

Treading the GST Path – II

ISD – Decodified.

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“Input Service Distributor – ISD” is a concept, whereby the input services received in the Corporate Office / Registered Office / any other office of a manufacturer / service provider, could be distributed to the various factories of the manufacturer/ service providing premises of the service provider. But for this provision, availment of cenvat credit on such services at the factory / service premises level was always beset with complications and litigations. The model GST law also recognises the importance of ISD.

The term “Input Service Distributor” is defined in Section 2 (56) of the model Act, as below.

"Input Service Distributor" means an office of the supplier of goods and / or services which receives tax invoices issued under section 23 towards receipt of input services and issues tax invoice or such other document as prescribed for the purposes of distributing the credit of CGST (SGST in State Acts) and / or IGST paid on the said services to a supplier of taxable goods and / or services having same PAN as that of the office referred to above;

Explanation.- For the purposes of distributing the credit of CGST (SGST in State Acts) and / or IGST, Input Service Distributor shall be deemed to be a supplier of services.

Section 17 and 18 of the model Act lays down the manner of distribution of credit by an ISD and recovery of wrongly distributed credits, respectively. The said sections are reproduced below for ready reference.

17. Manner of distribution of credit by Input Service Distributor

(1) The Input Service Distributor may distribute, in such manner as may be prescribed, the credit of CGST as IGST and IGST as IGST, by way of issue of a prescribed document containing, inter alia, the amount of input tax credit being distributed or being reduced thereafter, where the Distributor and the recipient of credit are located in different States.

(CGST ACT)

(1) The Input Service Distributor may distribute, in such manner as may be prescribed, the credit of SGST as IGST, by way of issue of a prescribed document containing, inter alia, the amount of input tax credit being distributed or being reduced thereafter, where the Distributor and the recipient of credit are located in different States.

(SGST Act)

(2) The Input Service Distributor may distribute, in such manner as may be prescribed, the credit of CGST and IGST as CGST, by way of issue of a prescribed document containing, inter alia, the amount of input tax credit being distributed or being reduced thereafter, where the Distributor and the recipient of credit, being a business vertical, are located in the same State.

(CGST Act)

(2) The Input Service Distributor may distribute, in such manner as may be prescribed, the credit of SGST and IGST as SGST, by way of issue of a prescribed document containing, inter alia, the amount of input tax credit being distributed or being reduced thereafter, where the Distributor and the recipient of credit, being a business vertical, are located in the same State.

(SGST Act)

(3) The Input Service Distributor may distribute the credit subject to the following conditions, namely:

(a) the credit can be distributed against a prescribed document issued to each of the recipients of the credit so distributed, and such invoice or other document shall contain such details as may be prescribed;

(b) the amount of the credit distributed shall not exceed the amount of credit available for distribution;

(c) the credit of tax paid on input services attributable to a supplier shall be distributed only to that supplier;

(d) the credit of tax paid on input services attributable to more than one supplier shall be distributed only amongst such supplier(s) to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State of such supplier, during the relevant period, to the aggregate of the turnover of all such suppliers to whom such input service is attributable and which are operational in the current year, during the said relevant period.

18. Manner of recovery of credit distributed in excess

(1) Where the credit distributed by the Input Service Distributor is in excess of the credit available for distribution by him, the excess credit so distributed shall be recovered from such distributor along with interest, and the provisions of section 51 shall apply mutatis mutandis for effecting such recovery.

(2) Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 17 resulting in excess distribution of credit to one or more suppliers, the excess credit so distributed shall be recovered from such supplier(s) along with interest, and the provisions of section 51 shall apply mutatis mutandis for effecting such recovery.

Explanation. –For the purposes of section 17 and this section, the relevant period shall be-

(a) if the recipients of the credit have turnover in their States in the financial year preceding the year during which credit is to be distributed, the said financial year; or

(b) if some or all recipients of the credit do not have any turnover in their States in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed.

It may be noted that during Budget 2016, distribution of credit by and ISD to an "outsourced manufacturing unit" was allowed. But the provisions under the model GST do not enable distribution of credit to such "outsourced manufacturing unit", but credit can be distributed, only among the units having the same PAN.

Whether it is intentional or the draftsmen of the model GST Act are not aware of the amendments made in Cenvat Credit Rules, 2016 from 01.04.2016?

As job workers are not liable to pay any duty under the GST regime, they may not require any credit. But what will happen to the proportion of the credit on input services, attributable to the goods manufactured by the job worker?

As everybody is aware the Input Tax Credits under the GST regime can be used as below, as per Section 35 of the model Act.

CGST Credit should first be utilised to pay CGST and then IGST.

SGST Credit should first be utilised to pay SGST and then IGST

IGST Credit should be first utilised to pay IGST, then CGST and then SGST.

CGST credit cannot be used to pay SGST and vice versa.

A situation may arise that an ISD may receive invoices towards input tax credit, on payment of CGST and SGST (on an intra state supply) and it may have units both in the same state as well as in other states. For example, an ISD situated in Chennai may receive an Invoice for intra state supply of input service on payment of CGST and SGST (TN) and such service may be common for its units situated in the State of Tamil Nadu as well as other states. The CGST credit can be distributed to all the units of the ISD and such credit can also be used by such units without any problem. But if the SGST (TN) credit is distributed to the units in other states, such states cannot utilise such credit of SGST (TN) for any purpose.

Hence, a thoughtful provision has been made in the model law that such SGST Credit can be distributed either as IGST if the ISD and Unit are situated in

different State. Once the SGST (TN) credit is distributed as IGST to the units in other states, such units can utilise such IGST credit, either for payment of CGST or SGST of their State.

ISD can distributed the credit as below, depending upon the requirements as per Section 17 of the Model Act.

CGST credit can be distributed as IGST if the ISD and Unit are in different States {Sec. 17 (1) of CGST Act}

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CGST credit can be distributed as CGST if ISD and Unit are in the same State {Sec. 17 (2) of CGST Act}

IGST credit can be distributed as CGST if ISD and the Unit are in the same State{Sec. 17 (2) of CGST Act}

SGST Credit can be distributed as IGST if USD and the Unit are in different States {Sec. 17 (1) of the SGST Act}

SGST credit can be distributed as SGST if ISD and the Unit are in the same State {Sec. 17(2) of the SGST Act}

IGST credit can be distributed as SGST if ISD and the Unit are in the same State {Sec.17(2) of the SGST Act}

The above liberal provisions for distribution of credit would help for proper distribution and utilisation of credit by different units, depending upon their requirements.

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