

SECTIONS 16 TO 18

Input tax credit

◆ ELIGIBILITY AND CONDITIONS FOR TAKING CREDIT [SECTION 16]

CONDITIONS PRECEDENT

- *Input tax credit on goods is available only when recipient has received goods* **313**
- *No input tax credit can be claimed of tax paid on input invoices of goods or services procured or availed by a registered person before its effective date of registration under GST* **314**
- *Where applicant-company registered in State of Rajasthan, procures services of short term accommodation (i.e. Hotel) in Haryana, and hotel charges Central GST and State GST, ITC of Central tax charged from applicant in Haryana is not available to it as both location of supplier and place of supply of services are in State of Haryana* **315**
- *Unless law specifically restricts recipient from claiming input tax credit when consideration is paid through book adjustment, credit of input tax cannot be denied and, thus, GST Act and Rules do not restrict claiming of ITC merely because consideration is paid through book adjustment; input tax credit is admissible to an assessee even when he settles debt created on inward supplies from Franchisee through book adjustment* **316**
- *If person is not registered in a particular State, tax paid on inward supplies in that State is not 'input tax' in relation to said person; a person registered in West Bengal cannot claim ITC for CGST & SGST of other States* **317**

BILL TO SHIP TO MODEL, IN CASE OF

- *Where applicant located in Jodhpur, purchased goods from a supplier in Guwahati and further directed supplier to supply said goods to another party (applicant's customer) located in Guwahati, it shall be deemed that said third person received goods and place of supply of such goods shall be principal place of business of such person i.e. Jodhpur and thus, IGST in instant case will be applicable on both transactions i.e. supplier and applicant and applicant and its customer and thus, applicant shall be eligible to claim full ITC of IGST paid on 'bill to-ship to' model as per sections 16 and 17 of CGST Act, 2017* **318**

◆ CANTEEN SERVICES TO EMPLOYEES

- *Applicant providing canteen services to its employees is eligible to avail ITC on purchase of LPG cylinders as LPG cylinders are used to provide services related to supply of food and beverages from canteens to their employees* **319**

COMPLIMENTARY TICKETS

- *Where tickets supplied by applicant including complimentary tickets would be considered as supply of services and would be taxable under GST, applicant would clearly be eligible for claim of input tax credit as per provisions of section 16* **320**

DEL CREDERE AGENT, IN CASE OF

- *Where applicant is Del Credere Agent of supplier of goods and collection of payment from customers is its responsibility and if a customer makes payment to applicant before 10 days credit period then he asks applicant for additional bonus towards early payment and applicant passes on such additional bonus to customer, transaction between applicant and customer not being a supply by customer, invoice cannot be raised/issued by customer and therefore, applicant is not entitled to take input tax credit of GST passed on to applicant in any manner* **321**

GARDEN, MAINTENANCE OF

- *Supply in relation to maintenance of garden is not a supply that can be considered as a supply used or intended to be used in course of furtherance of business of applicant which is to manufacture Propellants and Commercial Explosives; hence, applicant will not be eligible to avail ITC of tax paid by them on same* **322**

HEALTHCARE SERVICES, IN CASE OF

- *Where applicant is engaged in providing healthcare services and also supplies medicines to patients and also operates restaurant/canteen in its premises, it is eligible to claim credit of input tax paid on inputs, input services and capital goods which are attributable to supplies of goods or services which are taxable under provisions of CGST Act and not attributable to exempt supplies of goods or services under CGST Act* **323**

LAND DEVELOPMENT, IN CASE OF

- *Input Tax Credit availed in respect of GST paid on goods and/or services used/consumed for development of land would be liable to be reversed on pro rata basis in respect of plots sold after issuance of completion certificate* **324**

LIQUIDATED DAMAGES

- *Where appellant/contractee is liable to pay GST on payment of liquidated damages by contractor, input tax credit would be admissible*

to appellant subject to conditions and restrictions as specified in CGST Act and Rules made thereunder **325**

◆ **OCEAN FREIGHT SERVICES**

- *Input tax credit on supply can be availed only by recipient of supply; in case of ocean freight services, importer of goods is not recipient of supply of ocean freight services and may not be able to avail input tax credit, which is sought to be recovered under impugned notifications, namely, Notification Nos. 8/2017-Integrated Tax (Rate) dated 28-6-2017 and 10/2017-Integrated Tax (Rate) dated 28-6-2017, hence impugned notification are not in conformity with GST* **325A**

RAILWAY FREIGHT

- *Where applicant [Indian Oil Corporation Ltd.] paid GST on railway freight for transportation of refining crude petroleum oil, inter alia, High Speed Diesel, Motor Spirit (petrol) and Aviation Turbine Fuel (ATF) from its Haldia Refinery located in West Bengal to its export warehouse at Raxaul located in Bihar to ultimate export to Nepal, since transfer of goods from Haldia Refinery to Raxaul Depot was exempted supply, applicant cannot claim credit of GST paid on railway freight for transportation of ATF and other non-taxable supplies* **326**

REAL ESTATE AGENT, BROKERAGE

- *Where applicant, owner of commercial property, leased it out with help of services of property dealer, applicant would be eligible to take credit of the CGST & SGST charged by the property consultant in tax invoice raised on applicant for real estate brokerage services for renting of property on a fee basis* **327**

ROAD CONSTRUCTION SERVICES

- *Where Government of Rajasthan has awarded to applicant a works contract for construction of road and Operation and Maintenance (O&M) of said road for a period of 10 years and applicant is entitled to receive 50 per cent of construction cost on basis of achieving specified percentage of physical progress and shall receive balance 50 per cent in bi-annual instalment over O&M period along with interest, 50 per cent of cost of project received during construction period on which applicant paid GST being exempt by virtue of Entry No. 23A of Notification No. 12/2017-Central Tax (Rate) dated 28-6-2017, only 50 per cent ITC of GST paid on Input and Input service used in construction phase is available to applicant; however, full ITC of GST paid on inputs and input services used in O&M phase is available to applicant subject to provisions of section 17(5)* **328**

TELECOMMUNICATION TOWER

- *'Telecommunication tower' does not come within purview of goods, same being an immovable property and Input Tax Credit (ITC) on 'telecommunication tower' is not admissible; however infrastructure provided by applicant in providing laying and installation services to companies operating in telecommunication and power sector being movable property which can be classified as 'goods' in terms of section 2(52), applicant will be entitled to avail ITC on GST paid on goods and services consumed while providing infrastructure* **329**

ZERO VALUE SUPPLY, IN CASE OF

- *No input tax Credit is available to recipient of goods/services if value declared by supplier in invoice/debit is zero* **330**

OTHERS

- *Where discount is availed by applicant-recipient post supply of goods/ services and post issue of invoices, it can avail Input Tax Credit only to extent of invoice value raised by suppliers less discounts i.e. discounted price paid by him to suppliers* **331**
- *Proportionate ITC has to be reversed in cases where lesser payment is made to supplier due to deduction on account of liquidated damages from supplier's dues* **332**
- *Where applicant proposes to enter into a contract with a non-resident party for rendering service of conversion of iron ore into pellets and iron ore imported by applicant will remain property of non-resident, since imported goods are used in furtherance of business, applicant is eligible to take input tax credit of IGST paid on import of iron ore* **333**
- *Where assessee filed writ petition for striking down and declaring clause 12.5(c) of Part IV of Form 205B and Annexure V thereto to be ultra vires provisions of Gujarat VAT Act/Rules, and in reply revenue filed an affidavit stating that main grievance raised by assessee related to availability of input tax credit which it would avail in due course, in view of stance of revenue, assessee would have no further grievance to redress* **334**
- *Where applicant has procured capital goods and input services that are common to production of both taxable and exempted goods, in view of proviso to rule 43(1)(d) and rule 43(1)(e), (f) and (g), applicant is required to compute admissible amount of input tax credit on capital goods used for both taxable and exempt supplies in tax periods over useful life of such capital goods, calculated from date of invoice* **335**

- *GSTR-3B is not a return in lieu of return required to be filed in Form GSTR-3, it is only a stop gap arrangement till due date of filing return in Form GSTR-3 is notified, therefore, para 3 of press release dated 18-10-2018, clarifying that last date for availing ITC relating to invoices issued during July 2017 to March 2018, as last date for filing return in Form GSTR-3B, was illegal and contrary to section 16(4) read with section 39(1) and rule 61 of the CGST Rules* **336**

◆ **CREDIT AND BLOCKED CREDITS, APPORTIONMENT OF [SECTION 17]**

FOR BUSINESS PURPOSE

- *Where appellant is engaged in manufacture of aluminium metal through its refinery located at Damanjodi & Smelter Plant at Angul, appellant is entitled to input tax credit of tax paid in relation to plantation and gardening within plant area including mining area and premises of other business establishments* **337**
- *Input tax paid by a vehicle dealer on purchase of motor car used for demonstration purpose of customer can be availed as input tax credit on capital goods and set off against output tax payable under GST* **338**
- *Where appellant is engaged in manufacture of aluminium metal through its refinery located in Odisha and it has townships for its employees, it is not entitled to input tax credit of tax paid on goods and services procured for management, repair, renovation, alteration or maintenance services pertaining to residential accommodation for its employees in townships* **339**
- *Where applicant, engaged in manufacture of medical equipments, proposes to undertake an extension of its medical equipments manufacturing facility and in this regard it has awarded a contract to a vendor for execution of extension project, assessee would be entitled to take credit of input tax charged from it on supply of goods or services or both which are used or intended to be used in course or furtherance of business* **340**
- *Input Tax Credit is not admissible in respect of GST paid for stay in case of rent free hotel accommodation provided to General manager and Managing Director of company as same is not in furtherance of any business* **341**
- *Where applicant is engaged in supply of motor vehicles on monthly lease rent with GST as applicable to its customers under a proper agreement, it is eligible for availment of input tax credit for GST paid by it while acquiring said vehicles in terms of section 17(5)* **342**
- *Input tax credit is not admissible on ambulance purchased in November 2018, as pre-amended section 17(5), blocks any such*

enjoyment, even if provisioning of ambulance service to employees is obligatory under Factories Act, 1948 **343**

- *Where applicant provides Mobile Laboratory Services to test quality of cotton and it purchased five vehicles to use as mobile cotton labs, since goods referred to by applicant do not fall under exceptions referred to in section 17(5), applicant is not entitled to claim of input tax credit for said vehicle* **344**
- *Services of contractor for hiring of buses/cars for transportation of employees of applicant qualify as 'rent-a-cab' services and, thus, applicant is not eligible for input tax credit of GST charged by contractor for hiring of buses/cars for transportation of employees* **345**
- *Where applicant supplies cabs on rental basis to institutes like West Bengal Postal Circle, GST paid on purchase of motor vehicles for supplying rent-a-cab service is not admissible for credit* **346-347**
- *Where applicant is engaged in supply of port services and is maintaining an in-house hospital for providing health and medical cover exclusively to its employees and pensioners, wherein all services and medicines are provided free, applicant is not entitled to take credit of input tax charged on inward supply of medicines used to provide medical facilities to employees and pensioners in, in-house hospital* **348-349**

COMPENSATION CESS

- *As per provisions of section 17(2) of CGST Act, read with section 11 of Compensation Cess Act, applicant is eligible to take ITC of compensation cess paid on purchase of vehicles used for rental business and subsequently, used for effecting taxable supply by way of sale on such vehicles* **350**

CONSTRUCTION EXPENSES OF IMMOVABLE PROPERTIES

- *Tie-in pipeline to be laid by appellant which will join FSRU (a factory) to National grid will be considered as pipeline laid outside factory premises and, thus, ITC of GST paid on goods and services used for construction of Tie-in pipelines from FSRU to National grid will not be available to appellant as per provision laid out in section 17(5)(c) and 17(5)(d)* **351**
- *Where applicant, a hotelier incurs expenditure on repair and maintenance of building and its components, input tax credit of GST paid on building materials and on labour supply will not be available to applicant to extent of capitalization of building materials and services* **352**

- *Where applicant-company is engaged in business of supplying shared workspace/office space to freelancers, start-ups, small businesses and large enterprises, since detachable sliding and stacking glass partition are fixed to building to create office spaces and same is sine qua non for letting out of office space, fixing of sliding and stacking glass partitions amounts to addition or alteration to an immovable property and, therefore, input tax credit shall not be available on same* **353**
- *Where applicant-company is engaged in business of supplying shared workspace/office space to freelancers, startups, small businesses and large enterprises, since wood used for flooring is attached by using a foam and wooden flooring can be easily detached and reused, it cannot be covered under addition or alterations to immovable property in strict sense and, thus, input tax credit of GST can be availed by applicant on detachable 14mm Engineered wood* **354**

CSR EXPENSES

- *Where applicant-company, a dealer in electrical goods, had distributed electric items like switches, fan, cables, etc. to flood effected people in State of Kerala under its CSR obligation on free basis, input tax credit will not be available on said CSR expenses as per Section 17(5)(h)* **355**
- *Where assessee, a dealer in electrical goods, had supplied electrical items to Kerala State Electricity Board [KSEB] through its distributors spread across State in connection with reinstating connectivity in flood ridden areas as part of 'mission reconnect' free of cost and distributor billed goods to KSEB and paid GST to Government, distributor would be entitled to input tax credit on goods supplied to KSEB* **356**

PLANT AND MACHINERY

- *Credit of input tax charged on supply of fixtures and furniture and AC plant would be admissible under CGST/SGST Act, provided assessee has not claimed depreciation on tax component of cost of capital goods and plant and machinery under provisions of Income-tax Act, 1961* **357**
- *Applicant, manufacturer of steel and engaged in generation of power, is not eligible for ITC in respects of goods used in installation of plant and machinery* **358**

EXEMPTED SUPPLY, IN CASE OF

- *Where applicant company supplies seeds (exempted item) in packaged form using packing materials (taxable item) to its own branches in other States, then no Input Tax Credit (ITC) should be claimed on packaging material used for said exempted supply of seeds* **359**

- *De-oiled rice bran is fully exempted from CGST; hence, input tax credit attributable to supply of this exempted goods, i.e., de-oiled rice bran has to be reversed* **360**
- *Where goods or services or both are used by registered person partly for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies, amount of credit shall be restricted to so much of input tax as is attributable to said taxable supplies including zero-rated supplies* **361**

FINANCIAL INSTITUTION, IN CASE OF

- *Where applicant is engaged in providing finances, it can be considered as a financial institution for purpose of availing of credit to extent of fifty per cent of input tax credit, as prescribed in section 17* **362**

GIFTS/PROMOTIONAL SCHEMES

- *Where applicant, engaged in business of sale of pharmaceutical goods launched 'Shubh Labh Loyalty Programme' under which distributors/wholesalers get reward points on basis of goods sold by them which later enable them for rewards such as free trip to Singapore, wrist watch etc. since no contract/agreement has been signed by customers in writing accepting scheme floated by applicant, distribution of promotional articles by applicant is nothing but gifts and hence transaction is covered by provisions of section 17(5) and thus, applicants will not be entitled to ITC on GST paid on expenses incurred towards promotional schemes of Shubh Labh Loyalty Programme and goods given as brand reminders* **363**
- *Where applicant (manufacturer of paints), in order to promote business, gives incentives/gifts to those persons who assist in marketing of products, i.e., dealers, painters, etc. in form of goods and services, which are duly tax suffered and procured from other registered suppliers, applicant is not eligible to avail input tax credit on inward supplies of goods and services which are attributable to incentives provided in form of gifts of goods and services to painters and dealers and other persons* **364**

GUEST HOUSE EXPENSES

- *Provision of guest houses being a perquisite for employees, tax paid on maintenance and upkeep of guest houses cannot be allowed as ITC* **365**

INSURANCE PREMIUM, RECOVERY FROM EMPLOYEE

- *Where applicant company, engaged in distribution of steel coils, provides mediclaim cover to its employees as well as to their parents and initially pays entire premium along with taxes and then 50 per cent of premium is recovered from respective employees on a monthly basis, since applicant is not an insurance company,*

recovery of 50 per cent of insurance premium from employee by the applicant company does not amount to 'supply of service' and thus, the applicant cannot claim ITC of GST charged by insurance company **366**

LEASE RENT

- *Where appellant for construction of an Eco Resort on Design, Built and Operate Model has taken certain land on lease from State housing corporation and project is proposed to be completed within a period of two years and lease rent paid during pre-operative period shall be capitalised in books of account by appellant and land-owner will be charging GST on lease rent, input tax credit is not available to appellant on lease rent paid during pre-operative period* **367**

MANPOWER SERVICES

- *Supply of manpower service is covered under section 17(5)(d) and, thus ITC of GST paid on such supply of service is not available to extent of capitalisation of said service* **368**

MINING EQUIPMENT

- *GST charged on purchase of earth moving machinery including tippers, dumpers used for transportation of goods by a mining company will be allowed as input credit* **369**

MALL OWNER, IN CASE OF

- *ITC of GST paid on goods purchased for purpose of maintenance, repair, etc., of Mall, an immovable property, shall not be admissible to applicant, owner of mall, in terms of clause (c) of section 17(5)* **370**
- *Applicant, owner of mall and multiplexes shall be entitled to ITC of tax paid on Movie Distributor Revenue Share Bill, Projector Rental Bill and Advertising Bill in full; and in respect of Security Agency Bill and Housekeeping Bill, ITC shall be restricted to apportioned part which is utilised in providing taxable output services* **371**
- *Where applicant is developing a shopping mall, taxes paid on procurement of goods or services for installation of chillers, air handling unit, lift, escalator, travelletor, water treatment plant, sewage treatment plant etc. are regarded as blocked credits under section 17(5)* **372**
- *Where petitioner had not sold shops in mall but had let out same, petitioner was not liable to pay huge amount of GST on rent received and was entitled to utilise input credit tax charged on purchases made in construction* **373**

HIGH SEA SALES

- *Goods sold on High Seas Sale basis being non-taxable supply as per section 2(78) and being exempt supply as per section 2(47), input tax*

credit would be required to be reversed by the applicant to extent of inputs, input services and common input services used by applicant **374**

- *Where applicant is providing access to articles published in various journals and papers to its subscribers and it itself is not publishing any online journal, but only maintaining a database of links to all journals, transaction is not exempt and tax is liable to be discharged; hence, input tax credit on inward supplies of goods are not restricted under section 17* **375**

WAREHOUSE, CONSTRUCTION OF

- *Where applicant is constructing a warehouse on a land taken on lease for 30 years using pre-fabricated technology, warehouse being constructed is an immovable property and hence input tax credit is not admissible on inward supplies for construction of warehouse, as credit of such tax is blocked under section 17(5)(d)* **376**

WORKS CONTRACT

- *Works contract service for supply of goods and service is covered under section 17(5)(c) read with Explanation mentioned therein and therefore, ITC of GST paid on said works contract service will not be available to extent of capitalisation of said goods as mentioned in Explanation of section 17(5)* **377**

SALES INCENTIVES

- *Input Tax Credit cannot be claimed by applicant, developer and distributor of crop protection chemicals and hybrid seeds, on procurement of Gold coins which are to be distributed to customers at end of target based sales scheme period for achieving stipulated lifting or payment criteria* **378**

CLUBS

- *Applicant-club will not be entitled to claim input tax credit on tax paid on banquet and catering services for holding members meetings and various events* **379**
- *Where applicant is engaged in providing its members privileges and amenities of a club such as swimming facility, gymnasium, indoor games, restaurant service, etc., and it wants to know admissible proportion of input tax credit for services other than supply of food, applicant should apply provisions under section 17(2) and (6) read with rules 42 and 43 for reversal of input tax credit, treating supplies, if any, taxable under GST Act, as exempt supplies* **380**

OTHERS

- *Where applicant having presence across various States in India had obtained multiple registration for each of its unit that qualifies as distinct person and these units as well as head office of applicant, receive certain common input supplies on behalf of multiple/all of*

its units on payment of GST and credit thereof is availed by receiving unit/head office, availment of input tax credit of tax on common input supplies on behalf of units registered as distinct person and further allocation of cost incurred for same to such units qualifies as supply and attracts levy of GST **381**

- *Where applicant, authorised dealer of Maruti Suzuki, purchases demo vehicles against tax invoices from supplier after paying taxes for promotion of sale by providing trial run to customer and capitalizes purchase of such vehicles in books of account as capital goods, input tax credit on motor vehicle purchased for demonstration purpose can be availed as input tax credit on capital goods and set off against output tax payable under GST* **382**

◆ **CREDIT IN SPECIAL CIRCUMSTANCES, AVAILABILITY OF [SECTION 18]**

- *Consequent upon merger of a proprietorship concern with a private limited company input tax credit available in credit ledger account of proprietorship firm shall be transferred to respective credit ledger account of private limited company, subject to provisions of section 18(3) and rule 41, however, provisions of section 18(3) and rule 41 pertain to transfer of unutilized input tax credit and are not applicable to unutilized balance lying in electronic cash ledger* **383**

ELIGIBILITY AND CONDITIONS FOR TAKING CREDIT [SECTION 16]

◆ **CONDITIONS PRECEDENT**

313. *Input tax credit on goods is available only when recipient has received goods [Haryana Goods and Services Tax Act, 2017]*

Pasco Motor LLP, In re [2019] 102 taxmann.com 283 (AAR - Haryana)

The applicant is into the business of 'retail trading' of trucks. It purchases the goods from Tata Motors from different locations Jamshedpur, Lucknow, Pune, etc. The goods remain in transit for roughly five to ten days. The question relates to the sale invoices which are raised in the end of month by the seller; but the material arrives at the end of the purchaser in the next month. Since the returns are to be filed on monthly basis, a practical problem is being faced by the applicant that the purchases are being booked by the purchaser in the next month only. So in such a situation the applicant will be entitled to claim its Input Tax which stands charged and deemed to be paid by the seller in the previous month. The invoice by the seller is raised only after receiving the payment in advance. The applicant submitted that it will be entitled to claim the Input Tax Credit in the same month in which the invoice is raised and tax is deemed to be paid by the supplier who has delivered the goods to the transporter for transporting the same to the recipient's destination. In the end of the month, the company announces lucrative incentives for the end customer to boost the sale. The applicant,