

Treading the GST Path – III

Certain snippets on ITC

(G. Natarajan, Advocate, Swamy Associates)

1.0 The term “input tax credit” has been defined in Section 2 (58) of the model act as “credit of input tax, as defined in section 2 (57) (sic). The term “input tax” is defined in section 2 (57) as “input tax in relation to a taxable person means the {IGST and CGST}/{IGST and SGST} charged on any supply of goods and/or services to him which are used, or are intended to be used, in the course of furtherance of his business and includes the tax payable under sub section (3) of Section 7”.

1.1 Section 16 of the model GST Act deals with the manner of taking input tax credit and the goods and services in respect of which input tax credit is not admissible are contained in Section 16 (9). If that be the case, input tax credit would be admissible in respect of all goods and services supplied and received by the taxable person, except those specifically excluded under Section 16 (9).

1.2 If that be so, what is the relevant of defining the terms, “inputs”, “Input service” and “capital goods”? Under the present regime, cenvat credit is admissible in respect of the specified duties paid on “inputs”, “Input service” and “capital goods” and hence it becomes necessary to define these terms. But under the proposed definition of input tax under GST model law, the definition of the terms “inputs”, “input service”, seems to be redundant, though the definition of “capital goods” is relevant in as much as there are some special provisions applicable for capital goods (such as, amount to be reversed in case of removal of used capital goods, time limit for which they can be retained in job workers’ premises, etc.)

2.0 As per Section 16 (11), input tax credit would be admissible only if the supplier of the goods and services pays the tax and files his return. Much has been talked about the unreasonableness of this condition.

2.1 A careful reading of the provision would reveal that one of the conditions is “the tax charged in respect of such supply has been actually paid to the credit of the appropriate Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply”.

2.2 The underlined portion of the provision is a bombshell. If there is any dispute with regard to the entitlement of credit in the hands of inward suppliers, then the tax paid by him through such disputed credit cannot be availed as input tax credit by the recipients of his supplies. But to what extent? If the dispute is with regard to, say for an amount of Rs.1,00,000 and the said supplier has made his outward supplies to various buyers, can action be taken to deny the credit in the hands of all recipients of his outward supplies? How can it be decided that the disputed input tax credit has been used to pay which of his outward supplies? What are the guidelines in this regard? Can the different jurisdictional officers of different recipients of his supplies take simultaneous action in this regard to deny the credit? In an era where we have seen mountain

of disputes on cenvat credit entitlement, one can imagine, how much havoc this provision can cause to all concerned.

3.0 There are no express provisions as to the amount payable on as such removal of the credit availed goods (other than capital goods). Does it mean that there is no requirement to pay any amount? Certainly it cannot be. It may be noted that such as such removals would amount to supply and attract the levy of appropriate GST on its value as determined.

4.0 Section 145 and 146 deals with certain situations where transitional credit in respect of the duties paid on goods lying in stock could be availed. The list of taxes that are entitled for credit in this regard is contained in Section 145, by way of an Explanation and the list of such duties include, "Service Tax leviable under Section 66 B of the Finance Act, 1994". From when service tax is being levied on goods? It may be noted that the transitional credits are allowed only for goods and not for services and hence the reference to service tax in the list of duties entitled for transitional credit, seems to be a mistake.

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