

INTRODUCTION TO GST
INPUT TAX CREDIT_01-PART 5

CMA ANIL SHARMA

(B.com. (Hons.), M. Com., FCMA, TIOL Awardee, Practising Cost Accountant)

Management

The Institute of Cost Accountants of India, Kolkata

Week 05

Lecture 23

GST/5/18/15

If business is sold out because of merger, demerger, amalgamation, lease or otherwise along with liabilities is ITC available to new person emerged out of such arrangements...

Yes, ITC balance lying in Electronic Credit ledger can be transferred to new person emerged out of such merger, demerger, amalgamation, lease or otherwise.

A registered person shall file an application in FORM GST ITC-02, electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee:

Next friends, it happens many times in the business that business is sold out to some other person. It happens so many times that companies get merged and new companies come out because of merger, demerger, amalgamation and all. As I told you that because of this market and the business transactions, people take so many options to run the businesses. So, each and every aspect of the business is taken care by the GST law, which helps a lot to all stakeholders to compliance under the indirect taxes. So here the question comes again, that if business is sold out, or two or three existing companies merged together and the new company came out, will ITC be available to new company?

So, all these merging companies having stock on a particular day on which they had already paid GST to their suppliers, such that they are entitled for and they have also claimed ITC on

such goods, that goods may be in form of raw material, storage and consumables may be in WIP may be FG. So, when two or three companies merged and new company has emerged whether ITC will be available to the new company which has purchased all these companies or holding company has taken over the assets and liabilities of subsidiary company or some other company? Answer is yes.

ITC balance lying in 'electronic credit ledger'. Electronic credit ledger (we will discuss in the following slides when we will talk about returns) can be transferred to new person. So, if any business is sold out to a new one, or two companies have merged and third company has come out. ITC will be available to the new person or the new company coming out with a new GST number. And condition along with it is, the registered person in the emerging/merging companies shall declare their goods/stock to the government to the state GST department or the CGST department.

GST/5/18/16

If any registered person whose supplies become exempted or he becomes Composite Dealer , what will be the treatment to any ITC lying in his account?

He has to pay back that much of amount of ITC availed in cash ledger or ECL as the case may be.

Next friends, the question is if any registered person whose supplies become exempted (earlier example was exempted but become taxable, here goods were taxable earlier but because of government notification goods now become exempted) or he becomes composite dealer (means he was regular dealer he has a GST registration but now because his turnover is not crossing 1.5 crore limit or 50 lakh rupees in service as the case may be), now he has decided that instead of having this GST registration we should go for this where compliances are less. So, question is, if ITC is available or he has to reverse back the ITC whatever he has claimed so far?

So, friends when your products are becoming exempted (I told you for availing ITC for claiming ITC your final product must be taxable), here earlier your product was taxable but now it is exempted because of government notification, the change in the law, so whatever ITC you have availed or claimed, shall be reversed. He has to pay back, he has to reverse it, so ITC

is not available. Similarly, if a normal dealer is now becoming a composite dealer (because composite dealer I told you they are not eligible for ITC on their procurement because they are not charging tax to their customer in their invoices, so) they are also supposed to reverse ITC whatever he has claimed.

GST/5/18/17

What if Capital Goods, on which ITC is availed and utilized are sold out

If such capital goods are sold out or disposed off on which ITC was availed and utilized, in that case dealer has to pay back amount equal to ITC availed reduced by 5% per quarter from the date of Invoice of such capital goods or
The tax as per the rate applicable on transaction value of such capital goods whichever is higher.

Next friends in case of capital goods. Because it is your asset. You are not trading. It (capital goods) is your asset in your balance sheet. You are using these assets over the years for manufacturing purposes or to deliver services. On which (these capital goods) ITC was available when you purchased these capital goods, 2 years back, 3 years back, 4 years back or maybe 5-6 years back. When you purchased some machinery and machinery was subject to GST at the rate of 12%, and you have availed that 12% as your ITC, you have availed and also to an extent utilized it also, may be fully or may not be fully, and now you are selling these product/goods.

Five years back you purchased one machinery of one crore rupees on which 12% GST was paid means 12 lakh rupees. You used this machinery for five years, though it has its life for 10 years. Now you are selling this machinery for 60 lakh rupees. So, these 12 lakh rupees which you claimed as your ITC and during five years of its use you consumed/availed/utilized also this amount of 12 lakh rupees. Maybe your turnover is so high that you have consumed 100% or you might have consumed 80% only. So, you might have consumed 40% only. Then what? If such capital goods are sold out or disposed of on which ITC was availed and utilized. Here, the word is availed 'and' utilized, i.e. you have availed also, you have utilized also. Maybe fully or partly.

What if Capital Goods, on which ITC is availed and utilized are sold out

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20% PA

Supp
1 Cr
12% GST
12 lakh
60 lakh
72 lakh
12 lakh
12%

In that case, dealer (means the person who is having these goods) has to pay back the amount equal to ITC availed. There is a formula given in law. That the case dealer has to pay back an amount equal to ITC availed, reduced by 5% per quarter from the date of invoice of such capital goods. So means whatever amount you have claimed and availed or utilized, you are supposed to reverse back, supposed to pay back ITC 5% per quarter i.e. 20% per annum. This much amount you are supposed to reverse from the date of the capital goods purchased. The tax as per the rate applicable on transaction value of such capital goods whichever is higher. Word is 'or', so this amount that you have calculated or the tax as per applicable rate on transaction value.

Means here we purchase this machinery for 1 crore rupees. Now you are selling it for 60 lakh rupees and GST rate was 12%. Same rate will be applicable over here. So in 60 lakh rupees GST will be 7.2 lakh rupees. When you purchased you availed 12 lakh rupees. Now since you are selling it, you are supposed to deduct, you are supposed to reverse, you are supposed to pay back to the government. Because you have either consumed 100% or maybe 80% or maybe 40%. This much amount or this much amount, whichever is higher, that much you have to reverse.

So, whenever you are selling your capital goods on which ITC is availed and utilized, you must deal with the transaction very carefully. And if the asset is sold as a scrap, in previous example, asset was working in good condition, but somehow you are selling it. Here now asset is scrapped may be because of some accident may be some fire took place or any reason may be

due to some absolute technology and you have availed ITC on this particular asset which has been scrapped now. If asset is called as a scrap and scrap is subject to 18% GST if you are selling it as an asset as it is, because it is in use, it is operational and you are selling it as capital goods only, second-hand capital goods, then the rate applicable on that particular capital goods will be applicable.

GST/5/18/18

If Assets are sold as scrape..... What is the treatment for ITC availed?

In case assets is sold as scrape, GST @18 shall be applicable on money realized and no payment for ITC availed.

But when it is sold as scrap, then rate of GST will be 18%. So, take care when you are selling or entering into such type of transactions because it is related with ITC and you have availed ITC.

GST/5/19/19

Is ITC available for Goods or Inputs sent for Job work?

Yes, ITC is available if goods or other inputs sent for Job work .

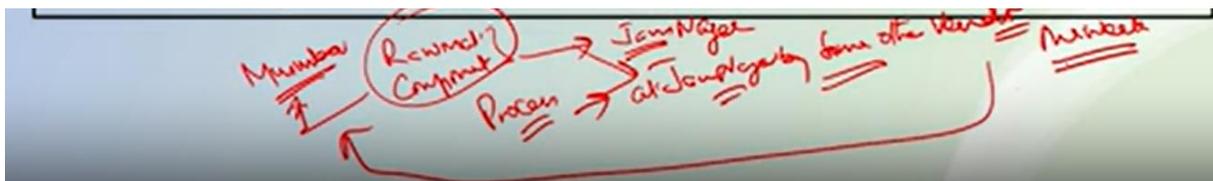
But in case such goods or inputs are not bring back with in one year from the date of being sent, it will be treated as supply and GST as per rate applicable shall be charged.

ITC is also available even if Goods or other inputs are sent directly by supplier on the instruction of buyer to job worker if received back by buyer within one year from the date of goods or inputs received by job worker.

Friends, this is another aspect of GST ITC which is very important from business point of view and it has its own role, its own place in GST and business also. In industry, especially in engineering industry / automobile sector it happens many times that we send material for some processes to third party because we don't have that facility or if that facility we start establishing in our own factory, it may be costly one. So, we identify the vendors such people in the market,

decide rates with them and start getting jobs from them. They are job worker for us. They give their service by having that particular process on our material. It happens, it's very common practice in market.

So, if I am in any type of industry and I have my business in Mumbai and I am procuring my raw material or component from Jamnagar. And on this raw material or component before using or before putting these items into use for my final product, I need some process to be done and this process is being done at Jamnagar itself by some other party.



They have specialization means this raw material this component needs some heating process, a very specialized job work and a party in Jamnagar itself has that facility; so what I am doing, I am procuring this component of raw material from Jamnagar vendor or the Jamnagar supplier and before bringing this material to Mumbai factory, I am sending this component to this job worker for that particular treatment. And it takes one week time. And then from here, I bring this material to my factory in Mumbai. So, friends, in this case, if I take a route that first I will procure this material from Jamnagar then take it to my Mumbai factory and then again will send Jamnagar for job work purposes it is not viable under the business it will make my business loss making venture.

So, law permit me there is a provision under GST law in such type of situations you can send this raw material directly to your job worker after procurement and after that process, this job worker will send material to you. There is a set procedure under GST law. It is allowed. It is a process where one week is required. But there are some cases where maybe two months or three months are required to complete this process. So, we need to understand this very carefully and we need to use the relevant documents as I told you here that when raw material is procured, it will go to job worker, bill will be available at Mumbai and from job worker in Jamnagar material will come to Mumbai with relevant documents, e-way bill also and job worker bill also for his heat treatment process and accordingly transaction will be undertaken. And if material is lying with job worker and I have received this copy of bill for payment purposes because my vendor who has supplied me, I have different terms of payment with him and I have different term and condition for job work; so I need to make payment to this supplier

because he has supplied material, his work is over as per my instructions or I have taken delivery from his factory and delivered this material to my job worker. So, I need to pay to this supplier. When I will pay it on the invoice raised by this person, I will avail ITC also though material is lying with my job worker.

Whereas section 16 says material should be delivered to you. Here it is presumed/deemed that material is lying with me now because I have given to job worker for some treatment and ITC is available to me. I can avail and I can utilize also. So, friends, whenever there is any transaction related to job work, you can claim ITC. But here the condition is this material which is sent to job worker for job work purposes must come back to you within one year time. You cannot keep this material with job worker for more than 365 days from the date of invoice when material was supplied to job worker. In that case, ITC will be reversed along with interest. Otherwise, ITC is available to you.

GST/5/19/20

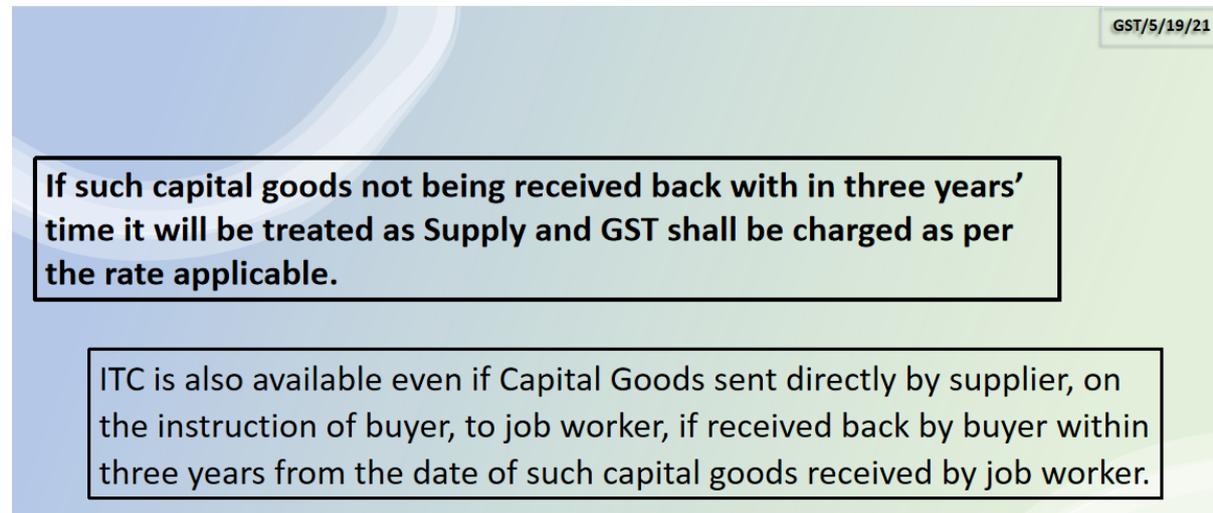
Is ITC available for Capital goods sent for Job work?

Yes ITC is available on Taxes paid for Capital goods, if sent for Job work.

Sometimes, friends, it happens when we send capital goods also to the job worker for production purposes because I need particular process and my job worker is not in a position to have that process or that equipment or that machinery with him and otherwise it is costly affair for me. So, I facilitate my job worker by giving him a machine to fulfil my own requirement and law permits that also. So, this machine, my capital good, will be supplied directly to my job worker. Though it is installed at job worker side, ITC is available to me. I can avail and claim and utilize it. But here law says this machine this particular product should come back to you within three years. So, within three years this machine should come back to you.

So again, here question is if it is possible to bring machine just for the compliance of the law because my production is still going on and it will go for another 10 years, but provision says

it must come out from job workplace to you. You may send back again. So, there is that procedure. But important is, yes, I can avail ITC. So, if this machine is of one crore rupees and GST is 18% or it may be an imported machine where I have paid 18% GST, 18 lakh rupees ITC is available to me. That's a big relief.

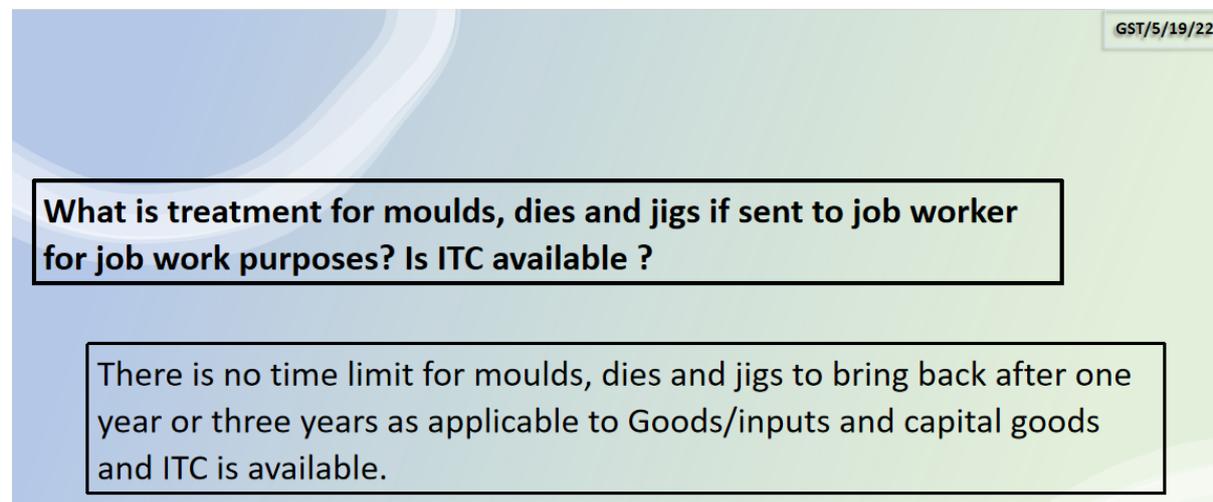


GST/5/19/21

If such capital goods not being received back with in three years' time it will be treated as Supply and GST shall be charged as per the rate applicable.

ITC is also available even if Capital Goods sent directly by supplier, on the instruction of buyer, to job worker, if received back by buyer within three years from the date of such capital goods received by job worker.

So, friends, as I told you, if this machine doesn't come to you after three years, the ITC you avail that is 18%, that is 18 lakh rupees has to be reversed. It will be treated as sale to the job worker.



GST/5/19/22

What is treatment for moulds, dies and jigs if sent to job worker for job work purposes? Is ITC available ?

There is no time limit for moulds, dies and jigs to bring back after one year or three years as applicable to Goods/inputs and capital goods and ITC is available.

Friends, it is another important aspect in GST, especially in case of industries of automobile sector because we have so many components in automobile sector or engineering sector and these components needs moulds/dyes and sometimes dyes are given by original supplier means manufacturer of automobile sector to its vendors or its job worker. So, these dyes or moulds have their own cost or Is ITC available? Answer is yes, ITC is available because dyes or moulds are lying with job worker for my own production, so ITC is available.

How Input Service Distributor (ISD) distribute ITC..... ?

- The input tax credit available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in FORM GSTR-6
- ISD shall separately distribute the amount of ineligible input tax credit and eligible input tax credit
- The input tax credit on account of central tax, State tax, Union territory tax and integrated tax shall be distributed separately,
- formula for distribution - $C1 = (t1 \div T) \times C$,
"C" is the amount of credit to be distributed, "t1" is the turnover, of person R1 and "T" is the aggregate of the turnover, during the relevant period, of all recipients (All Rs) to whom the input service is attributable, R1 is one of the recipient.
- the Input Service Distributor shall issue an Input Service Distributor invoice indicating its for distribution of ITC

Friends, it is another aspect Input Service Distributor. This is another category of a person under GST. What is that? Friends, in big companies which have its operations across India, they have policy of procurement of important material at headquarter level. Means they have centralized purchasing. If any company is having its offices across India, in different states, 10 to 15 states where they are having their operation, but they have procurement policy that procurement will be done at headquarter level for certain items. Then what will happen because GST is a consumption-based tax (as you know). So, all vendors from whom the company is procuring, the company is giving its purchase order to these suppliers in such a way that the company is asking; send bill to headquarter and supply material to my units or to my locations/ different locations/states.

So, company having head office in Mumbai, having 26 offices in different states of the country and the vendor or the supplier from Karnataka sending material, (means raw material or whatever they have procured from them) to their different offices or locations from time to time and for every dispatch or each dispatch, they are sending invoices to their Bombay office. So here question is, material is going to respective states where they are having their office or unit or locations and bill is coming to Mumbai and when Karnataka party is raising bill to Mumbai, they are charging IGST by mentioning Mumbai office, but material is actually consumed in different 26 locations in the country.

So, this company at head office though having GST number in Maharashtra for their head office they will take another additional number in the name of ISD. Why so? Because this company is having centralized procurement policy so Karnataka company/Karnataka supplier will raise

invoices to this number because this company is having GST number separately for Maharashtra and also having GST number as ISD for centralized procurement because this material is not being used in head office it is being used in different 26 locations so ITC should be shifted to or the tax should be shifted to location where material is consumed. So, this ISD sitting in Mumbai (this company) will raise or transfer this procurement through its own invoices for two respective locations by charging IGST or as the case may be CGST or SGST, if they have office in Maharashtra also other than head office. So, this company/this ISD will also file their taxable returns every month.

So, whatever they will procure for other locations it will be their inputs and when they will raise invoice to them it will be their outward supply. They will set off their inputs ITC against their outward supply and respective units will get their ITC based upon the invoices raised by ISD, though payments are made by Bombay office only. So, this is the ISD concept in GST. And this way ITC shifted when companies having procurement centralized, though material is consumed in different states, but their procurement is at head office level. So, ITC is available to the respective units where material is finally consumed.

GST/5/20/24

Can Registered person transfer ITC to other places/units if has obtain additional/new registrations with in the state...

- Yes, he can transfer and avail ITC on Inputs/capital goods transferred to new place or unit with in the states and should furnish the details of such inputs and capital good inform-GST-ITC-02A,
- The newly registered person (transferee) shall, on the common portal, accept the details so furnished by the registered person (transferor) and, upon such acceptance, the unutilised input tax credit specified in FORM GST ITC-02A shall be credited to his electronic credit ledger

Friends, I told you that companies are having so many business propositions nowadays. So, GST has taken care of almost each and every transaction of the business, so that ease of doing business and benefits can be given to the industry to the extent. So here again a question comes can a registered person who is a normal dealer or normal taxpayer, transfer ITC to other place of unit, if he has obtained additional new registration within the state? So if a company already

having GST number in a state and has started operations in another location with different unit under the same company can they interchange/can they share ITC? Yes, they can.

GST/5/20/25

In case transaction is covered under RCM, how ITC shall be availed?

- In case transactions are covered under RCM, tax has to be paid in cash and in same month's return ITC can be availed.

So, friends we all know that on our procurement we pay GST and there are some transactions as mentioned earlier also where GST is not paid by the supplier to the government but it is paid by the buyer or the recipient to the government. In case of advocate services, advocate raise bill to the company but he does not charge GST in his bill because he is not supposed to, because transaction with advocate is covered under Reverse Charge Mechanism RCM Section 9(3) of CGST (charging section). Similarly, services of goods transport authority (transporter), if he is covered under five percent category, he will not charge GST to the service recipient. Rather the recipient will pay GST at the rate of 5% on transport services.

RCM Rec
Tax by Can

In case transaction is covered under RCM, how ITC shall be availed?

- In case transactions are covered under RCM, tax has to be paid in cash and in same month's return ITC can be availed.

GTA (5%)
Rate ✓

GST not Paid by Seller to govt } But Paid by Buyer/Rec to govt

RCM
Sec 9(3)

So, in either case, the recipient is paying tax. In majority cases, he is paying tax through supplier but on specific transactions he is paying tax directly to the government under reverse charge

mechanism and in this case also he is entitled to ITC, he can avail ITC but subject to conditions of section 16 and section 17. He is eligible for that he can claim ITC. But here the only condition which is not otherwise in other cases whenever this RCM transaction come into picture recipient is supposed to pay tax by cash only, he cannot set off this liability against the ITC available to him in his credit ledger. Here RCM tax is always paid in cash and ITC is available to him. So, friends this was the total procedure of ITC, importance of ITC, as I told you section 16, section 17, section 18 & section 19 of CGST act are very relevant from business point of view. It's a cash (hard cash) so its management is very important non availability of ITC or wrong availability or wrong availment of ITC will cost to the business and can create problems also.

CHAPTER V : INPUT TAX CREDIT

Section 16. Eligibility and conditions for taking input tax credit.

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,-

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

¹[(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]

(b) he has received the goods or services or both.

²[**Explanation.**- For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;]

³[(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;]

So, friends, I have gone through all the provisions of the law and here is section 16 as drafted under CGST Act. When we are dealing with tax matters, we must understand how the law is written. So just for your reference, this is the actual language drafted under the law. Section 16

which talks about eligibility and conditions for taking input tax credit (this is the title under the law of this section). It says: every registered person means the person who is having GST number shall subject to such conditions and restrictions as I explained you of section 16 and 17 itself as may be prescribed and in the manner specified in section 49 that is payment of taxes, be entitled to take credit of input tax charged on any supply of goods or services or both to him. Means tax charged to him for his procurement his buying which are used or intended to be used in the course of or furtherance of his business. Means ITC is available for the taxes paid on inputs which are used by this person means the registered person for his business and if he is using such procurements for personal purposes then ITC is not available and the said amount shall be credited to electronic credit ledger. There is a ledger maintained by GST portal we will discuss in return chapter. And that amount whatever he has paid to his supplier he will claim it in his monthly return of GST 3b and the same will be available to his credit ledger at GST portal. So, friend this way you are supposed to read legal provisions of the law understand them properly and then execute.