

DESIGN OF PRESENTATION

- Transitional Credit under GST Act
- Credit mechanism under the GST Act



ITC: CONCEPT

- a) Backbone of any Value Added Tax System
- b) CENVAT Credit : On value addition under Central Excise and Service Tax
- c) Input Tax Credit: On value addition under State VAT laws
- d) Adoption of term ITC under GST law to match the global scenario

CENVAT/ITC: BASIC STRUCTURE

| | | | |
|----------------|-------------------------------|---|-----------------|
| SELLER (VAT) | SERVICE PROVIDER(SERVICE TAX) | MANUFACTURER (CENTRAL EXCISE) | SUPPLIER (GST) |
| PURCHASER(VAT) | SERVICE RECIPIENT(S.TAX) | RECIPIENT OF MANUFACTURED GOODS (C.EXCISE) | RECIPIENT (GST) |



REGISTERED TAXABLE PERSONS

| | | | |
|--------------|-----------------|------------------------------|----------------|
| TAXABLE SALE | TAXABLE SERVICE | MANUFACTURE OF TAXABLE GOODS | TAXABLE SUPPLY |
|--------------|-----------------|------------------------------|----------------|

ANK'S SHASTRAVICHARA:1

“There is no change in the concept of ITC under the GST

Only change in form, manner and utilization”

TRANSITION and EXCESS CREDIT

– [Sec.140 of CGST ACT]

– EXISTING REGISTERED TAX PAYER UNDER C.EXCISE/SERVICE TAX:

- » Has carried forward excess CENVAT/ITC Credit on INPUTS in the return of the last month ending immediately prior to the appointed day
- » ITC to be admissible under the GST Act
- » “all returns” under the “existing law” for a period of 6 months prior to appointed day to have been filed
- » Should NOT be Goods manufactured and cleared under such exemption notification as notified by the Government

TRANSITION and EXCESS CREDIT

– [Sec.18 of UTGST ACT]

– EXISTING REGISTERED TAX PAYER UNDER VAT:

- » Has carried forward **Excess VAT/Entry Tax credit** on INPUTS in the return of the last month ending immediately prior to the appointed day furnished by the assessee not later than 90 days from that day
- » ITC to be admissible under the GST Act
- » “all returns” under the “existing law” for a period of 6 months prior to appointed day to have been filed
- » Should NOT be Goods sold under such exemption notification as notified by the Government

TRANSITION and EXCESS CREDIT

“ existing law”: Section 2(48) of CGST Act/
Section 2(5) of UTGST Act:

any law, Notification, rule, regulation
relating to levy and collection of tax on
goods/services/both made before the
commencement of CGST Act/UTGST Act

ANK'S SHASTRAVICHARA:2

“Exemption Notification” covers Notifications relating to SEZs and EOU's?!!

Concept of Zero rating for SEZs and the above phrase employed in Section 140(1)(iii) creates confusion

APPLY APEX COURT RULING: IN A.INFRASRUCTURE CASE:
“ There is a distinction between Exempt goods and Exempt transactions”.

TRANSITION and EXCESS CREDIT

– [Sec.18 of UTGST ACT]

– EXISTING REGISTERED TAX PAYER UNDER VAT:

- **SECOND PROVISIO:** No eligibility to be carried forward as transitional credit attributable to inter-State sales against C forms, in-transit sales , stock transfers, penultimate exports falling under the provisions of CST Act
- WHEN
- Not substantiated by the forms nor submitted within the period specified in Rule 12 of Central Sales Tax (Registration & Turnover) Rules, 1957

TRANSITION and EXCESS CREDIT

– [Sec.18 of UTGST ACT]

– EXISTING REGISTERED TAX PAYER UNDER VAT:

- **THIRD PROVISIO:**
- Amount equivalent to Credit attributable to inter-State sales against C forms, in-transit sales , stock transfers, penultimate exports falling under the provisions of CST Act :
- When substantiated by the forms in the manner prescribed in Rule 12 of Central Sales Tax (Registration &Turnover) Rules, 1957
- ----- eligibility for refund

RULE 1 PROVISIO OF DRAFT TRANSITIONAL PROVISIONS SGST RULES: Value of claim of concessional levy/exemption along with serial number and value of statutory declaration forms to be submitted with GST-TRAN1 FORM

ANK'S SHASTRAVICHARA:3

51 STC 381 Arulmurugan & Co. (FULL BENCH decision of the Madras High Court APPROVED by Hon'ble SC in Hyderabad Asbestos case

- *“where an assessee seeks to file C forms beyond the stage of assessment, the relative power which he concerned authority should invoke is the power defined in the proviso to section 8(4) and not the power defined in the proviso to rule 12(7).”*

“ When C forms/statutory forms can be filed till the level of Tribunal as per Full Bench Madras High Court approved by SC, can credit be denied on the basis of lapse of limit prescribed by Rule 12(7) of CST Turnover Rules?”

ANK'S SHASTRAVICHARA:4

Some Union Territory/States have done away with the difference between inter State sales as against C forms and those without, for claim of ITC under the respective VAT Acts. The dealers have been claiming credit based on this legal position.

what will happen to such credit?

TRANSITION and EXCESS CREDIT

- EXCESS CREDIT RELATING TO CAPITAL GOODS: Section 140 of CGST Act & Section 18(2) of UTGST Act:
- DATE OF ROLL-OUT:- 1.7.2017
- ELGIBILITY OF UNAVAILED TRANSITIONAL CREDIT OF CAPITAL GOODS
- **1. Not Carried forward** in Return of 1.06.2017
- **2. Unavailed eligible credit** under the “existing law”:
 - VAT/Services Tax/Central Excise
- **3. Eligible under GST** also
- Explanation :Aggregate *minus* Aailed = Unavailed

TRANSITION and EXCESS CREDIT

- Transitional Credit for the following persons: (Section 140 of CGST Act)
 - Persons not liable to be registered under the earlier law
 - Persons engaged in manufacture of exempt goods/ provision of exempt services
 - Works contractors availing abatment under Notification 26/2012
 - First stage dealer
 - Second stage dealer
 - Registered importer
 - Depot of a manufacturer
- CENVAT credit on Inputs /WIP/FG held in stock on the appointed day:

TRANSITION and EXCESS CREDIT

Transitional Credit for the following persons: (Section 140 of CGST Act

CONDITIONS:

1. Such inputs/goods intended to make taxable supplies;
2. Registered person eligible for ITC under CGST Act;
3. Possession of Invoice/other prescribed documents evidencing payment of duty under the existing law;
(Input stock should match with the invoices)
4. More than 12 month old invoices –to be rejected
5. Supplier of services is not eligible for any abatement under the CGST Act

TRANSITION and EXCESS CREDIT

- PROCEDURE TO CLAIM CREDIT: (applicable to all registered persons mentioned in Section 140)
- [Rule 1 of TRANSITIONAL PROVISIONS DRAFT RULES]
 - Application for claim of ITC to be made within 60 days from the appointed day in the Common Portal in Form GST-TRAN1 duly signed
 - DETAILS TO BE SPECIFIED: Amount of tax/duty for which credit claimed
 - FOR CAPITAL GOODS: details of utilised /availed credit and details of unutilised credit to be furnished

EOU/EHTP: Credit applicable only to the extent specified in Rule 3(7) of CENVAT CREDIT RULES (Proviso to Rule 1)

TRANSITION and EXCESS CREDIT

- SPECIAL SCHEME OF CLAIMING CREDIT IN ABSENCE OF INVOICE/ANY OTHER DOCUMENT EVIDENCING PAYMENT OF TAX:
- [Section 140(3) Proviso r/w. Rule 3 of Draft Transitional Provisions Rules:]
- Applies to : URD under existing law and registered under GST law
- (Does not apply to manufacturer/supplier of services)
- Credit to be made available to recipient of supply of such goods by way of reduced prices
- Credit to be allowed to registered person at 40% of CGST: only after the supply has been made under GST law after appointed date
- Available for six tax periods

TRANSITION and EXCESS CREDIT

- SPECIAL SCHEME OF CLAIMING CREDIT ON GOODS HELD IN STOCK ON APPOINTED DAY IN ABSENCE OF INVOICE/ANY OTHER DOCUMENT EVIDENCING PAYMENT OF TAX:
- [Section 140(3) Proviso r/w. Rule 3 of Draft Transitional Provisions Rules:]
- **CONDITIONS:**
 - 1. Such goods Not wholly exempt from CE duty (I Schedule to CE Tariff Act)/Nil rated
 - 2.Document evidencing procurement of such goods is available
 - 3. a statement after six tax periods in Form GST TRAN--- to be submitted
 - 4. stock of goods on which credit claimed: easily identifiable by registered person
 - 5. Credit made available in GSTR-PMT2 of Registered Person

ANK'S SHASTRAVICHARA:5

- Document evidencing procurement of such goods is available
- The provision and Rule is a special scheme applicable as an ombudsman to URD not in possession of documents.
- What is the rationale behind this requirement?
- What are the possible documents that can be produced?

TRANSITION and EXCESS CREDIT

- CLAIM OF TRANSITIONAL CREDIT BY MANUFACTURER OF TAXABLE AS WELL AS EXEMPT GOODS/PROVIDER OF EXEMPT SERVICES: (Section 140 of CGST ACT)
- **Eligibility:**
- **Excess CENVAT credit carried forward** in a Return under existing law as per Section 140(1)
 - AND
- Credit in respect of Inputs in stock/WIP/FG on the date of roll out relating to exempt goods and services

TRANSITION and EXCESS CREDIT

- CLAIM OF TRANSITIONAL CREDIT BY SELLER OF TAXABLE AS WELL AS EXEMPT GOODS (Section 18 of UTGST ACT)
- **Eligibility:**
- **Excess ITC carried forward** in a Return under existing law as per Section 18
 - AND
- Credit in respect of Inputs in stock/WIP/FG on the date of roll out relating to exempt goods

TRANSITION and EXCESS CREDIT

- When Inputs/ input services received after appointed date but duty/tax paid under existing law:
- **CREDIT ELIGIBLE**
- **CONDITIONS:**
 - A) Invoice of the said inputs/input services to be recorded in books of accounts of the taxable person within 30 days from appointed day
 - PROVISIO: Extendable for a further period of 30 days by competent authority
 - B) Statement to be furnished by the taxable person in respect of the credit taken

TRANSITION and EXCESS CREDIT

CREDIT ELIGIBILITY FOR ISD: Section 140(7):

Non obstante clause

Services received prior to appointed day by ISD eligible for distribution after appointed day

Even if Invoices received after appointed day

TRANSITION and EXCESS CREDIT

CREDIT ELIGIBILITY FOR RP HAVING CENTRALISED REGISTRATION UNDER EXISTING LAW☹ Section 140(8):

Under GST law, No Centralisation : Each State: Separate registration

Eligible to take credit carried forward in the last return prior to appointed day

OR

Where the return is filed within 90 days from appointed day, the return being an original return or revised return where claim reduced from earlier claim

Can be transferred to any RP having same PAN

Eligibility also under GST law

TRANSITION and EXCESS CREDIT

RE-CLAIM OF REVERSED CREDIT FOR SERVICES:

Credit on input services reversed under existing law due to non payment of consideration within 3 months:

Can be re-claimed if consideration is paid within 3 months from appointed day

- **INPUT TAX CREDIT UNDER GST LAW**

INPUT 2(59) INPUT SERVICE 2(60)

SUPPLIES RECEIVED

- GOODS* OTHER THAN CAPITAL GOODS 2(54)
- SERVICES* RECEIVED 2(55)

Used or intended to be used in the Course of furtherance of business



*SUBJECT TO EXCEPTIONS AS MAY BE PROVIDED BY THE ACT

INPUT TAX 2(62)

SUPPLIES RECEIVED

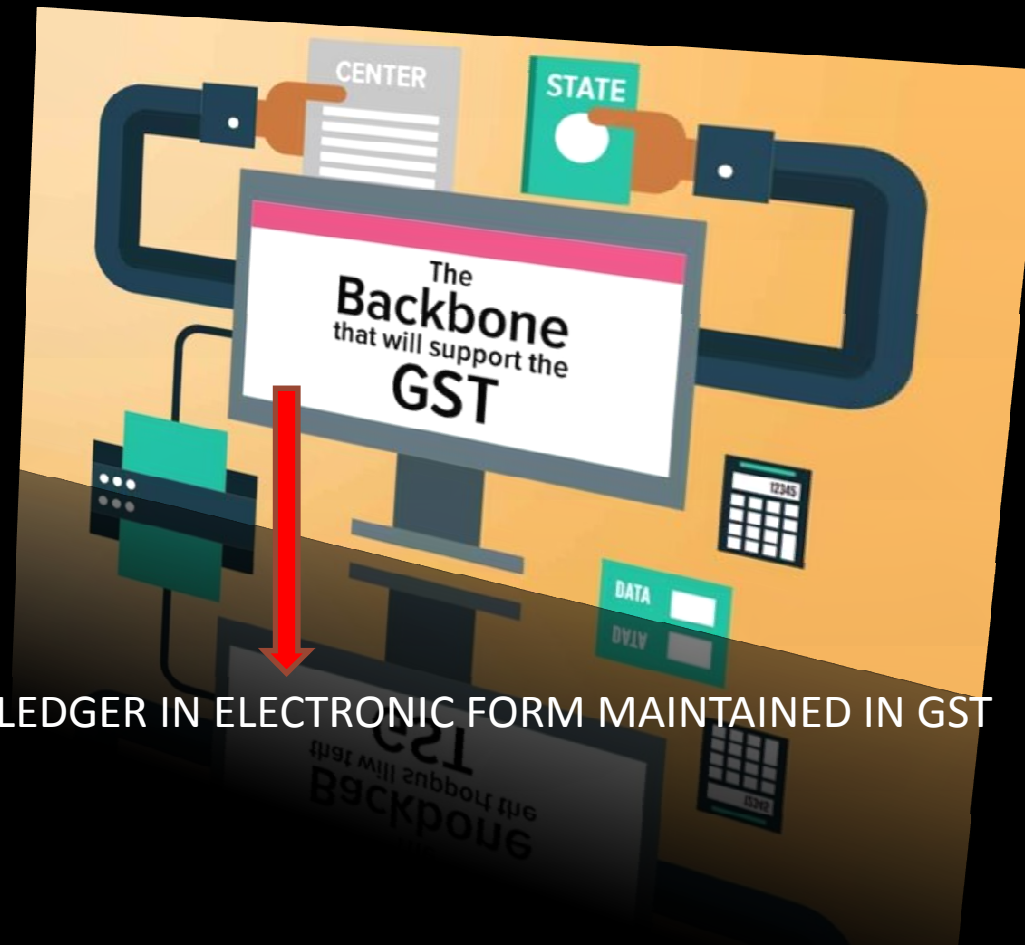
TAX CHARGED
SGST&IGST/CGST&IGST



Used or intended to
be used in the Course
of furtherance of
business

Includes tax paid under reverse charge 7(3)

Electronic Credit Ledger 2(46)



ITC CREDIT LEDGER IN ELECTRONIC FORM MAINTAINED IN GST PORTAL

MATCHING AND CLAIM OF ITC

A' a registered dealer purchases goods from 'B', another registered dealer within the State. On the basis of the tax invoice raised by 'B', 'A' pays input tax to 'B' along with sale price.

"B" fails to deposit the tax collected from A into the Treasury.

WHO IS LAIBLE?

MATCHING AND CLAIM OF ITC

UNDER MAHARASHTRA VAT ACT,2002:

Section 48(5) contains a specific provision that set-off is available to the purchasing dealer only if “tax actually paid” into the Treasury.

Provisions challenged. Upheld by Hon’ble High Court, Mumbai:

“Provision not discriminatory

Provision cannot be read down to allow credit of tax which should have been paid by selling dealer but was not paid”

[MAHALAKSHMI COTTON MILLS’s case: MANU/MH/0520/2012]

MATCHING AND CLAIM OF ITC

UNDER TN VAT ACT,2006:

Section 19(16) of TNVAT Act :

“ the Input Tax Credit availed by any registered dealer shall be only provisional and the assessing authority is empowered to revoke the same if it appears to the assessing authority to be incorrect, incomplete or otherwise not in order”

Sri Vinayaga Agencies

Vs

Asst. Commissioner (CT)

MANU/TN/1386/2013

***“ Section 19(16) does not empower the Assessing Authority to revoke the ITC on the plea that selling dealer has not paid the tax.
SELLER LIABLE; PURCHASER ENTITLED TO CLAIM OF ITC”***

MATCHING AND CLAIM OF ITC

UNDER GST LAW:

Details of outward supply by Supplier: GSTR-1 (before 10th of succeeding month)
{ Made available in GSTR-2A to Recipient)

Details of inward supply by Supplier: GSTR-2 (before 15^h of succeeding month)
{ Made available in GSTR-1A to Supplier)

In case of mismatch: Self correction by recipient

In case of mismatch due to non deposit of tax by Supplier:

- (1) Notice to both
- (2) If Supplier does not rectify , added to recipient's output tax liability
- (3) Can re-claim ITC if supplier deposits the tax later

[SECTION 42 OF CGST ACT]

ANK'S SHASTRAVICHARA:6

- Principle laid down in *Mahalakshmi Cotton Mills's (Bom.HC)* case adopted under the GST law
- *Sri Vinayaga Agencies (Mad.HC)* no longer applicable in GST scenario

INPUT TAX CREDIT UNDER GST

- **Persons eligible to take credit**
 - Existing tax payers
 - New registrants (includes persons who have applied for registration)
 - Switch over from exempt dealers to RTP
 - Switch over from CTP to RTP

INPUT TAX CREDIT UNDER GST

- I. EXISTING TAX PAYERS: Section 16 of CGST Act
- Conditions for claim of ITC
- 1) Tax invoice, debit note, any “other tax paying document”
- 2) Receipt of goods or services: [Deemed or Notional delivery included](#)
- 3) Provisional ITC claimed under Section 41 subject to actual payment of tax to the appropriate Government by Supplier
- 4) furnished return under Section 39
- 5) one invoice -goods are received in instalments, ITC allowed upon the receipt of the last instalment

INPUT TAX CREDIT UNDER GST

- Deemed or Notional delivery included
- Explanation to Section 16(2)(b):
- Recipient deemed to have received the goods :
 - A) When the supplier delivers the goods to recipient
 - B) Supplier delivers to agent of recipient or otherwise on direction of recipient
 - C) Goods may be delivered before or during movement of goods either by way of documents of title to goods or otherwise

ANK'S SHASTRAVICHARA:6

- documents of title to goods or otherwise:
- ITC Rules mentions the following documents as documents of title:
- INVOICE, DEBIT NOTE, BILL OF ENTRY, DOCUMENT ISSUED BY ISD

“OR OTHERWISE”: Lorry receipt/delivery order?????

- REF: STATE OF TAMILNADU v. N. RAMU BROS. 89STC 481 (Mad.)
- referred in three or four judgements of other High Courts
-
- CONCEPT OF NOTIONAL DELIVERY LAID DOWN

INPUT TAX CREDIT UNDER GST

-
- DENIAL AND RE-CLAIM OF CREDIT TO RP:
- Circumstances: (SECOND PROVISO TO SUB-SECTION(2) :
- Failure by recipient to pay the invoice amount with tax element within 6 months from date of invoice (except RCM)
- ITC availed will be added to output tax liability with interest
- Once payment of consideration made, he can re-claim credit

INPUT TAX CREDIT UNDER GST

RESTRICTED CREDIT TO RP:

Circumstances: SUB-SECTION (3)

- when a registered person has claimed depreciation on the tax component of the cost of capital goods under the Income Tax Act, ITC will not be allowed on the tax component

INPUT TAX CREDIT UNDER GST

BAR OF CREDIT TO RP:

Circumstances: SUB-SECTION (4)

- Invoice/debit note for supply issued after due date of furnishing return u/s.39 for the month of September viz.October 20th
- OR

Invoice/debit note for supply issued after due date of furnishing annual return (December 31st.)

whichever is earlier

INPUT TAX CREDIT UNDER GST

- SECTION 17(1),(2),(3),(4)
- APPORTIONED CREDIT;
- (a) When Supplies partly for business and partly non-business: ITC attributable to business purpose alone eligible
- (b) When Supplies partly for taxable including zero rated supplies under CGST Act or under IGST Act and partly for exempt supplies, ITC attributable to taxable supplies including zero rated supplies alone eligible
- [Value of exempt supplies includes RCM supplies, transaction in securities, sale of land, sale of building subject to Schedule II]

INPUT TAX CREDIT UNDER GST

- SECTION 17(1),(2),(3),(4)
- APPORTIONED CREDIT;
- Special Treatment to banking Company, Financial Institution including NBFC :
- Can apportion the credit as described in Sub Section (2)
- OR
- Can avail 50% of eligible ITC on Inputs, capital goods, input services per month
- The rest of the credit will lapse
- Once option is exercised, cannot be withdrawn in a year
- No restriction of 50% when supplies made between two registered persons having same PAN number

ANK'S SHASTRAVICHARA:8

Can ISD model be followed by bank, State wise for hassle free compliance?

Can two different options be taken by the banking company under the CGST Act and SGST Act simultaneously?

Blocked credit: Section 17(5)

Categories

- a) motor vehicles

Exceptions

- a) supply in the course of business
- b) provision of taxable services of transportation of goods/passengers
- c) imparting motor driving training

Blocked Credit : Section 17(5)

- CATEGORIES

- b) Food & Beverages,
 - outdoor catering,
 - beauty treatment,
 - cosmetic and plastic surgery,
 - Health services

- C) club membership, and fitness centre

- EXCEPTIONS

Where the inward supply is used for making an outward supply of same category of goods/services

Blocked Credit : Section 17(5)

- CATEGORIES

- D) Rent-a-cab, Life insurance, health insurance

- EXCEPTIONS

Where services are obligatory for employer to provide to its employees by Government Notification

OR

Where the inward supply is used for making an outward supply of same category of goods/services or as part of mixed or composite supply

Blocked Credit : Section 17(5)

- E) Travel benefits extended to employees
- f) works contract services supplied for construction of immoveable property other than plant and machinery
- G) Goods/services received by a taxable person for construction on his own account, other than plant and machinery, even when used in the course of business
- Explanation : ' construction': re-construction, renovation, additions etc

- EXCEPTIONS

When it is an input service for further construction activity

ANK'S SHASTRAVICHARA:9

Developer has been held to be a works contractor. Construction and sale of flats to prospective buyers is a “works Contract” .

M/s.Larsen&Toubro Ltd. MANU/SC/0985/2013

Can Developer claim ITC on the basis that the works contractor rendering service to him, is an input service received by Developer?

Blocked Credit : Section 17(5)

- h) Composition Tax Payer under Section 10
- i) Goods/services/both received by a Non Resident Taxable person
- j) Goods/services used for personal consumption
- K) goods lost, stolen, destroyed, written off, disposed of by way of gift, free samples
- L) Tax paid in proceedings falling under Section 79, 120, 130

- EXCEPTIONS

When goods are imported by him

Persons eligible to take credit(Section 18)

- **Availability of credit in special circumstances:**
- (1) Person becoming liable for registration entitled to ITC on all inputs in stock/WIP/FG held the day preceding the day on which the liability arose :

CONDITION:

- a) should apply for registration within 30 days from the date of commencement of liability
- b) Should have been granted registration

:

- (2) Person voluntarily taking registration eligible for ITC on all inputs in stock/WIP/FG held the day preceding the date of registration

Persons eligible to take credit(Section 18)

- 3) Composition tax payer becoming Regular tax payer: on all inputs in stock/WIP/FG/capital goods held the day immediately preceding the day he becomes liable as RTP
- 4)Exempt tax payer becoming RTP: on all inputs in stock/WIP/FG/capital goods held the day he becomes liable as RTP
- Credit on CG reduced by percentage points specified
- Conditions:
- Invoices for the all above below one year

Persons eligible to take credit

- Section 18:
- Change in Constitution of a registered taxable person:
 - A) merger
 - B) Demerger
 - C) Amalgamation
 - D) lease , transfer, Sale
- Unutilized ITC can be transferred to the transferee company.
- CONDITION: There should be specific provision for transfer of liabilities

Persons ineligible to take credit

- Section 18:
- When RTP switches to CTP
- Where goods/services become exempt absolutely
- REVERSAL of ITC equivalent to credit attributable to Inputs in stock/WIP/FG/Capital goods
- Balance : Lapse

Persons ineligible to take credit

- REMOVAL OF CAPITAL GOODS:
- Removal of capital goods:
- The taxable person has to pay an amount equal to amount of ITC taken minus the percentage point specified in this behalf
- OR
- the transaction value of the capital goods which ever is higher.
- PROVISIO: In case of supply of jigs/ refractory bricks/ moulds/dies as scrap: transaction value alone

MANUFACTURER vis-à-vis JOB WORKER

- Principal allowed to take credit:
 - All inputs/ capital goods sent to job worker
 - All inputs/capital goods sent directly to job worker

CONDITIONS:

Inputs sent for job work to be received back within one year

Capital goods sent to be received back within 3 years

.

MANUFACTURER vis-à-vis JOB WORKER

TIME LIMIT CALCULATION:

When inputs/capital goods sent from principal's place to job worker's site: The day when it was sent from principal's place till date of return from JW

When inputs/capital goods sent directly to job worker's site from other site on behalf of principal: The day when it was received by JW till date of return from JW's site

DEEMING FICTION IN CASE OF NON RECEIPT WITHIN TIME LIMIT:

That there has been a supply by principal to job worker (taxable)

The time limit and deeming fiction not applicable to jigs, moulds, tools etc

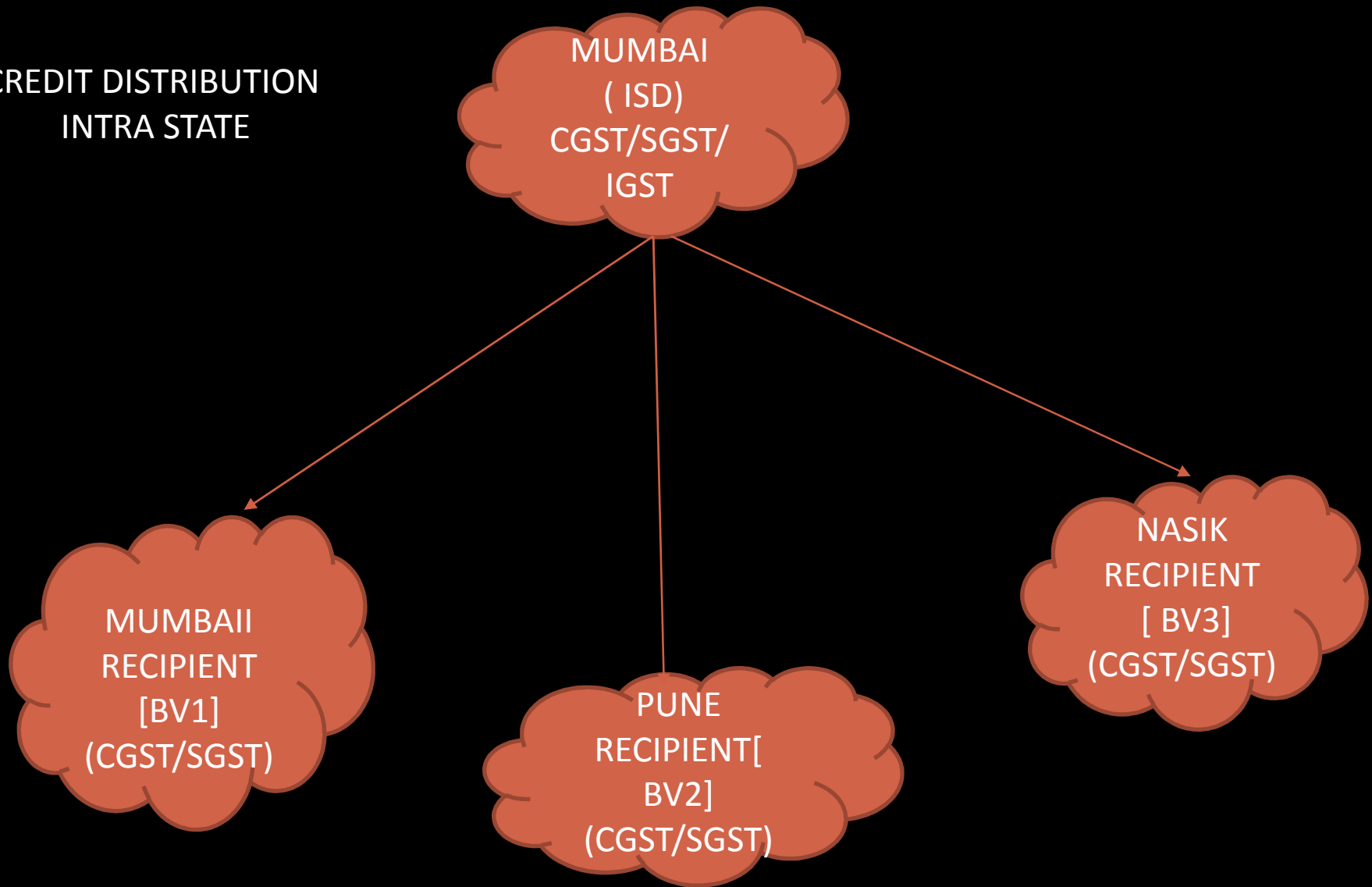
INPUT SERVICE DISTRIBUTOR: Section 21

- **Business Vertical: section 2(18):**
- distinguishable component of an enterprise
- engaged in supplying an individual/ group of related product or service
- subject to risks and returns that are different from those of other business verticals
- Factors to be considered:
- (a) the nature of the products or services
- (b) the nature of the production processes
- (c) the type or class of customers for the products or services
- (d) the methods used to distribute the products or provide the services;
and
- (e) if applicable, the nature of the regulatory environment, for example, banking, insurance, or public utilities

Beauty of ISD (Sec.21)

- **FORMULA:**
- CGST Credit can be distributed as IGST & IGST Credit as IGST, if the units are in different state.
- IGST Credit can be distributed as CGST & CGST Credit can be distributed as CGST, if the units are in same state.
- SGST Credit can be distributed as IGST & IGST Credit as IGST, if the units are in different state.
- IGST Credit can be distributed as SGST & SGST Credit can be distributed as SGST, if the units are in same state.

CREDIT DISTRIBUTION
INTRA STATE



IGST at ISD (Chennai)

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graph LR; A[IGST at ISD (Chennai)] --- B[Bangalore  
As IGST]; A --- C[Mumbai  
As IGST]; A --- D[Chennai  
As CGST / SGST];
```

Bangalore
As IGST

Mumbai
As IGST

Chennai
As CGST / SGST

CGST at ISD (Chennai)

Bangalore
As IGST

Mumbai
As IGST

Chennai
As CGST

SGST at ISD (Chennai)

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graph LR; A[SGST at ISD (Chennai)] --- B[Bangalore As IGST]; A --- C[Mumbai As IGST]; A --- D[Chennai As SGST]
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Bangalore
As IGST

Mumbai
As IGST

Chennai
As SGST

INPUT SERVICE DISTRIBUTOR: Section 21

- Manner of distribution:
- A) distribution against specified documents
- B) Amount of credit distributed not to exceed available credit
- C) credit attributable to a recipient of credit to be distributed only to that recipient
- D) when credit is attributable to more than one recipient:
 - (i) to be distributable as is attributable
 - (ii) *pro rata* on the basis of turnover in the State of the recipient to the aggregate turnover of all such recipients
- When Distribution of credit exceeds the available credit/ credit is distributed to a recipient more than what is attributable:
 - Recoverable from the ISD with interest

» THANK YOU