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**Virtual CPE Meeting on Indirect Tax Refreshers Course under
the theme: "Profession - Tomorrow and Beyond**

Critical issue in Input tax credit

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1. Leviability of Interest on un-utilised Input Tax Credit or irregular availment of credit under Trans-1.

SECTION 50. Interest on delayed payment of tax. — (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

[**Provided** that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]

Leviability of Interest on un-utilised Input Tax Credit or irregular availment of credit under Trans-1.

- (3) A taxable person **who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43,** shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.

Section 42 of CGST Act, 2017.

1. **Section 42(1) - (1)** The details of every inward supply furnished by a registered person shall, be matched.
2. **Section 42 (5)** The amount in respect of which any discrepancy is communicated and which is not rectified by the supplier in his valid return for the month shall be added to the output tax liability of the recipient.
3. **Section 42 (7)** The recipient shall be eligible to reduce, from his output tax liability, the amount added earlier if the supplier declares the details of the invoice or debit note in his valid return.
4. **Section 42 (10) -** The amount reduced from the output tax liability in contravention of the provisions shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient **shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50.**
5. **Similar provisions and procedure applicable for Section 43 (10)**

Judgement of erstwhile regime and GST regime on various issue:

Sr. No.	Issue	Judgement
1	Ineligible Input tax credit availed in GSTR-3B but not utilised, thereafter reversed the same. Whether interest is required to be paid.	<ul style="list-style-type: none"><li data-bbox="1258 368 2318 471">• M/s Commercial Steel Engineering Corporation 2019-TIOL-1585-HC-PATNA-GST

Liability of interest on Gross Liability or Net Liability payable through electronic cash ledger.

Section 49 (2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with [section 41 or section 43A], to be maintained in such manner as may be prescribed.

M/s. Megha Engineering & Infrastructures Ltd. Writ Petition No.44517 of 2018. Telangana High Court.

M/s LANDMARK LIFESTYLE. WP(C) No. 6055/2019 – Delhi High Court.

REFEX INDUSTRIES LIMITED. 2020 (34) G.S.T.L. 588 (Mad.)

Liability of interest on Gross Liability or Net Liability payable through electronic cash ledger - Amendment in section 50 to provide for interest on net tax liability.

[**Provided** that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]

Press release makes it retrospective.

Impact of interest on payments made through DRC-03 under section 73 / 74.

Liability of interest on Reversal of Capital goods credit under RULE 43.

- Rule 43 (h) the amount T_e along with the applicable interest shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit.

Issues related to section 16

Sr. No.	Section	Issue involved
1	16(1)	Can input tax credit be taken on CSR expenses?
2	16(1)	Can input tax credit be taken on CSR expenses more than limit provided under Income Act, 1951.
3	16(1)	Whether the recipient other than companies who are not required to undertake CSR expenses under companies act will be entitled to avail the input tax credit on such expenses.

(59) “input” means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;

(60) “input service” means any service used or intended to be used by a supplier in the course or furtherance of business;

(19) “capital goods” means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business

• **Judgement of erstwhile regime and GST regime on various issue:**

Sr. No.	Issues	Judgement
1	Input tax credit of CSR Expenses	<ul style="list-style-type: none"> • Essel Propack 2018-TIOL-CESTAT Mumbai
2	Can input tax credit be taken on CSR expenses more than limit provided under Income Act, 1951.	<ul style="list-style-type: none"> • Jindal Power Ltd, 2016-TIOL-1231-ITAT-RAIPUR- <i>It was held that every expense that could be allowed as a deduction should be such as a hardnosed and perhaps devoid of senses of compassion, businessman alone would incur in furtherance of his business pursuits.</i>
3	Whether the recipient other than companies who are not required to undertake CSR expenses under companies act will be entitled to avail the input tax credit on such expenses.	<ul style="list-style-type: none"> • Kanhaiyalal Dudheria [2020] 113 taxmann.com 217 (Karnataka) • Sri Venkata Satyanarayana Rice Mill Contractors Co. 2002-TIOL-2567-SC-IT <i>It was held that any expense made to secure a benefit for the business, whether voluntarily or at instance of an authority, would be allowable as an expense, was followed.</i>

Section 17 (5) – Disallowance of Credit.

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

Issues related to section16

Sr. No.	Section	Issue involved
4	16(2)	If the supplier has filed GSTR-3B and paid tax to the government, but not filed GSTR-1, hence input tax credit shall not be reflected in the GSTR-2A of the recipient. Whether the recipient will be entitled to avail input tax credit.
	Judgements.	<ul style="list-style-type: none"> • Bharti Telemedia Ltd. W.P.(C) 6293/2019- Del. HC • Arise India Limited 2017 (10) TMI 1020 - Delhi HC • Arise India Limited 2018 (1) TMI 555 - SC • M/S. Onyx Designs 2019 (6) TMI 941 - Karnataka HC • M/s. International Flavours & Fragrances India Pvt. Ltd 2019 (3) TMI 1086 - CESTAT Chennai

Issues related to section 16

Sr. No.	Section	Issue involved
		<p>First proviso to rule 69 of CGST Rules, 2017 states <i>“Provided that where the time limit for furnishing FORM GSTR-1 specified under section 37 and FORM GSTR-2 specified under section 38 has been extended, <u>the date of matching relating to claim of input tax credit shall also be extended accordingly: “</u></i></p> <p>Circular 26/26/2017- GST dated 29th December 2017 - relevant portion of the said circular is reproduced below:</p> <p><i>It has been further decided that the time period of filing of FORM GSTR-2 and FORM GSTR -3 for the months of July 2017 to March 2018 would be worked out by a Committee of officers and communicated later. (Para 1.3 of point 1)</i></p> <p><i>Since, the GST Council has decided that the time period of filing of FORM GSTR-2 and FORM GSTR -3 for the month of July 2017 to March 2018 would be worked out by a Committee of officers, the system-based reconciliation prescribed under Circular No. 7/7/2017-GST dated 1st September 2017 can only be operationalized after the relevant notification is issued. The said circular is therefore kept in abeyance till such time. (Para 3.2 of point 3)</i></p> <p><i>Detailed instructions regarding reconciliation of information furnished in FORM GSTR-3B with that contained in FORM GSTR-2 and FORM GSTR-3 will be issued in due course of time. (Para 6 of point 3)</i></p>

Issues related to section 16

Sr. No.	Section	Issue involved
1	Second proviso to section 16(2)	Tax is paid within 180 days but taxable value is not paid, whether input tax credit is required to be reversed
2	Second proviso to section 16(2)	The company has not paid consideration within 180 day and the input tax credit was not utilised against output liability. Whether interest is required to be paid in case where the input tax credit is reversed.
3	Second proviso to section 16(2)	Whether 180 days reversal will also apply in case where the contract provides for payment of consideration after 180 days.

- Liability of Interest on reversal on account of non-payment within 180 days - Rule 37 of CGST Rules.
- **Provided** further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed.
- **Provided** also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon

- **Judgement of erstwhile regime and GST regime on various issue:**

Sr. No.	Issues	Judgement
	Tax is paid within 180 days but taxable value is not paid	<ul style="list-style-type: none"> • Hindustan Zinc Ltd. 2014 (34) S.T.R. 440 (Tri. - Del.) • Hindustan Petroleum Corpn. Limited 2019 (5) TMI 1093 - CESTAT Hyderabad

- Liability of Interest on reversal on account of non-payment within 180 days - Rule 37 of CGST Rules.
- **RULE 37. Reversal of input tax credit in the case of non-payment of consideration.** — (1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in **FORM GSTR-2** for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice :
- **(2) The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.**
- (3) The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid.

Sr. No.	Section	Issue involved
9	Third proviso to section 16(2)	Whether a registered person can avail ITC of the full GST charged on the supply or a proportionate reversal of the same is required in case where value of supply is reduced by way of post supply discount with GST u/s 34.
	Whether a registered person can avail ITC of the full GST charged on the supply or a proportionate reversal of the same is required in case where value of supply is reduced by way of post supply discount with GST u/s 34.	<ul style="list-style-type: none"> <li data-bbox="1370 739 2305 782">• M/s MRF LTD 2019-TIOL-61-AAAR-GST

10	16(4)	Recipient accounted input tax credit in the books of account during the Financial year 2019-20 but the same taken in return after September of subsequent year. Whether the recipient will be entitled to avail input tax credit after September.
		Svizera Labs PVT. LTD. 2018 (363) E.L.T. 1186 (Tri. - Mumbai)

11	16(4)	Whether time limit specified under section 16(4) applies to bill of entries/ RCM self-invoice
12	16(4)	Whether the credit of RCM paid during GST audit will be available.
13	16(4)	Cross charge invoice for supplies received during the financial year 2019-20 but invoice raised by the supplier in 2020-21 whether credit with respect to such invoices can be availed after September 2020
	<p><i>Section 16 (4).</i></p> <p><i>(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or [****] debit note pertains or furnishing of the relevant annual return, whichever is earlier.</i></p>	

8	16(2)(c)	Whether the recipient is required to reverse input tax credit on non-payment of tax by the supplier to the government.
9	Third proviso to section 16(2)	Whether a registered person can avail ITC of the full GST charged on the supply or a proportionate reversal of the same is required in case where value of supply is reduced by way of post supply discount with GST u/s 34.
10	16(4)	Recipient accounted input tax credit in the books of account during the Financial year 2019-20 but the same taken in return after September of subsequent year. Whether the recipient will be entitled to avail input tax credit after September.
11	16(4)	Whether time limit specified under section 16(4) applies to bill of entries/ RCM self-invoice
12	16(4)	Whether the credit of RCM paid during GST audit will be available.
13	16(4)	Cross charge invoice for supplies received during the financial year 2019-20 but invoice raised by the supplier in 2020-21 whether credit with respect to such invoices can be availed after September 2020

- **Provisions of Section 16 of CGST Act, 2017 are reproduced below:**

- **Eligibility and conditions for taking input tax credit**

16. (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;

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

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.

(c) subject to the provisions of section 41 or section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.

*(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or [****] debit note pertains or furnishing of the relevant annual return, whichever is earlier.*

Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under [section 39](#) for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under [sub-section \(1\) of section 37](#) till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]

Issues related to Section 17 of CGST Act, 2017

Sr. No.	Section	Issue involved
1	17(5)(b)	Whether input tax credit of canteen service will be available to the company since section 17(5) only denies the credit of outdoor catering service.
2	17(5)(d)	Whether input tax credit of construction against output GST on rental income will be allowable.
3	17(5)(h)	Whether advertisement materials given to dealers/vendors such as diary, pen, mugs etc containing the brand name of the company constitute gift and require reversal of credit.
4	17(5)(h)	Fridge / Free foreign trip to dealers for achieving Sale Target.
5	17(5)(h)	Whether hand sanitizers given to employees constitute personal consumption.

8	17(5)(h)	Whether charges incurred for installation of capital goods will be classified as capital goods or input service for the purpose GST Law.
9	17(5)(h)	Ineligible Input tax credit availed in GSTR-3B but not utilised, thereafter reversed the same. Whether interest is required to be paid.
10	17(5)(h)	Can ITC be availed of GST paid on staff mediclaim policies obtained during the COVID-19?

- **Extract of Section 17 is reproduced below:**
- **Apportionment of credit and blocked credits.**

17. (1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

Explanation.-For the purposes of this sub-section, the expression “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.

(4) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:

Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:

Provided further that the restriction of fifty per cent. shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.

(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:-

(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:-

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles;

(aa) vessels and aircraft except when they are used—

(i) for making the following taxable supplies, namely:-

(A) further supply of such vessels or aircraft; or

(B) transportation of passengers; or

(C) imparting training on navigating such vessels; or

(D) imparting training on flying such aircraft;

(ii) for transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the input tax credit in respect of such services shall be available-

(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(ii) where received by a taxable person engaged-

(I) in the manufacture of such motor vehicles, vessels or aircraft; or

(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

(b) the following supply of goods or services or both-

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.]

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

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Explanation.—For the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

- (e) goods or services or both on which tax has been paid under section 10;*
- (f) goods or services or both received by a non-resident taxable person except on goods imported by him;*
- (g) goods or services or both used for personal consumption;*
- (h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and*
- (i) any tax paid in accordance with the provisions of sections 74, 129 and 130.*

(6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

Explanation.— For the purposes of this Chapter and Chapter VI, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes-

- (i) land, building or any other civil structures;*
- (ii) telecommunication towers; and*
- (iii) pipelines laid outside the factory premises.*

Judgement of erstwhile regime and GST regime on various issue:

Sr. No.	Issue	Judgement
1	Whether input tax credit of construction against output GST on rental income will be allowable.	<ul style="list-style-type: none"><li data-bbox="1258 368 2305 472">• M/s. Safari Retreats Private Limited 2019 (5) TMI 1278 - Orissa High Court <p data-bbox="1258 539 2305 696">Issue is pending before Supreme Court. However, Hon'ble Supreme has not Stayed order of High Court.</p>

THANK YOU

BALANCED VIEW

PRESENTED BY

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