



BHUJBRANCH OF

WESTERN INDIA REGIONAL COUNCIL OF
THE INSTITUTE OF CHARTERED ACCOUNTANTS
OF INDIA

For Private Circulation Only

It is during our darkest moments that we must focus to see the light.



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Long Time Ago People who sacrifice their sleep, family, food, laughter and the other joys of life were called “SAINTS”

Now they are called “CA PROFESSIONALS”

Disclaimer

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Chairperson's Message



CA Bhavée Thacker

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Dear Professional Colleagues,

The Month of October was turbulent enough with the mixed feelings of Religious Festival and Commercial Festival. Infact , it is the time which is not fully enjoyed on both perspectives. Professional remained glitched on what to actually do in this tough time.

On the broader perspective, Irrespective of the Prophets of doom propagating all sorts of negativities about GST (Goods and Service Tax), Indian Economy, "India Story" still remains credible if one goes by definitive indications to this effect. If not in a very short term, but definitely in a medium term, our country is poised to acquire the wherewithal that should provide the launch pad for its next big growth push.

GST Figures are sweeping since July 2017. The Collection is on rise despite of the doomy cloud entangling the sky. The System Failure and due to the frustration the human failure to meet the deadlines of the Returns, the country including the state are struggling to win the battles and the story as of now moves on.....

Coming to the Season of Tax Audit in midst of the Existing GST and TDS Deadlines the scenario is actually messy and actual things may be clear on the last of the month how many got left out and how many carried over or finished.

Friends, we are the witness of these times where our country is changing and we indirectly are the biggest partners who are setting a trend for the future generations for better tomorrow. This turmoil is not so easy but will bring definite success and we shall reap its fruits in the coming times.

This month we have tried to bring out the different angles of GST with new writers bringing their insight on the various topics. I am glad that my young team of writers are bringing their fresh thoughts to the paper and well articulated by the Our own Senior Jagrut Sir working on them. We have built a team of writers who are now confident to produce an article in a very short duration, infact the very purpose of newsletter being served.

It is said that Some See a Weed in new writing but I see a wish that these may spread across to develop into saplings. There are thousand thoughts lying within a man that he does not know till he takes up the pen to write. I would like to take the opportunity to thank all those who have contributed till now not only for their expression of thoughts but also for their Endeavour that has helped us in bring the issues month on month.

Your Contribution to the Newsletter makes a difference

To quote in simple words, I would like to say that

"Every Piece of Copy doesn't have to be a Masterpiece, but every Piece of Copy need to be Clear in Thoughts, that may rule the world of the reader."

Wishing You all a Very Happy and a Prosperous New Year Ahead.... !!!!

CA Bhavée Thacker
Chairperson

INPUT TAX CREDIT UNDER GST – PRACTICAL ASPECTS

Compiled By:- CA HARDIK V.THACKER

In this write up, an attempt is made understand the concept of input tax credit under GST in the background of certain practical situations.

Repair & Maintenance or Renovation to Immovable Properties

M/s. AML Ltd. has incurred substantial amount of expenditure on repair, maintenance and renovation of the factory and administrative office building. Whether M/s. AML can take input credit for GST paid on above expenses?

As per Section 17(5)(C) of CGST Act, 2017, “Input Service” for Works Contract Service when supplied for construction of immovable properties (other than plant and machinery) except where it in an input service for further supply of works contract services shall not be available

Now the question arises, what about “Input Credit” for expenses related to Repairs & Maintenance or renovation to immovable properties?

The explanation to Section 17(5) (c) defines the term “Construction” as including re-construction, renovation, additions or alteration or repairs, to the extent of capitalization, to the said immovable property

Considering the above provision and explanation, if repairs & maintenance or renovation expenses are capitalized then it would have termed as “construction of immovable properties” and not allowed as “Input Credit and if not capitalized then eligible as “Input Credit”

Goods and Services received for construction of Immovable Properties

M/s. ABC Ltd intends to construct administrative building within factory precinct. For the purpose ABC has ordered 1000 bags of cement and 16 tonne steel and other material for the purpose. Work will be carried out by construction company engaged. Whether input tax credit for GST paid on cement, steel, other material would be eligible?

No, as per section 17(5)(d), “Input Tax Credit” shall not be allowed for goods or services or both received by taxable person (even though it is not works contract) for construction of an immovable properties on his own account including when such goods or

services or both are used in the course or furtherance of business

M/s ABC Ltd has paid consultancy fees to surveyor or architect for construction of the administrative building. Whether GST paid on above professionals' charges would be allowed as "Input Tax Credit"

No, on the same ground as mentioned in above para, input tax credit shall not be allowed for goods or services or both received by taxable person (even though it is not works contract) for construction of an immovable properties on his own account including when such goods or services or both are used in the course or furtherance of business

Electrification work at "Immovable Properties"

M/s ABC Ltd. has given a contract for electrification work of administrative building to M/s XYZ. Whether the Input Tax Credit for amount paid to M/s XYZ will be eligible?

In my view, electrification work that embedded to immovable property in such way that without damage to immovable property it cannot be removed from immovable property impart character of immovable property and would not be allowed as "Input Tax Credit"

Accordingly, "Input Tax Credit" for amount paid to M/s XYZ for the electrification work of administrative building will not be eligible.

However, GST paid on Air conditions (Not Centralized AC system which is part of immovable property) and like movable equipment fixed at "immovable Property" can be taken as input tax credit.

Repair & Maintenance, Insurance and Hiring of "Motor Vehicle (Not Cab)"

As per section 17(5)(a), "Input Credit" for motor vehicle and other conveyances shall not be available except when they are used for providing certain (vehicle based) services.

Two interpretations of above restriction are possible

- (1) GST paid with respect to any payments made in relation to motor vehicle (i.e. Repairs, Insurance, hiring charges) would not be available as "Input Tax Credit"
- (2) GST paid only with respect to purchase of new motor vehicle is restricted.

In my view it would be safe to follow the Interpretation (1), except any clarification received from the appropriate authority. Even in service tax regime all the expenses related to Motor Vehicles were specifically excluded

Expenses incurred on Corporate Social Responsibility (CSR)

M/s. BCD has undertaken project on improving sanitation and health care facility in nearby village. M/s BCD has incurred expenses of Rs.15 lakhs including GST for the project. Whether the GST paid on the expenses would be eligible for “Input Tax Credit”?

At first sight, Inward supplies received for CSR activities undertaken by M/s. BCD are not “In the course or furtherance of his business”. However, where incurring expenses under CSR scheme is obligatory under any Act, then viability of business activity without CSR expenses can be challenged.

If the input tax credit is being taken for the project, department may challenge its relevance with business. If M/s BCD can prove the relevance of the project expenses with business, then it may succeed the case.

Expenses related to “Staff colony” maintained by organisation

M/s MEF Ltd. have staff colony to offer the employees residential facility as a part of contractual obligation. Whether the expenses incurred by the company (other than construction of immovable property) for staff colony would be eligible for input tax credit? Will it make any difference if M/s MEF Ltd. is collecting rent from employees for providing the facility?

Case Law under previous service tax regime: -

In [CC & CE, Hyderabad Vs M/s ITC Limited \(2011 \(11\) TMI 516 - ANDHRA PRADESH HIGH COURT](#)) held that the staff colony, provided by the respondent Company, being directly and intrinsically linked to its manufacturing activity could not therefore be excluded from consideration. Consequently, the services which were crucial for maintaining the staff colony, such as lawn mowing, garbage cleaning, maintenance of swimming pool, collection of household garbage, harvest cutting, weeding etc., necessarily had to be considered as 'input services' falling within the ambit of [Rule 2\(l\)](#) of the [CENVAT Rules, 2004](#).

In my view, ratio of the above judgement can also be applied in current regime also as there is no any specific restriction provided under section 17(5) of CGST Act.

However, possibility of disagreement by the department cannot be ignored.

If the M/s. MEF Ltd. is collecting rent from employees for residential unit then it cannot take input tax credit as rent received by M/s. MEF would termed as “Renting of residential unit” and the renting residential dwelling unit is exempt service and expenses incurred for providing exempt service cannot claim as input tax credit considering “input tax” as defined in section 2(62) of CGST Act, 2017.

Telephones / Mobile Phones / Laptops provided to employees

M/s PNL Ltd. has provided landlines phones at residence of all of its HOD and Mobiles phones for official purpose. Whether Input tax credit for the GST paid on such expenses would be eligible? Whether it will make any difference if part use of phones may be for personal purpose also?

Input tax credit for mobile and landlines phones or laptops is not specifically restricted. Hence credit for the same can be taken so far the phones & laptops are used for the business purpose. However, if the same may also be used

partly for personal purpose also then department may object the eligibility of input tax credit.

In Service Tax regime, it was settled law that if the mobile phones and laptops are given for business purpose then assessee can claim input tax credit. There is no requirement on the part of the assessee to show that full use was for business purpose only.

Considering the above M/s PNL Ltd. can take input tax credit for the phones and laptops given to employees for business use even though it may use for personal purpose also. However, it is advisable that M/s MNL Ltd. shall take endorsement from employee on invoice or separate form confirming business use.

GOODS TRANSPORT AGENCY AND GST

Compiled By: - CA ABHAY THACKER

Transportation is a one of the biggest part of the economy of our country. Any problems in transportation, disrupts the entire business chain. The most popular form of goods transport in India is via road. Transportation of goods by road is done by transporter or courier agency. This article will discuss the GTA or goods transport agencies and the provisions of GST applicable on them.

What is a GTA?

GTA means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called. This means, while others might also hire out vehicles for goods transportation, only those issuing a consignment note are considered as a GTA.

Consignment note is a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage. So, individual truck owners who do not book cargo and issue consignment note in normal course of business are not GTA.

Service Tax

There was a reverse charge mechanism under Service tax Act. There was an abatement of 60% for transportation of used household goods and 70% for transportation of normal goods.

GST on GTA

Normally a service provider is required to pay taxes, but GTA service provider is not liable to pay GST on consideration

received for transportation of goods on road as because the said service is specified under sec 9(3) of CGST Act vide notification 13/2017- Central Tax Rate, June 28, 2017

According to the said provision, recipient of service is required to pay tax on reverse charge basis and all the provision Levy of GST on GTA service for transportation of goods on road and availability of credit to the recipient of service is always a controversial issues of the Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such service.

Reverse Charge in case of GTA

In case a GTA provides the services to the following persons, recipient of services is required to pay GST under reverse charge (notification No. 13/2017- Central Tax (Rate) dated 28th June, 2017

1. Factory registered under the Factories Act, 1948

2. A society registered under the Societies Registration Act, 1860 or under any other law
3. A co-operative society established under any law
4. A person registered under GST
5. A body corporate established by or under any law; or
6. A partnership firm whether registered or not (including AOP)
7. Casual taxable person

Who will pay GST under Reverse Charge Basis?

As per Notification No. 13/2017- Central Tax dated 28/06/2017 the person who pays or is liable to pay freight for the transportation of goods by road in goods carriage, located in the taxable territory shall be treated as the receiver of service.

Various Scenarios to Determine Who is Liable to pay GST in case of a GTA

Service Provider	Supplier/Consigner	Receiver/Good/Consignee	Person liable to pay freight	Person liable to pay GST
GTA	A Company	Partnership (whether registered or not)	Company	Company
GTA	Partnership firm (whether registered or not)	Registered Dealer X	Registered Dealer X	Registered Dealer X
GTA	Partnership firm (whether registered or not)	Registered Dealer X	Partnership firm	Partnership firm
GTA	Co-op Society Ltd.	Registered Dealer X	Registered Dealer X	Registered Dealer X
GTA	Co-op Society Ltd.	Registered Dealer X	Co-op Society Ltd.	Co-op Society Ltd.
GTA	Company A Ltd.	Company B Ltd.	Company B Ltd.	Company B Ltd.
GTA	Unregistered Dealer A	Registered Dealer X	Unregistered Dealer A	GTA**

GTA	Unregistered Dealer A	Registered Dealer X	Registered Dealer X	Registered Dealer X
GTA	Unregistered Dealer A	Unregistered Dealer Y	Registered Dealer Y	GTA**

**** If GTA is registered**

Reverse Charge if the GTA Is Unregistered

As per Notification No.8/2017-Central Tax (Rate) dated 28th June 2017, intra-state supplies of goods or services or both received by a registered person from any unregistered supplier, is exempted from GST if it does not exceed Rs. 5,000 in a day.

If the transport charges (from an unregistered GTA) are less than Rs. 5,000 per day then no GST will be payable.

When GTA will be liable to pay GST?

If GTA provides goods transport service on road to an unregistered individual for personal use only then GTA will be liable to pay GST as a provider of service as because such service is excluded in Notification No. 13/2017-Central Tax (Rate) Dated: 28/06/2017 from specified service for the purpose payment of tax under reverse charge basis under sec 9(3) of CGST Act 2017

Conclusion:

1) GTA is liable to pay tax on services provided for transportation of goods on road where the said service is not specified for coverage u/s 9(3) of CGST Act.

2) GTA could discharge GST liability @ 5% if the conditions attached to the

serial no. 9(iii) under heading 9965 to notification 11/2017 Central Tax Rate, June 28, 2017 is duly complied with.

3) Transportation of goods on road by GTA, which is notified as specified service for the purpose of sec 9(3) of CGST Act, GST liability for the said

service will be discharged by the recipient of the service and the GST rate applicable on recipient will be 18%

4) Tax paid under reverse charge by the recipient of service will be eligible for credit in the hands of recipient of service.

REFUND UNDER GST

Compiled By: - CA PAVAN KORADIA

The Administration of Tax is run through a Mechanism by maintaining a fine Balance between the Revenue Collection and Cash Flow available to the Business. In the Tax Statute, Refund refers to any Amount that is due to the Taxpayer from the Tax Administration. The Goods and Service Tax Act, 2017 it is considered as a strained area, both for the Taxpayer and the Tax Administration. In order to establish an Effective and Efficient Tax Administration System it is essential that issues on which refund arises ought to be kept at Minimum and be clearly defined in the Law. The Goods and Service Tax Act, 2017 in Chapter XI has dealt with the provisions of refund elaborately. The Previous Tax Structure was cumbersome, and it took months and sometimes years to get refunds from the Government's kitty. GST provides for a clearer and efficient invoice based tracking system, verifying the transactions on an individual basis, thus, allowing systematic checking of the same. It comes as a huge relief for manufacturers or exporters, especially those in a 100% EOU or Special Economic Zone, whose working capital gets tied up in this cumbersome refund process. We will examine the concept of Refund in terms of substantial Law and Rules as made available under the Statute.

Topic divided in 6 parts.

- (A) Situations Leading to Refund Claims
- (B) Refund Forms
- (C) Time limit for filing refund
- (D) Standardization of Procedure
- (E) Documents required for claiming Refund
- (F) Time limit for granting Refund

(A) Situations Leading to Refund Claims:

- Export of Goods or Services.
- Supplies to SEZ units and Developers.
- Deemed Exports.
- Refund of Taxes on purchase made by UN or Embassies etc.
- Refund arising on account of Judgment, Decree, Order or Direction of the Appellate Authority, Appellate Tribunal or any Court.
- Refund of accumulated ITC on account of Inverted Duty Structure.
- Finalization of Provision Assessment.
- Refund of Pre-Deposit.
- Excess payment due to Mistake or Inadvertence.

- Refund to International Tourists of GST paid on Goods in India and carried abroad at the time of their departure from India.
- Refund on account of issuance of Refund Voucher for taxes paid on Advances against which, goods or services have not been supplied.
- Refund of CGST & SGST paid by treating the supply as intra-State supply which is subsequently held as Inter-State Supply and vice versa.

(B) Refund Forms:-

Form Number	Purpose of the Form
GST RFD-01	Refund Application Form along with details of Goods certified by a Chartered Accountant
GST RFD-02	Acknowledgement for refund claimed
GST	Notice of Deficiency on

RFD-03	Application for Refund
GST RFD-04	Provisional Refund Sanction Order
GST RFD-05	Refund Sanction/Rejection Order
GST RFD-06	Order for Complete Adjustment of claimed Refund
GST RFD-07	Show cause notice for reject of refund application
GST RFD-08	Payment Advice issued to Banks
GST RFD-09	Order for Interest on delayed Refunds
GST RFD-10	Refund application form for Embassy/International Organizations

Mistakenly Excess payment of Tax	Date of Payment
Export of Goods under Rebate or Refund of accumulated input credit of duty/tax when goods are exported	Date on which "Let Export order" given by proper officer
Export of Services under rebate or refund of accumulated input credit of duty/tax when services are exported	Date of Bank Realization Certificate (BRC)
Finalization of Provisional Assessment	Date of Finalization order
Refund of pre-deposit amount deposited at the time of filing Appeal or when Appeal is decided in favor of the Appellant	Date of communication of Appellate Authority order in favor of Taxpayer
Payment of duty / tax during Investigation but no or less liability arises at the time of finalization of	Date of communication of adjudicating order or order related to completion

(C) Time Period for filing Refund:-

It is recommended that a period of 2 year from the Relevant Date may be allowed for filing Refund Application. It is mandatory to keep in mind these relevant dates as failure to file Refund Applications within mentioned time can lead to blockage of credit.

Situation of Refund	Relevant Date
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investigation /adjudication	ofInvestigation
Refund of tax payment onpurchases made by Embassiesor UN bodies	Date of payment of GST
Credit accumulation due to Output being tax exempt or nil-rated	Date of providing Service.
Credit accumulation due to inverted duty structure	Last day of the financial year

(D) Standardization of Procedure

- Application Form to claim a refund can be filed through the GSTN portal
- An **Acknowledgment Number** will be given to the applicant by the means of SMS or Email when the application is filed electronically
- The changes will be made to Return and Cash Ledger and decrease the “carry-forward ITC” automatically
- Refund Application and relevant documents presented must be scrutinized and adhered accordingly within a period of 30 days of **filing the Refund Application**
- The issue of “Unjust Enrichment” will be analyzed for each refund application. In the case of non-qualification, the refund would be transferred to CWF (Consumer Welfare Fund)

- If a refund amount stated crosses the predetermined amount of Refund then the file will through the Pre-audit process for sanctioning the Refund
- Refund will be credited electronically to the account of an Applicant via ECS, RTGS or NEFT
- The Application for Refund can be made after every quarter
- An amount less than 1000 is not eligible for the Refund

(E) Documents required for claiming refund

For claiming Refund there are several documents which are required so that Refund Applications should be minimal but adequate. Below given the list of documents required;

1. Applicant has to submit the Reference number and a Copy of the order passed by Proper Officer/ Appellate Authority/ Tribunal/ Court.
2. A Statement containing the Number and Date of shipping bills or bills of export and thenumber and date of relevant export invoices, in a case where the refund is on account of export of goods.
3. In case of Export of Services, the Applicant has to furnish a Statement containing the numberand date of invoices and the relevant Bank Realization Certificate or Foreign inward remittancecertificate according to the case.
4. Applicant has to submit a statement containing the number and date of invoices as per theInvoice rules and the endorsement from the specified officer of SEZ, in the case of supply ofGoods/Services to SEZ or a SEZ distributor.

5. A Statement containing the number and date of invoices along with such other evidence as may be notified in this behalf has to be submitted by the applicant, in a case where the refund is on account of deemed exports.
6. The applicant claiming the refund for the ITC accumulated on the account of rate of tax being higher on inputs than the output (other than 0 rated supplies) has to submit the number and date of invoices issued and received during the tax period.
7. In case of any refund claims for the provisional tax paid being lower than the tax payable on final assessment, the applicant has to submit the reference number of the final assessment order.
8. The applicant filing for a claim of refund of less than Rs. 2 lakhs has to submit a declaration stating that the incidence of the tax, interest is not passed on to any other person.
9. A certificate from a chartered accountant has to be attached to annex 2 of Form GST RFD-01 if the claim of refund from the applicant is for more than Rs. 2 lakh.

(F) Time Limit for granting refund & interest in case of delay:-

As per the GST Law the time limit for granting refund will be 60 days from date of system Generated Acknowledgement of refund. However, in case where provisional refund to the extent of 90% of the amount claimed is refundable in respect of zero-rated supplies made by certain categories of registered persons in terms of sub-section (6) of section 54 of the CGST/SGST Act, the provisional refund has to be given within 7 days from the date of acknowledgement of the claim of refund.

In case refund is not granted in prescribed time limited than an interest @ 6% p.a. is notified and the period for interest will be started from the last day on which refund should be granted. The Government shall pay an interest of 9% from the date immediately after the expiry of 60 days from the date of receipt of application of refund in case of refund arising from an order passed by the adjudicating authority, appellate authority or appellate tribunal.

Processing of the Refund Applications under GST is expected to be a faster and smoother process. Since all the data is going to be uploaded electronically, Verification and Scrutinization of refund applications would be faster.

E-way Bill under GST

=> What is E-way Bill?

E-way bill is an electronic way bill for movement of goods which can be generated on the GSTN portal (common portal).

=> When E-way Bill is mandatory?

E-way bill is mandatory generate and carry when there is 'movement' of goods in 'single consignment' in a 'single conveyance' –

- in relation to 'supply'
- for reasons other than a 'supply' (eg. return)
- due to inward 'supply' from an unregistered person of having value 'more than Rs.50000' to or from a 'registered person' for a distance of 'more than ten kilometres' within the state or union territory.

- A 'Supply' may be either of the following:
 - A supply made for a consideration in the course of business
 - A supply made for a consideration which may not be in the course of business
 - A supply without consideration in the course of business
- When E-way bill is generated, a unique 'E-way Bill Number (EBN)' is allocated and available to the supplier, recipient and the transporter.

E-way Bill – Framework

Every Registered Person under GST ▪ Before movement of goods ▪ Fill Part A of Form GST EWB-01

SITUATION – 1:

If he is consignor or consignee (mode of transport may be owned or hired) ▪ Fill Part B of Form GST EWB-01

SITUATION – 2:

If he is consignor or consignee and goods are handed over to transporter ▪ Fill

- *Compiled by CA Sachin Mehta*

information relating to transporter in Part B of Form GST EWB-01 ▪ Generate E-way bill on the basis of info. shared by the regi. person in Part A of Form GST EWB-01

NOTES:

1. If supplier of goods is an unregistered person under GST and recipient is registered, compliance related to E-way bill is to be done by recipient as if he is the supplier.
2. If the goods are transported for a distance of less than 10 kilometres, there is no need to furnish the details of conveyance in Part B of Form GST EWB-01.
3. If a transporter is transporting multiple consignments in a single conveyance, they can use the form GST EWB-02 to produce a consolidated e-way bill, by providing the e-way bill numbers of each consignment. If both the consignor and the consignee have not created an e-way bill, then the transporter can do so by filling out PART A of FORM GST EWB-01 on the basis of the tax invoice/bill of supply/delivery challan given to them.

=> What is the validity of an E-way Bill?

An E-way bill is valid 'from the Date & Time at which e-way bill is generated', which is based on the distance travelled by the goods. DISTANCE VALID FOR

Up to 100 Kilometres - One day

For every 100 Kilometres after that - An Additional day

NOTE:

A. The details of E-way bill generated shall be made available to the recipient, if registered, on the common portal, who shall communicate his acceptance or rejection within 72 hours of the details being made available to him on the common portal otherwise it shall be deemed that the recipient has accepted the said details.

=> Who verifies E-way Bills?

The Government may authorize a proper officer to intercept any conveyance to verify

the e-way bill or the e-way bill number in physical form for all inter-State and intra-state movement of goods.

GALLERY

An Informal Meet with CA Mahesh Sarada











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