when the same is supplied by him to the customer free of cost under warranty.

- **Applicability of Section 16:**

Whether section 16 is applicable in case ITC availed for the transactions like import of goods, import of service or tax paid under Reverse Charge Mechanism?

- **Applicability of time Limit to Reclaim ITC:**

ITC for the goods lost by the taxpayer has been reversed in terms some of section 17(5)(h). Now, after some time goods are found by the taxpayer. Whether time limit for re-claiming of ITC as mentioned under rule 37 is applicable for such re-availment?

- **How to determine ITC to be availed by recipient in case of short payment by Supplier:**

| Particular | Scenario 1 | Scenario 2 | Scenario 3 |
|------------------------------------------------|------------|------------|------------|
| Tax Liability disclosed in Supplier's GSTR-01 | 1,00,000 | 1,00,000 | 1,00,000 |
| Tax Liability discharged in Supplier's GSTR-3B | 60,000 | 60,000 | 60,000 |
| Supply made to Recipient | 20,000 | 60,000 | 80,000 |

- Whether Entire ITC will be available to the taxpayer?
 - Or the ITC will be proportionately available in ratio of payment made by the supplier?
- **ITC Reversal in case of goods are “damaged” and not “destroyed”:**

As per Section 17(5)(h) of CGST Act, ITC of the goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample is disallowed. But what about the ITC of goods which are “damaged” due to flood, earthquake etc? Whether it is entirely available to the taxpayer?

- **Utilisation of ITC for payment output liability which has no nexus:**

Whether ITC validly taken on any 'input' can be utilized for payment of 'output tax' i.e., GST on any outward supply can be discharged through ITC which has no nexus with the inputs on which ITC was taken? **[Aristo Bullion Pvt. Ltd (GST AAAR Gujarat)]**

- **ITC Reversal in case of Retention Money**

As a part of agreement and business terms, sometimes some portion of payment is retained by the customer in order to assure quality and adherence to standards. Whether ITC on such amount needs to be reversed if such period of retention falls beyond 180 days from the date of invoice in terms of Rule 37 of CGST Rules, 2017?

In construction sector, generally service recipient retains certain agreed percentage of payment of service provider. Invoice has issued for full amount. However, payment is made after retaining agreed payment. The said retained money may be released after 1 or 2 years. In such case, service recipient has availed full credit based on invoice but has not paid full amount (due to retention money) to service provider. Whether ITC needs to be reversed to the extent of retention money as payment has not made within 180 days as per agreed term?

- **ITC of Free sales/ Sample goods**

Suppose Mr X has supplied goods free of cost or made sample distribution of goods amounting to Rs 100/-. What will be the GST liability in the following scenarios:

Scenario 1 : What will be the treatment of ITC reversal when goods are distributed as free sales or sample ?

Scenario 2 : What is the GST liability, if the Sale made at nominal value of Rs 1?

Scenario 3 : What will be the GST liability, if Goods sold at Rs 100 and discount on the same is Rs 99?

- **Burden of Proof – Section 155 and recent supreme court judgement**

As per section 155 of the CGST Act, 2017 *any person claiming that he is eligible for ITC, then burden of proof shall lie on person claiming ITC.*

For proving the eligibility, he needs to prove that he is in possession of invoice and movement of goods has been occurred.

Q1. For proving the eligibility of ITC u/s 155, is he required to prove that conditions mentioned in the section 16(2) of the CGST Act, 2017 has been fulfilled ?

Q2. What should be the extent of the burden of proof on the purchaser?

- **In absence of cogent evidence, mere invoice production, cheque-payment insufficient to claim ITC: Supreme Court in case of Ecom Gill Coffee Trading Private Limited CIVIL APPEAL NO. 230 OF 2023 dated 13-Mar-23 (Karnataka VAT Act, 2003)**
- Burden of proof that the ITC claim is correct is squarely upon the assessee who has to discharge the said burden. Merely because the dealer claiming such ITC claims that he is a bona fide purchaser is not enough and sufficient. Such a burden of proof cannot get shifted on the revenue.
- Mere production of the invoices or the payment made by cheques is not enough and cannot be said to be discharging the burden of proof cast under section 70 of the KVAT Act, 2003.
- **The dealer claiming ITC has to prove beyond doubt the actual transaction** which can be proved by furnishing the 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.
- The aforesaid information would be in addition to tax invoices, particulars of payment etc. In fact, if a dealer claims Input Tax Credit on purchases, such dealer/purchaser shall have to prove and establish the actual physical movement of goods, genuineness of transactions by furnishing the details referred above and mere production of tax invoices would not be sufficient to claim ITC.

- **ITC applicability to SEZ unit:**

In case of supplies made to SEZ with payment of Tax; supplier needs to make the payment of Tax and in turn claim the refund of Tax. However, certain suppliers are not ready to take the burden of Tax and hence they still charge Tax on the face of invoice, recover it from SEZ unit and then make the payment to Government. In such a scenario, burden of Tax is on SEZ unit; where SEZ unit can very well take the credit of the said Tax paid to supplier or service provider and utilize the same against Tax liability arises on outward supply. Neither ITC provisions nor Rules restricts SEZ unit to avail and utilize the said credit. Even while filing of TRAN-1 and GSTR-3B also GSTN allows SEZ unit to avail and utilize credit. But on filing refund claim departmental officers doesn't allow the same. As per their opinion, SEZ unit is not allowed to take credit because supply to SEZ is zero rated supply. Clarification in this regard is requested from Government.

Advance Ruling related to Input Tax Credit

Facts:

The applicant owns an e-commerce portal www.myntra.com and is a major India fashion e-commerce company, engaged in the business of selling of fashion and lifestyle products through the said e-commerce portal. In order to enhance their business, the Appellant proposes to run a loyalty programme where loyalty points will be awarded on the basis of purchases made by the customer. The appellant through its portal, would make the vouchers and subscription packages available to those customers who wish to redeem the loyalty points earned /accumulated.

Ruling:

1. Whether the applicant would be eligible to avail ITC on the vouchers and subscription packages procured by the Applicant from third party vendors that are made available to eligible customer participating in loyalty program against the loyalty points earned/accumulated by customer?
- The eligibility to input tax credit is governed by the provisions of Chapter V (Sections 16 to 19) of the CGST Act. Section 16 states that a 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 which are used or intended to be used in the course or furtherance of business. Thus, the primary conditions for eligibility of ITC is that there should be an inward supply of either goods or services or both; such inward supply should be charged to tax by the supplier and such inward supply should necessarily be used or intended to be used in the furtherance of business - Input tax credit is restricted when the goods and services or both are used for non-business purposes or exempt/non-taxable supplies. Further, notwithstanding the entitlement conferred by Section 16(1), certain goods and services and certain forms of supply, **as mentioned in Section 17(5) of the CGST Act, are expressly denied input tax credit.**

Facts:

The applicant is engaged in the business of manufacture and supply of ghee and other products. The product groups of the appellant are classified into ghee, masalas, instant mixes and sweets. With the objective of expanding the market share, the appellant stated that they had launched a sales promotional offer to enhance sales of its products; the sales promotional offer was named as 'Buy n Fly scheme'. The retailers have to purchase the eligible products from the distributor, sub-stockiest and they shall be eligible for the rewards under the scheme once the targets specified therein are achieved. It is not a mandatory scheme for all the retail outlets rather it is left to the discretion of the retailers to participate in the scheme. As per the scheme the targets and/slabs are as below:

| | | | | |
|-------------------|---------------|--------------|------------|------------|
| Turnover Criteria | ₹ 1,50,000 | ₹ 1,00,000 | ₹ 50,000 | ₹ 25,000 |
| Rewards/product | Trip to Dubai | Gold Voucher | Television | Air Cooler |

Question before AAAR:

1. Whether the GST paid on inputs/input services procured by the appellant to implement the promotional scheme under the name 'Buy n Fly' is eligible for Input Tax Credit under the GST law in terms of Section 16 read with Section 17 of the CGST Act, 2017 and TNGST Act, 2017?

Ruling:

- Section 16 of the CGST Act, 2017 empowers the taxpayer for entitlement of taking the tax charged on the Inputs as input tax credit on the goods or services or both supplied to him which are used or intended to be used in the course or furtherance of his business and such unbridled flow of input tax credit got restriction in section 17 of the Act. Section 17 (5) begin with Non-obstante clause that Notwithstanding anything contained in section 16(1) and section 18(1) and hence section 17(5) would independently apply and the Parliament consciously restricts the input tax credit which is a concession and not a vested right.
- The clause (g) forbid the input tax credit for the goods or services used for personal consumption and the Parliament in its wisdom did not place any further restriction as to who use the goods or services or both for personal consumption and it is obvious reason that under the GST law the flow of input tax credit is allowed until its consumption and hence such personal consumption be by the appellant or by its retailers would disentitle them to avail such input tax credit. **Hence the plain reading of clause (g) of Sec: 17(5) reveals that the goods or services or both used for personal consumption by the appellant or its retailers would make the related input tax credit unavailable for the appellant,** as the retailers of the appellant ultimately consumed the goods and services provided under reward scheme and the contention that the clause (g) would be applicable to the stage of procurement use and not on the last use would be of no avail to the appellant.

Facts:

The applicant is engaged in manufacture of Basic Chromium Sulphate, Sodium Sulphate and Chromic Acid. The applicant needed some additional storage space and therefore, entered into **lease agreement**. The applicant submitted that monthly rental bills were received till March 2019, But for the months from April 2018 to March 2019 a **single tax invoice dated 01.04.2020 mentioning in the description as Rental charges for the months from April 2018 to March 2019 by showing rent month-wise for 12 months.**

Ruling:

1. Whether the tax invoice dated 01.04.2020 issued by the supplier of service for the rental service supplied for the period 01.04.2018 to 31.03.2019 is hit by the limitation for claiming ITC under Section 16 (4) of the CGST/SGST Act, 2017?
 - The invoice referred pertains to the services rendered in the financial year 2018-2019 and hence it is 'hit by the limitation for claiming ITC under Section 16 (4).
2. If the applicant avails ITC on such invoice after 01.04.2020 and before filing GST return for September 2021/Annual Return for 2020-2021, whether it amounts to violation of condition stipulated under sub- section(4)?
 - Affirmative

Analysis:

- The 'Supply of Service' here is 'Renting of immovable property'. The supplier of service issued a tax Invoice dated 01.04.2020 covering the period from 01.04.2018 to 31.03.2019. Therefore the supply of service pertains to the FY 2018-19. The date on which the invoice issued was 01.04.2020 and hence the invoice issued pertains to FY 2020-21. However, the date of invoice or the period to which an invoice pertains will be determined only by the period of supply covering which the said invoice was issued. Therefore, in the instant case, irrespective of the date of Invoice (which is leading to mis-interpretation of the period of Invoice), the same is pertaining to the period of supply covered i.e. 2018-19.
- Since invoice pertains to the FY 2018-19, vide Section 16 (4), the recipient is entitled to take ITC on the same before furnishing of Return **“under Section 39 for the month of September, 2019 following the end of FY 2018-19 to which such invoice pertains or furnishing of the relevant annual return for the year 2018-19, whichever is earlier - Even the proviso to section 16 (4) reiterates that the registered person is entitled to take ITC in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the FY 2017-18.** This proviso absolutely necessitates or rather endorses the invoices relating to supplies made during the FY 2017-18 only, for the registered dealer to claim entitlement of ITC in the succeeding financial year.

Facts:

The applicant M/s VNR Seeds Pvt. Ltd. Raipur with multiple registrations under GST in various States is involved in the business of supplying seeds (in packaged form using packing materials), for sowing purpose, which is exempted item. They procure taxable packaging materials/commodities etc. which are required for processing and packing of seeds. They also use to transfer aforesaid taxable inputs like packaging materials and other consumables from one branch to another and from one processing unit to another.

Ruling:

1. The applicant wants to use Input Tax Credit (ITC) on the aforesaid purchased packaging materials and keep credit till they are in their stock.
 2. The applicant transfers aforesaid taxable inputs within its own branches situated in various States across India and are required to pay GST merely for these inter-branch transfers. It was thus their contention that they are liable for multiple tax which is against the core principles of GST.
- As per section 17(2) of CGGST Act, 2017 any registered recipient can claim ITC to the extent of taxable stock or taxable outward supply shown in their returns. The registered recipient cannot claim ITC on the amount of taxable supply component included in the total amount of exempted supply. The amount of unclaimed ITC shall also be reversed in the electronic ledger of the same month. **Thus if the applicant supplies seeds (exempted item) in packaged form using such packing materials (taxable item), to its own branches in other States, then no ITC could be claimed on the packaging material used for exempted supply of seeds. Whereas, if the applicant supplies only packing material to own branches in other States, then the ITC involved in purchase of such packing material could be availed as per section 17(2) of CGGST Act, 2017.**

Facts:

Motor car dealer has to put up cars for demonstration purpose at his place of business in interests of his customers. Dealers has to compulsorily purchase such assets (demonstration cars) from the principal supplier only. Dealers capitalize such assets in their books and after a certain period prescribed sell the cars to prospective

Ruling:

- Whether input tax credit on the motor car purchased for demonstration purpose of the customer can be availed as credit on capital goods and set off against output tax payable under GST in the case of a motor car dealer.
- It was held that there is an exemption to section 17(5)(a) which is Section 17(5)(a)(i)(A) which states that section 17(5)(a) blocks credit of tax paid w.r.t. motor vehicles and other conveyances but if they are for further supply of such vehicles and conveyances same shall be allowed as ITC.
- Firstly, such demo cars are used as for promotion, they are acquired w.r.t. furtherance of business.
- Secondly, these cars will be eventually sold out to prospective buyers in near future and then that would supply therein. Considering, this fact provisions of section 17(5)(a) should not apply.
- **Therefore, ITC of tax paid on cars used for demonstration purpose should be allowed.**

Facts:

The applicant are engaged in supply of service by providing **Mobile Laboratory Services**, **to test the quality of Cotton**. The firm purchased five vehicles to use as mobile cotton labs, for the purpose of testing of quality of cotton. the business itself is testing and the lab (launched on vehicles) are to be considered as prime business components, without which there can not be any supply of services.

Ruling:

1. Whether they can utilize /refund the ITC which is readily available in GST Portal, for the vehicles purchased by them for the purpose of their core business activity?
- As per Section 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:— (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) importing training on driving. flying, navigating such vehicles or conveyances; (ii) for transportation of goods”.
 - **The Input Tax Credit on the vehicles purchased by the applicant for the purpose of their business will fall under Sec.17(5), and hence applicant is not entitled for claim of ITC.**

Facts:

The Applicant are engaged in business of operating a mall with multiplex. The Applicant is having following four operations in the company:

- i. Multiplex (Cinemas) – Operating a 3 Movie screens multiplex and Snack Bar under Movie Magic banner;
- ii. Mall – Applicant owns and operates the South Avenue Mall and has given space to several brands under rent/revenue sharing basis. The Applicant is also charging Common Area Maintenance charges from tenants;
- iii. Food Court – Operates a food court in the Mall, which is an air-conditioned area with self serve (dine-in) and take away arrangements;
- iv. SAM Retail – Operates a franchise apparel retail store within the Mall.

Ruling:

1. Whether ITC of GST paid on Movie Distributor revenue share bill, Projector Rental Bill, Advertising Bill, Security Agency Bill, and House Keeping Bill can be claimed in full?
 - Applicant shall be entitled to ITC of tax paid on Movie Distributor Revenue Sharing Bill, Projector Rental Bill and Advertising Bill in full; further in respect of Security Agency Bill and Housekeeping Bill, the ITC shall be restricted to the apportioned part which is utilised in providing taxable output services. Any ITC attributable to exempted output services shall be subject to reversal in terms of Section 17(1) of the GST Act 2017.

Ruling:

2. Whether ITC on GST paid on goods purchased for the purpose of maintenance such as Vitrified Tiles, Marble, Granite ACP Sheets, Steel Plates, TMT TOR, Bricks, Cement, Paint, Chemicals, Sanitary items like wash basin, urinal pots, and toilet accessories can be claimed in full?

- The ITC of GST paid on goods purchased for the purpose of maintenance of Mall such as Vitrified Tiles, Marble, Granite, ACP Sheets, Steel Plates, TMT Tor (Saria), Bricks, Cement, Paint, Chemicals, Sanitary Items like wash basin, urinal pots and toilet accessories shall not be admissible to the Applicant in terms of clause (c) of Section 17(5) of the GST Act 2017;

3. Whether ITC of GST paid on Works Contract service received from registered & unregistered Contractor for maintenance contract of building can be claimed in full?

- the ITC of GST paid on Works Contract Service received by the Applicant for maintenance contract of building shall not be available to them in terms of clause (d) of Section 17(5) of the GST Act 2017.

Facts:

The advance ruling was sought on the question of availability of ITC on GST charged by service provider on canteen facility which is used by employees of the applicant. The canteen facility is mandatory to be provided under Factories Act, 1948. In terms of provision of Section 17(5)(b) ITC on goods or services or both shall be available where it is mandatory for employer to provide the same to the employee.

Ruling:

The Gujarat Appellate Authority for Advance Ruling (AAAR) has revised the decision made by the Gujarat Authority for Advance Ruling (AAR) by ruling that Tata Motors is entitled to claim Input Tax Credit (ITC) on the Goods and Services Tax (GST) charged by the service provider for canteen facilities provided to its employees working directly in the factory.

Analysis:

Applicant had appealed that though ITC on food and beverages is blocked under Section 17(5)(b)(i) yet proviso placed below sub clause (iii) provides that ITC is eligible if the goods or services mentioned in sub clause (b) is provided by employer as mandated under any law for time being in force. However, Gujarat AAR observed that that colons and semicolons are two types of punctuation; colons are used in sentences to show that something is following like quotation, example or list and semicolons are used to join two independent clauses/sub clauses that could stand alone as complete sentences.

Sub clause (i) of clause (b) of Section 17(5) ends with a colon and is followed by a proviso which ends with a semi colon which denotes that 17(5)(b)(i) ends there and proviso which states that ITC is eligible where it is obligatory for an employer to provide the same to employee is placed under sub clause (iii). Gujarat AAR states that proviso is applicable only to sub clause (iii) of clause (b) and not to the whole of clause(b) .

It has been clarified by the board vide Circular No 172/04/2022- GST that proviso provided at the end of clause b applies to whole of the clause b and not just sub clause (iii) of clause b of the Section 17(5). On the basis of said circular Gujarat AAAR had modified the ruling passed by Gujarat AAR

Facts:

Applicant is engaged in wholesale business of supply of LPG. The application was made to sought advance ruling on eligibility of ITC on construction of refrigerated storage tank and Water Tank. Refrigerated storage tank is built for safe storage of Propane/Butane which is used for outward supply after blending in required proportion. Water tank is an integral part of firefighting system which is built to comply with mandatory requirements of Oil Industry Safety Directorate (OISD) Standards 236.

Ruling:

AAR provides that GST Act does not define Equipment; however, general parlance of Equipment is defined as “Equipment is a thing which is used for a particular purpose.”. The purpose of refrigerated storage tank is to safe storage of Propane/Butane used in making outward supply. It is mandatory for applicant to maintain a water storage system and water tank is an integral part of water storage system. Thus, it qualifies to be an equipment. Equipment is considered as Plant and Machinery and hence ITC is allowed on construction of refrigerated storage tank and water tank. **AAR ruled ITC as eligible on construction of Refrigerated Storage Tank and Water Tank.**

Facts:

The applicant is engaged in **construction of commercial mall**. The application was made to sought eligibility of ITC of all installations listed in the application. The items listed in application included **Water Treatment Plant and Sewage Treatment Plant**.

Ruling:

As per explanation to Section 17(5) of the CGST Act,2017 ITC blocked on construction of immovable property excludes Plant and Machinery. It was further clarified in the ruling by AAR that machinery is goods but what is excluded is species of Plant and Machinery which is an immovable property which is not a civil structure. These when incorporated in construction becomes part and parcel of the building and civil structure and no longer has separate existence. The authority ruled ITC as blocked on the grounds that the provisions of these facility are essential and cannot be considered as separate from building or civil structure. Hence the **ITC on inward supplies of goods and services involved in construction of immovable property which is a civil structure or building is not available and hence blocked. AAR ruled ITC of all installations listed in the application are blocked.**

Facts:

M/s. Vimal Alloys Private Limited (Taxpayer) is procuring ferrous alloys, scrap, gas and other materials from its vendors

- The tax authorities targeted the furnaces/rolling mills on the ground that the preceding sellers of the sellers from whom the Taxpayer has purchased goods had not paid the tax and, hence, the ultimate recipient would be liable to pay tax along with interest and penalty, even though there is neither any obligation nor any infrastructure provided under the GST law to verify or to find out the status of tax payment by such preceding sellers.
- The issue in the instant case is as regards the admissibility of the Taxpayer's claim of ITC under the following circumstances:
 - The immediate seller from whom the Taxpayer had purchased goods has paid applicable tax to the Government. However, the preceding sellers from whom the immediate seller had purchased goods have not paid applicable tax on such supplies.
 - The Taxpayer has complied with all the requirements of Section 16 of the CGST Act barring Section 16(2)(c).

Question before the AAR:

1. Whether the Taxpayer is entitled to claim ITC on the purchases made by it from the seller who had discharged its tax liability, but the preceding seller has not discharged its liability?
2. If the answer to the above is negative, then how will the Taxpayer ensure that the tax liability has been discharged by all the sellers falling in the queue of the transaction?
3. Whether the Taxpayer would be eligible for the ITC since no infrastructure has been provided by the government to ensure discharging of tax liability by the sellers falling in the queue of a transaction?

4. Whether the Taxpayer is entitled to claim ITC on the purchases made by it from the seller in the event of non-payment of tax even though the Taxpayer complies with the following conditions:

- Possession of the invoice and other relevant documents
- The payments have been made through banking channels; and – There is no connivance or collusion between the Taxpayer (i.e., Purchaser) and the Seller?

Contentions by the Taxpayer:

1. The Taxpayer satisfies all the conditions laid down under Section 16 of the CGST Act:

- Taxpayer has received the goods against tax invoice issued under the GST law
- Taxpayer has made payment to its supplier for such supplies
- The supplier has furnished form GSTR-1 and the details of such procurements are reflected in the Taxpayer's form GSTR-2A generated from the GST portal
- Taxpayer has also obtained copies of Form GSTR-3B filed by the supplier to substantiate payment of GST to the Government.

Considering the above, the Taxpayer's ITC claim cannot be denied.

2. It was also contended that the GST law does not cast an obligation nor provides a suitable infrastructure to verify whether the seller discharges its tax liability per law.
3. Moreover, the GST portal does not enable the Taxpayer to ascertain whether the preceding sellers from whom the seller has procured goods/services have discharged their tax liabilities.
4. Additionally, the Taxpayer also placed reliance on the settled legal principle that a bona fide purchaser cannot be vicariously held to be liable for the defaults of its sellers.

Contentions by the Taxpayer:

5. Further, any attempt to penalize the Taxpayer for the defaults of the preceding sellers from whom, its sellers have procured goods/services would be against the principles as per the legal maxim 'lex non cogit ad impossibilia' which implies that **the law cannot compel a man to do an impossible task**
6. Given the above, it was submitted that there cannot be any liability on the part of the Taxpayer for nonpayment of tax by the preceding sellers who have supplied the goods to the supplier of the Taxpayer. Instead, the proceedings must be initiated against the errant dealers, being the preceding sellers.

Contentions by the Tax Authorities:

1. It was submitted that the availability of ITC is subject to the conditions laid down under Section 16 of the CGST Act
2. It was also contended that ITC is available only if the tax has been paid in cash or through admissible ITC. If the ITC is accumulated in violation of provisions of the GST law, the same shall not be available to its successive suppliers in the chain
3. As a result, the Taxpayer is not entitled to claim ITC since the sellers from whom it had purchased goods do not have the admissible ITC for discharging its tax liabilities

Observations and Ruling by the AAR:

1. On perusal of Section 16(2)(c) of the CGST Act, it was observed that no registered person shall be entitled to claim ITC in respect of goods/services unless the tax charged for such supply has been paid to the Government, either in cash or through the utilisation of admissible ITC. If the seller or its preceding sellers have not deposited the tax either in cash or through the utilisation of admissible ITC, the purchaser is not eligible to claim ITC.
2. Regarding questions 2, 3 and 4, it was observed that the issues raised before the AAR are not covered under the purview of Section 97(2)(d) of the CGST Act, and hence, no ruling could be passed in respect of the same.

ITC eligibility on supply and installation of HVAC/Air Conditioning system

Relevant Extracts of Section 17(5): Input Tax Credit shall not be available in respect of the following, namely:-

Section 17(5) (c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

Section 17(5) (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 purposes of clauses (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

- **AAR/AAR View: ITC not admissible/blocked u/s 17(5)(c):**

1. M/s. Wago Private Limited. (Guj)
2. M/s. The Varchha Co. Op. Bank Limited. (Guj)
3. M/s. Nipro India Corporation Private Limited

- **AAR/AAR View: ITC not admissible/blocked u/s 17(5)(c):**

1. M/s. Nipro India Corporation Private Limited (Maha)
2. M/s. Bahl Paper Mills Ltd. (Uttarakhand)

- **KMS View:**

Purchase and installation of HVAC system will be considered as Plant & Machinery and Input Tax Credit on said supply shall be eligible.

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