



**S. B. GABHAWALLA & CO.**  
CHARTERED ACCOUNTANTS



# Input Tax Credit



# Path to tread today...

1. Whether Input Tax Credit is a right or a concession?
2. What is eligible as input tax credit?
3. What are the essential tests or conditions for claim of input tax credit?
4. What is not eligible as input tax credit?
5. What are the documentation requirements for claim of input tax credit?
6. What are the timelines for claiming input tax credit?
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8. What are the interest and penalties applicable?
9. Whether there are provisions to deal with special situations?
10. What to do if ITC accumulates and cannot be utilised?

# Input Tax Credit : Right or Concession?

- No Specific Reference in the Constitutional Provisions
- Statement of Objects & Reasons for introduction of the Constitution (122<sup>nd</sup> Amendment) Bill, 2014 as introduced in Lok Sabha:
  - The Amendment is intended to remove cascading effect of taxes and provide for a common national market for goods and services
- Statement of Objects & Reasons for introduction of CGST Bill as introduced in Lok Sabha
- Section 171 – Any benefit of input tax credit to be passed on to the customer – Whether promissory estoppel will apply?
- Section 155 – Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person

# ITC – Right or Concession? Judicial View preGST

- There is no provision in the Rules which provides for a reversal of the credit by the excise authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilised, has to be paid for. The credit is, therefore, indefeasible – CCE vs. Dai Ichi Karkaria 1999 (112) ELT 353 (SC)
- Input Tax Credit is not a right but a concession and the conditions prescribed in the Statute need to be fulfilled – Jayam and Co. vs. Asst. Commissioner 2018 (19) GSTL 3 (SC)
- Rule prescribing time limit for claiming the credit is valid – Godrej & Boyce Mfg. Co. Ltd. vs. Commissioner 1992 (3) SCC 624 (SC)
- Grant of Credit is a policy decision and the State is empowered to prescribe conditions and restrictions - State of Gujarat vs. Reliance Industries Limited 2017 (16) SCC 28 (SC)

# ITC – Right or Concession? Judicial View (GST)

- Denial of Transition Credit in respect of Capital goods does not mean unreasonable discrimination and is valid – RSPL Ltd. vs. Union of India 2019 (26) GSTL J177 (SC)
- Giving credit or set off in the payment is legislative policy which had to be reflected in the legislative scheme. Compensation to States Act, 2017 or Rules framed thereunder does not indicate giving of any credit or set off of the Clean Energy Cess already paid till 30-6-2017. Thus, claim of the petitioner that he is entitled for set off in payment of Compensation to States Cess to the extent he had already paid Clean Energy Cess cannot be accepted - Mohit Minerals 2018 (17) GSTL 561 (SC)
- Whether a notification can prescribe for reversal of input tax credit already accumulated? Notice Issued – Federation of Gujarat Weavers Welfare Association vs. Union of India 2019 (22) GSTL 9 (Guj HC)

## To summarise

- The availment of input tax credit at the first juncture is a concession and the Legislature can prescribe conditions and restrictions in this regard
- Once the input tax credit is validly availed and becomes a part of electronic credit ledger, it becomes indefeasible and a vested right

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# Eligibility for taking input tax credit - Sec. 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

# Input Tax – Section 2(62)

Section 2(62) -- “input tax” in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes —

- (a) the integrated goods and services tax charged on import of goods;
  - (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
  - (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
  - (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
  - (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,
- but does not include the tax paid under the composition levy

# In relation to registered person

ABC - GSTIN	CT – 2(21)	ST - 2(104)	IT – 2(58)	UT – 2(115)	Total Input Tax?
Maharashtra - Normal	1000	1000	1200	---	3200
- Wrong POS – Hotels / Couriers	200*	200*	300*	---	??
- Wrong POS – UT	100*			100*	??
<b>Gujarat</b>	<b>200</b>	<b>200</b>	<b>150</b>	<b>--</b>	<b>550</b>
DNH, Daman & Diu	100	--	--	100	200
- Wrong POS – Transition Issue	50*			50*	??
<b>Ladakh</b>	<b>120</b>	<b>--</b>	<b>--</b>	<b>120</b>	<b>240</b>

\* The Credit is reflected in the GSTR2A of the GSTIN mentioned above but the place of supply belongs to some another State, presumably pertaining to States/UTs other than the ones mentioned above where ABC does not have place of business

# Possible Arguments to defend the credit :

- On Merits
  - Common definition of input tax to include all the flavours without bifurcation
  - Definition of Central Tax & Integrated Tax to mean the tax levied under the said Acts
  - No specific provision deeming the CGST Acts & SGST Acts as distinct acts qua each registered person
  - Definition of State Tax to mean the tax levied **under any** SGST Act
  - There is only one UTSGST Act – Explanation to S. 2(8) only deems the UTs to be distinct, not the law
  - No specific reference to place of supply in input tax credit provisions
  - Credit flows into GSTR2A though not in GSTR9
- On Equity
  - Section 20 of SGST Act permits distribution of SGST credit as IGST
  - Schedule I Entry 2 could also be invoked to cross charge the tax
- On Intention
  - B2B Integrated Tax is not settled with the States under Section 17 of the IGST unless cross utilised
  - B2B State Tax if cross utilised needs to be paid back to the Centre kitty under S. 53 of the SGST Act

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# Essential Tests for Claim of Input Tax Credit

- Section 16(1)
  - Input Tax Charged
  - Supply of Goods or Services made to him
  - Used or Intended to be used
  - In the course or furtherance of business
- Section 16(2)
  - Possession of Tax Invoice / Duty Paying Document
  - Received Goods or Services
  - Tax Actually Paid to the Government
  - Filed the Return
  - Proposed --- GSTR1 – GSTR2A

# Input Tax Charged :

- Charged vs. leviable
  - Excess Tax Charged by vendor
  - Tax charged under forward charge even though liable under reverse charge
- No dual claim of depreciation as well as ITC for capital goods
- In cases where the ITC component is written off in books along with expense, whether ITC can still be claimed?
- Whether tax needs to be 'borne' by the person claiming the ITC?

# Supply of Goods or Services to him

- Definition of inward supply under section 2(67) means receipt of goods or services or both whether by purchase, acquisition or any other means with or without consideration
- Section 2(93) deems the person receiving delivery as the recipient in situations of free supplies
- May help in interpretation of eligibility of input tax credit in case of taxes charged for free supplies – DDP Shipments



# Receipt of Goods/Services

- Difference in Transport Details – if explained, allowable – CCE vs. Mittal Appliances Limited 2018 (12) G.S.T.L. 297 (M.P.)
- Receipt in one unit, credit taken in another – allowable since revenue neutral – Sanvijay Rolling & Engineering Ltd vs. CCE 2018 (11) G.S.T.L. 344 (Bom.)
- Subsequent use in manufacture not questioned, credit allowable – CCE vs. Good Earth Steel Pvt Ltd 2018 (9) G.S.T.L. 177 (Tri. - All.)
- Role of Explanation , eWay Bills, etc.

# Tax Paying Documents : Rule 36

- Forward Charge – Tax Invoice
- Forward Charge – Debit Note
- Reverse Charge – Self Generated Invoice u/s 31(3)(f)
- Bill of Entry
- ISD Invoice
  
- Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document, and the relevant information, as contained in the said document, is furnished in **FORM GSTR-2\*** by such person :
- **Provided** that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person
- Rule 48 – If supplier required to raise an e-invoice, any invoice generated otherwise will not be a valid tax invoice

# Tax Actually Paid to the Government

- Not same as GSTR 2A mismatch
- Subject to the provisions of Section 41 or 43A
- Recipient can demonstrate the tax payment in many ways
  - GSTR2A reflection
  - Certificate from the supplier that he has wrongly uploaded in B2C Section or another GSTIN
  - Existence and Continuation of the Registration and Regular Return filing by the Supplier is prima facie proof of payment of tax
  - Cancellation of Registration under section 30(2) without initiating action for recovery of taxes is prima facie indicative that the tax has actually been paid

# Tax Actually Paid – Inability to demonstrate – Onus – Judicial View

- On Quest Merchandising India Pvt Ltd – 2018 (10) GSTL 182 (Del),  
Arise India Limited – TS-2-SC-2018-VAT
  - Section 9(2)(g) of DVAT Act read down to only deal with cases of fraudulent availment of input tax credit
- D Y Beathel Enterprises 2021-VIL-308-MAD
  - If the tax had not reached the kitty of the Government, then the liability may have to be eventually borne by one party, either the seller or the buyer. However, before initiating recovery proceedings against the seller, the buyer cannot be proceeded against

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# Reasons for Ineligibility of Input Tax Credit

- Blocked Credits under Section 17(5)
- Credits attributable to exempted supplies – Section 17(2)
- Credits attributable to non business use – Section 17(1)
- Credits blocked through Notifications granting concessional tax rate
- Credits not eligible due to vendor non compliance
- Credits not eligible due to procedural lapses

# Ineligible Credits – Section 17(5)(a) & (aa)

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;

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**;

# Ineligible Credits – Motor Vehicles (Contd.)

- (ab) services of general insurance, servicing, repair and maintenance
- (b) leasing, renting or hiring of motor vehicles, vessels or aircraft
- Different set of exclusions from ineligible credits
- Position prior to 01 February 2019
  - Interpretation of 'in respect of'
- Concept of Supply wider than sale



# Ineligible Credits – Section 17(5)(b)

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, ....., 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

# Ineligible Credits - Construction

(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;

*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.

# Other Ineligible Credits

- (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.

# Denial of Input Tax Credit through Notifications – Restaurants & Builders

- Entries 7 & 3 of Notification 11/2017-CT(Rate)
  - Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to *Explanation* no. (iv)]”;
- Genesis of the Notification
  - “In exercise of the powers conferred by sub-section (1) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 and sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017)..... hereby notifies that the central tax.....shall be levied at the rate as specified in the corresponding entry in column (4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table ”
- Whether the credit can be denied absolutely?

# Section 16(1) permits conditions and restrictions as may be prescribed...

- What is scope of the phrase ‘conditions and restrictions’?
  - Condition – Section 16(2)
  - Restriction – Section 17
  - Is there a difference or are they used interchangeably?
- How to prescribe such ‘conditions and restrictions’?
  - “prescribed” means prescribed by rules made under this Act on the recommendations of the Council; - Section 2(87)
  - “notification” means a notification published in the Official Gazette and the expressions “notify” and “notified” shall be construed accordingly; - Section 2(80)

# Absolute Credit Denial for Restaurants and Builders

- Whether it is a condition or a restriction?
- Whether the condition or restriction is prescribed?
- What is the scope of Notification 11/2017-CT?
- Is the condition mentioned in Notification 11 for applicability of rate or eligibility of credit?
- Can a tariff entry prescribe a conditional rate without any fall-back option?
- What is the impact of non fulfilment of condition?

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# Documentation Requirements for ITC

- Tax Invoice – Rule 46 & Rule 48
  - Document - Physical vs. Electronic vs. Scanned - Section 2(41), Section 145?
  - Signature – Physical vs. Scanned vs. Digital
- Debit Note / Credit Notes – Rule 53
- ISD Invoice – Rule 54
- Section 35(1) – Account of Inward Supply and ITC Availed
- Section 35(6) – Presumed Sale for Shortages



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# Section 16(4) : Outer Time Limit of Credit

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 invoice relating to such 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.]

# Section 16(4) : Timeline Impact

- Decision in AAP& Co. --- Press Release clarifying that “the last date for availing input tax credit relating to the invoices issued during the period from July 2017 to March 2018 is the last date for the filing of return in Form GSTR-3B” is illegal
- Retrospective Substitution of Rule 61(5) and 61(6) to over-come this decision
- Whether retrospective substitution is valid?

# Section 16(4) : Delayed Filing of Returns

- GSTR 3B Return for the month of March 2019 filed after September 2019 claiming input tax credit pertaining to March 2019. Whether Section 16(4) is attracted?
  - Interplay of Section 16(2) and Section 16(4)
  - Law cannot expect the impossible
  - Appropriate Interpretation of the Words used
  - Provisional Credit (Section 41) vs. Final Credit (Section 42)
  - GSTR2 still in abeyance – not substituted

# Timeline of claiming credit : Summary

Invoice pertains to which financial year	Timeline for Claim of Input Tax Credit
2017-2018	20 April 2019
2018-2019	20 October 2019
2019-2020	20 October 2020
2020-2021	20 October 2021

Scenario	Applicability
Forward Charge	Applicable
Reverse Charge from RD	Applicable
Reverse Charge from URD	Applicable [based on 31(3)(f)]
Import of Goods	Not Applicable
Recredit of already reversed credit	Not Applicable

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# Anti-Abuse or Fair-Play Provisions

- Reversal of Credit on Failure to pay the vendor – Proviso to Section 16(2)
- Proportionate Input Tax Credit for Non Business Use or Use for Exempted Supplies – Sections 17(1), 17(2), 17(3), Rules 42 and 43
- Requirement to ensure matching of credits – Rule 36(4)
- Reversal of Input Tax Credit on removal of plant and machinery – Section 18(6)
- Fake Invoicing – Section 16(2) , Rule 86A, 86B read with Section 132

# Reversal of Credit on Failure to pay

- **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



# 180 days Test

- Scope
  - RCM ?
  - Import of Goods ?
- Meaning of 'Fails to pay'
  - Is it the same as 'does not pay' ?
  - Retention Money / Extended Credit Period
  - Book Adjustments
  - Whether vis-à-vis person / registered person?
  - What about Schedule I Supplies?
- Re-claim of Credit
  - Whether interest can be reclaimed?
  - Whether any time limit for reclaim of credit?

# Apportionment of Credit – Section 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.]*

# Exempted Supplies

- Section 2(47) : “exempt supply” means
  - supply of any goods or services or both
  - which attracts nil rate of tax or
  - which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act,
  - and includes non-taxable supply
- Section 2(78) “non-taxable supply” means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;

# Credits : Understanding Apportionment

Acronym	What it denotes	Impact
T1	Inputs/Input Services other than business	Not Eligible for Credit
T2	Inputs/Input Services for exempted supplies	Not Eligible for Credit
T3	Blocked Credits	Not Eligible for Credit
C1	Intermediary Number T – (T1+T2+T3)	
T4	Inputs/Input Services for taxable supplies	Fully Eligible for Credit
C2	Residual Common Credit C1 – T4	
D1	Proportionate Common Credit attributable to exempted supplies $E/F * C2$	To be reversed
D2	Presumed Non Business 5% of C2	To be reversed
E	Value of Exempted Supplies	
F	Value of Taxable and Exempted Supplies	

# What is taxable / exempt /neither

Nature of Transaction	Reference	Classification
Supply of Taxable Goods / Services on payment of tax	Taxable Supplies	F
Zero Rated Supplies – Exports / SEZs on payment / without payment of tax	Taxable Supplies	F
Supply of Exempted Goods/Services	Exempted Supplies	E
Sale of Land and Building	Exempted Supplies – Stamp Duty Value -	E
Sale of Securities	Exempted Supplies – 1% of Sale Price	E
Supplies covered under Reverse Charge	Exempted Supplies	E
Interest	Not to be considered exempt	--
Ocean Freight	Not to be considered exempt	--
Schedule III Transactions outside taxable territory	Not to be considered exempt	--

# Proportionate Credit : Special Scenarios :

- Restaurants
  - Whether to be treated as exempted supplies for expense off ratio calculation?
- Real Estate
  - Whether area based prescription permissible without amendment in the Act?
  - Whether area based prescription applies to past periods also?
- Textiles
  - Whether the Rule providing for lapsing of accumulated ITC is valid?

# Apportioned Credit on Capital Goods

- Claim ab initio credit
- If used for common purposes, proportionate reversal required over the next 60 months
- Interest payable from the date of ab initio credit till the date of proportionate reversal

# Matching GSTR 2A vs. 3B : Reconciliation Nightmare – Summary of Provisions

- Upto 09.10.2019 – i.e. insertion of Rule 36(4)
  - Press Release of September 2018
  - No Legal Basis for Reconciliation
  - Onus on Department to establish non payment by vendor – D Y Beathel
  - DG Audit Manual
- From 09.10.2019 till notification of Section 16(2)(aa)
  - Challenge the validity of Rule 36(4)
  - Rule 36(4) stops at GSTR1 and not GSTR2A
  - Fine if the unmatched credit within the tolerance limit of Rule 36(4)
- From the date of notification of Section 16(2)(aa)
  - Detailed matching may be required



# Matching of Credits – Process Flow as per Law

## Section 41

- Provisional Claim of Credit which is the net result of the 'dialogue process'
- GSTR 1-2A-2-1A-3

## Section 42

- Matching and Communication of discrepancies:
  - GSTR1 process
  - Import of Goods
  - Duplication of Claims

## Section 42(5)

- Added to the output liability of the recipient
- Can be claimed back later

# FY 2019-20 : Rule 36(4) – Tolerance Limit for unmatched ITC

(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed x per cent of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.

Period	Tolerance Limit for Unmatched Credits
Upto 09.10.2019	No Provision
09.10.2019 – 31.12.2019	20%
01.01.2020 – 29.02.2020	10%
01.03.2020 – 31.08.2020	No Restriction (to be cumulatively applied in Sept. 2020)
01.09.2020 – 31.12.2020	10%
01.01.2021 – 31.03.2021	5%
01.04.2021 – 30.04.2021	No Restriction ( to be cumulatively applied in May 2021)
01.05.2021 onwards	5%

# Substitution / Bogus Invoice Frauds...

- Sections 122 and 132 cover beneficiaries of fake invoicing also within the net of penalties and prosecution.
- Availment of input tax credit without an invoice is cognizable and non-bailable offence.
- Rule 86A – Blocking of Input Tax Credits
- Rule 86B – Mandatory Payment of 1% of output tax in cash
- Additional Penal Provisions under Income Tax Act as well
- How to defend fake invoicing allegation?

# ITC Utilisation Restriction : Rule 86A

- Scenarios
  - Supplier OR Goods/ Services non existent
  - Tax Not Paid
  - Recipient Non Existent / Not conducting business
  - Not in Possession of Tax Invoice
- Lock / Unlock Utilisation of Credit
- Maximum period of one year
- Reasons to be recorded in writing
  - Whether SCN is required or can be done suo motu?

## *Fake Invoicing : Defence / Weaknesses*

- Tax Invoice – Payment – Upload on Portal – Entry in Books – Transport Proof - E-Way Bill
- Toll Payments - FastTag
- Warehousing Needs – CCTV Records
- Use in Manufacture / Further Sale
- Regularity of Transaction – Materiality – Repetitive Nature
- Pre-Transaction Correspondence and Documentation

# Can the State be unjustly enriched?

- If there is no supply, there can be no tax
- The amount borne by the buyer needs to be refunded
- Section 54 permits such refund if there was no supply
- Refund and Input Tax Credit are substitutes of each other

# Path to tread today...

1. Whether Input Tax Credit is a right or a concession?
2. What is eligible as input tax credit?
3. What are the essential tests or conditions for claim of input tax credit?
4. What is not eligible as input tax credit?
5. What are the documentation requirements for claim of input tax credit?
6. What are the timelines for claiming input tax credit?
7. What are the anti-abuse or fair-play provisions to watch out for?
- 8. What are the interest and penalties applicable?**
9. Whether there are provisions to deal with special situations?
10. What to do if ITC accumulates and cannot be utilised?

# Interest : Scenarios

- Reversal on account of non payment of consideration – proviso to Section 16(2)
- Reversal on account of expense –off ratio – Rule 42(2)
- Interest on account of delayed filing of returns – Section 50 proviso
- General Cases – ITC Aailed and Utilised
- General Cases – ITC Aailed but not utilised



# Path to tread today...

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9. **Whether there are provisions to deal with special situations?**
10. What to do if ITC accumulates and cannot be utilised?

# Credit in Special Scenarios

- **Transitory Provisions**
  - Stock lying on the date of voluntary registration / crossing the limit in case of normal registration
  - Stock and Capital Goods in case of exit from composition & vice versa
  - Stock and Capital Goods in case exemption is withdrawn & vice versa
- Transfer of Credit on mergers , demergers, etc.
- Subsequent Supply of Capital Goods – Section 18(6)
- Distribution by Input Service Distributor – Section 20
- Removal to Job Worker – Section 19

# Path to tread today...

1. Whether Input Tax Credit is a right or a concession?
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- 10. What to do if ITC accumulates and cannot be utilised?**

# ITC Accumulation : Working Capital Impact

- Inherent to Business or Working Capital Cycle
  - Inventories, Advances, Capital Expenditure, Infrastructure Companies
  - Huge Transition Credit or Inflow due to ITC-02
- Structural Issues
  - Exports and Zero Rated Supplies
  - Inverted Duty Structure
- Sub Optimal Implementation
  - Geographical Impact – Some States have cash outflow and some States have credit accumulation
  - Timing Mismatch – Earlier periods have cash outflow and later periods have credit accumulation
  - Flawed Branch Transfer Policy

