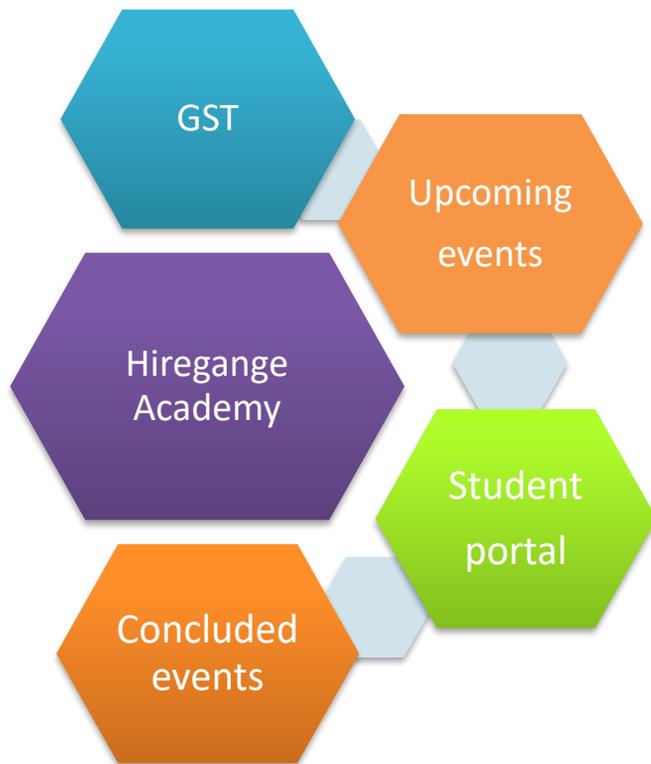


# Hiregange Academy

(A Division of Empower Education Foundation®)

- Empowering Knowledge & Employability

## Going Beyond!!! April 2019



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## Indirect Tax Basket

### ❖ GST Special

- Immovable Plant and Machinery- ITC in GST
- High Sea Sales
- FY 2017-18: Actions in Annual Returns

## Look out for

- ❖ [Students portal](#)
- ❖ [Happenings at Academy](#)

## Immovable Plant and Machinery- ITC in GST

The capital goods credit in GST is allowed u/s 16(1). However, those that are immovable see some restriction u/s 17(5)(c,d). In this article we examine what could be eligible and what may not be.

The definition u/s 2(19) specifies that it is goods the value of which is capitalised in the books of account. Consequently it means that goods which are not capitalised would not be capital goods and would be considered as inputs. Here it is assumed that well established principles of capitalisation or not would be followed and for companies additionally AS10 – Standard of Property, Plant and Machinery would be adhered to.

In a composite supply of plant and machinery the services of site formation, foundation, special structures, erection and commissioning would be included in the value to be capitalised. In the erstwhile central excise regime there were a number of decisions which clarified this aspect.

We would like to advert to the decision in case of Power cables, control panels, air compressors held to be Capital Goods. {Jawahar Mills Ltd Vs CCE – 2001 (132) ELT 3(SC)}. In this landmark decision, the decisions under Income Tax were also examined and it was observed that the principles laid down would be applicable. The interesting apex courts judgement of what was a plant in Income tax are: a. Building so constructed to be an integral part of the power generation is a plant (KPC), b. Drawings are part of plant: (Elecon Engg.) and c. Sanitary fittings, pipelines are plant for a hotel based on their functionality. (Taj Mahal)

The Standard AS 10 would indicate that once the particular item is having some functionality which is a part of the purpose then it could be classified as a plant and machinery.

This leads one to the question whether a clean room constructed to ensure no bacteria/ dust etc in a food processing or pharmaceutical industry; cement/ concrete foundation for the boiler, special RCC/ steel structures for cranes, lifts and elevators used in building constructed to be let out though immovable could be said to be part of plant and machinery. If so then the ITC could be eligible.

The philosophy of ITC in GST is that unless it is expressly barred or illegal or irregularly availed, the credit would be eligible. This philosophy is a carry forward of cenvat under central excise where this principle was settled by the Supreme Court in *Dai Ichi Karkaria*. { 1999(112) ELT (353(SC))}.

The entities who build malls, let out commercial property for pure rent or as plug and play, go for factory expansion, build ports or airports may do well to examine this tax planning possibility of enhancing their ITC. This would go to reduce the cost of the project.

- CA. Madhukar N Hiregange

## High Sea Sales

### Background

The economy and the trade have grown to a greater extent as compared to the ancient period and people have come with many types of dealings and transactions over a period of time to either attract the customers, to reduce their costs or to make things easier for conducting their business. One such transaction is High Sea Sale.

In this article, we have provided the meaning and procedure of high sea sales, valuation, taxation and other aspects relating to high sea sales under GST.

### What is high sea sale?

High Sea Sales [HSS] is a common trade practice within four corners of law whereby the original importer of goods sells the subject goods to a third person before the goods are entered for customs clearance.

HSS in general understanding is a sale where importer sells the goods to another buyer after the goods are loaded on a carrier such as ship, aircraft in exporter's country while the goods are yet on high seas or in the air or sale of the goods after their dispatch from the port/ airport of export and before their arrival at the destination port/ airport.

For example, A located in Mumbai procures goods from vendor B of USA. The goods are exported from USA and when the goods are in transit, A enters into a contract with C of Nagpur, and sells these goods to C, before the goods crosses the customs frontier of India. The sale of goods by A of Mumbai to C of Nagpur, while they are in transit is called high sea sale.

There is no bar on same goods being sold more than once on high seas. The same consignment of goods in transit can be sold multiple times before such goods cross customs frontier and enter into territory of India.

### Why high sea sales?

In the case of HSS, the end HSS buyer would be treated as importer. He clears the goods from customs on payment of applicable import duties. Further if there is any end user-based exemptions in respect of the goods, then such end HSS buyer who uses such goods, for specified purposes can claim such exemptions/concessional tax benefits when he presents the bill of entry for home consumption at customs.

For example, the goods imported by EOUs or SEZs are normally exempted from the payment of BCD and IGST on the import of goods. Where the HSS seller purchases the goods from outside India and enters into an HSS contract with an EOU or SEZ when such goods are in the transit, such EOU or SEZ would not be required to pay BCD and IGST when it files the bill of entry for home consumption.

Suppose such goods were cleared by the original importer from the customs area and then sold to the EOU instead of selling such goods on HSS basis, the original importer would be required to pay BCD when it imports the goods which would be a cost to him and which would be recovered from the EOU when the goods are sold subsequently.

### Procedure for High sea sales-

1. The HSS seller buys goods from an overseas supplier against POs received from its customer in India i.e., HSS buyer. That is, it will be a back to back PO. As against the PO given by the HSS seller, the overseas supplier will export the products. The export documents such as the bill of lading will show the HSS seller as the buyer of the goods.
2. After the goods are dispatched from the port of the exporter country

and before the goods reach/ cross the customs frontier of India and is entered for customs clearance, the goods will be sold by the HSS seller to its HSS customer by entering into HSS contract/ agreement.

3. HSS contract should be entered on stamp paper, signed by both the HSS buyer and HSS seller and should be duly notarised. In the cases where the HSS Contract is not notarised, the same is required to be attested by the authorized signatory of bankers. The notarisation is required in order to determine the time of entering into HSS agreement or contract.
4. The sale is to be effected by endorsing the bill of lading, invoice and packing list in favor of the HSS buyer. The endorsement should read “Transferred on High Sea Sales basis to M/S ——— for a sales consideration of Rupees ————”. Such endorsement should be stamped and signed by the HSS seller. Sale invoice indicating the price at which goods are sold by the HSS seller to HSS buyer should be issued. [This is suggestible if the HSS seller does not mind disclosing original import values to HSS buyer.]
5. In the example given above, A of Mumbai buys goods from the USA against POs received from B of Nagpur. After the goods are dispatched from the USA and before the goods reach/ cross the customs frontier of India, the goods would be sold by A of Mumbai to B of Nagpur by entering into HSS contract/ agreement. A is called the HSS seller and B is called as HSS buyer.

### Filing of Import General Manifest [IGM]

1. The Import General Manifest [IGM] is to be filed in the name of HSS buyer as the consignee of the goods by the shipping line if such shipping line is aware of the HSS contract before filing IGM. In such cases, IGM is not required to be amended.

2. Where the IGM is already generated by the shipping line and has mentioned the HSS seller as the consignee of the goods in the IGM, then the shipping line would be required to amend the IGM in order to change the consignee as the HSS buyer. The procedure to amend IGM by the shipping line is given below.

### Amendment of IGM

1. Circular 14/2017- Customs dated 11th April 2017 provides the procedure for amending IGM. The shipper would be required to file an application for the amendment in the IGM in its letter head.
2. The following documents are required to be filed along with the application for the amendment in the IGM:
  - HSS contract signed by both the HSS buyer and HSS seller and duly notarised. In the cases where the HSS Contract is not notarised, the same is required to be attested by the authorized signatory of Bankers.
  - Non-negotiable copy of Bill of Lading in the original. If same is not available, then a photocopy of such Bill of Lading duly authenticated by Shipping Line/ Steamer Agent/ Custom Broker;
  - HSS invoice and commercial invoice in original or a duly attested Copy thereof;
  - Authority letter for custom broker appointed by the HSS buyer or application from HSS buyer (if CB is not appointed) in original,
  - IEC copy of both the buyer and the seller.

- [To read more click here](#)

- **Ragunandan**  
- **Ramya**

## FY 2017-18: Actions in Annual Returns

### Introduction

The main intention of removal of difficulties (ROD) order no. 02/2018 was to facilitate all the registered persons providing additional opportunity to rectify the errors or omissions of the financial year 2017-18 including availment of the GST input tax credit which was not availed within the due date i.e. September 2018. Now, the due date for the rectifications/amendments in the GSTR-1 and availment of ITC in GSTR-3B has been extended through ROD order no. 02/2018 till March 2019 return. This article provides an insight into benefits & limitation of the order. Also, we provide details of various practical transactions of FY 17-18 and the action points in GSTR-3B/GSTR-1/GSTR-9 annual return.

### Relevance of Circular no. 26/2017:

In most of our earlier laws, there was an option of revising the returns which was filed, although, now only amendments in subsequent returns are allowed under GST in lieu of any rectification/omissions of previous returns. The above-mentioned circular was released to provide such benefits to the assesses as the GSTR 2 & 3 were deferred.

Any rectifications/amendments for transactions pertaining to FY 17-18 could be performed with in the due date of filing September 2018 month return.

### Extension of time limit for disclosing output liability in GSTR-1 return:

In sub-section (3) of section 37 of the said Act, after the existing proviso, the following proviso shall be inserted, namely: –

*“Provided further that the rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September, 2018 till the due date for furnishing the details under sub-section (1) for the month of March, 2019 or for the quarter January, 2019 to March, 2019”.*

### Analysis:

Before introduction of the above provision, the time limit for making rectification is allowed till filing of September 2018 return and now through this amendment it was extended up to till filing March 2019 return.

Now any invoices, debit and credit notes erroneously reported or omitted to be disclosed in form GSTR-1, the registered person can rectify/amend the details up to filing of March 2019 return (GSTR-1 due date is 11th of April 2019, subject to extensions if any)

**Note:** The above order is in relation to Section 37 (i.e. form GSTR-1) and corresponding amendment is not provided in the Section 39 (i.e. GSTR-3B/3). Therefore, any error or omission in GSTR-1 details can be rectified/amended but errors or omissions which affect the output liability cannot be altered in GSTR-3B.

### Extension of time limit for availing ITC:

In sub-section (4) of section 16 of the said Act, the following proviso shall be inserted, namely:-

*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.

### Analysis:

Before introduction of the above provision, the availment of ITC on invoices and debit notes in relation to FY 17-18 was allowed up to filing of September 2018 month return and through this amendment the time limit has been extended up to filing of March 2019 return (GSTR-3B due date 20th April 2019, subject to extensions if any).

Now the registered person can avail ITC on the invoices/debit notes pertaining to FY 17-18 up to filing of March 2019 GSTR-3B return, limited to where the invoices/debit notes which are uploaded by the vendor in the Form GSTR-1 up to March 2019 (i.e. reflecting in recipient GSTR-2A)

It is important to note, ITC on debit notes even if dated post 31st March 2018 against the original invoices issued during the period July 2017 to March 2018 is also extended/permitted upto march 2019 return in terms of Section 16(4) only.

The article also provides the following:

- Action points in Outward Supplies in FY 2017-18
- Action points in Inward Supplies in FY 2017-18
- Various issues in GSTR-9

Observation	GSTR-1	GSTR-3B	GSTR 9
A) salesinvoices and, B) Debit notes and, C) Credit notes, were missed to upload in GSTR-1 but liability discharged through GSTR-3B	Can upload up to 11/04/2019 (unless extended)	No action required	No action required
Schedule I transactions and other income not disclosed in returns	Can upload up to 11/04/2019 (unless extended)	Sept'18-time limit has passed, requires to be discharged voluntarily through DRC-03**(cash/credit)	Disclose differential liability and discharge through DRC-03 (cash only)\$\$

A) Sales invoices and, B) Debit notes, were missed to upload in GSTR-1 and tax liability also not discharged in GSTR-3B	Can upload up to 11/04/2019 (unless extended)	Sept'18-time limit has passed, requires to be discharged volunt arily through DRC- 03**(cash/credit)	Disclose differential liability and discharge through DRC-03 (cash only) \$\$
Credit notes not disclosed in GSTR-3B	Can be disclosed in GSTR-1 up to 11/04/2019. (unless extended)	Cannot reduced tax liability through GSTR-3B, may apply for refund through portal under 'Any other' head	As there is no option for reduction of tax liability in GSTR-9, may apply for refund through portal under 'Any other' head
Exempt/Non-GST supplies are not disclosed in GSTR-1 & 3B	Can be disclosed in GSTR-1 up to 11/04/2019 (unless extended)	Cannot disclose in GSTR-3B as Sept'18-time limit has passed	Disclose in GSTR 9 (as per Books) Impact of Rule 42/43 to be seen.

### Inward supplies in relation to F.Y 17-18:

Observation	GSTR-3B	GSTR 9
ITC not availed in GSTR-3B	Avail ITC by 20 <sup>th</sup> April'19 subject to ITC reflecting in GSTR-2A	Fill in Table 8C – ITC availed period between Apr'18 to Mar'19#& 8E – ITC available but not availed
RCM – RPLiability not discharged	Sept'18-time limit has passed, requires to be discharged voluntarily through DRC-03**(cash/credit) and ITC is ineligible	RCM liability discharge through DRC-03 (cash only)
RCM - URPLiability not discharged in GSTR-3B but accounted in books (self- invoice in FY 17-18)	Discharge RCM liability through DRC- 03**(cash/credit) and ITC in- relation to that transaction is ineligible	Disclose differential liability and discharge through DRC-03 (cash only) \$\$

Observation	GSTR-3B	GSTR 9
RCM - URP liability not discharged in GSTR-3B but accounted in books (self-invoice in FY 18-19)	Aggressive view: Discharge liability in GSTR-3B and avail the ITC of the same	Conservative view: Disclose differential liability and discharge through DRC-03 (cash only) \$\$ and ITC in-relation to that transaction is ineligible
RCM liability paid in returns but missed to account in books	No action required as tax liability and ITC considered	To ensure books vs GST Returns is performed to capture all liability and ITC
ITC relating to Bill of entry is not availed in the returns	ITC may be fully eligible, as Section 16 is silent on time limit (litigable)	Format issue – ITC on imports – time limit only upto March'18 (amendment awaited)
ITC not reversed in GSTR-3B in case of credit notes received and reflected in GSTR-2A	ITC can be reversed up to the filing of March 2019 return through GSTR-3B	Fill in Table 8C – ITC availed period between Apr'18 to Mar'19#
In case of ITC excess availed, TRAN reversals and Rule 42/43/37 reversals	Discharge ineligible ITC through DRC-03 and not in GSTR-3B** (cash/credit)	Disclose differential liability and discharge through DRC-03 (cash only) \$\$

-To read more [click here](#)

- CA Akshay Hiregange

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[https://www.icai.org/new\\_post.html?post\\_id=15592&c\\_id=347](https://www.icai.org/new_post.html?post_id=15592&c_id=347).
5. ANNOUNCEMENT – For Kind Attention of Members , Firms , Students.  
[https://www.icai.org/new\\_post.html?post\\_id=15570&c\\_id=240](https://www.icai.org/new_post.html?post_id=15570&c_id=240).

## Upcoming Events

Mark your Calendar

Topic	Date	Venue & Brochure link
Seminar on “GST CERTIFICATION COURSE”	13 <sup>th</sup> May to 18 <sup>th</sup> 2019	Hiregange Academy No.33 Second Floor 26th Main, 36th Cross Road, 4th T Block, Jayanagar, Bangalore <a href="http://hiregangeacademy.com/event/GST-Certification-course-16th-batch-converted.pdf">http://hiregangeacademy.com/event/GST-Certification-course-16th-batch-converted.pdf</a>

# Concluded Events

Topic	Date	Venue & Brochure link
Seminar on “Value addition in, GST, Customs & FTP (including cost control and tax planning)”	27 <sup>th</sup> April 2019	The Chancery Pavilion No. 135, residency road, Bangalore-560025 <a href="http://hiregangeacademy.Com/event/cfo-seminar-brochure final.Pdf">http://hiregangeacademy.Com/event/cfo-seminar-brochure final.Pdf</a>
Seminar on “Customs and FTP”	26 <sup>th</sup> April 2019	#1010, Hiregange Academy, 1st floor, 26th main road , 4 <sup>th</sup> ‘T’ block, jaynagar, Bnagalore-560041. <a href="http://hiregangeacademy.com/event/brochure-for-customs-&amp;-ftp-seminar-on-26th-april-2019.pdf">http://hiregangeacademy.com/event/brochure-for-customs-&amp;-ftp-seminar-on-26th-april-2019.pdf</a>
One day workshop on- “Understanding Basic and advanced MS Excel”	25 <sup>th</sup> April 2019	Hiregange Academy, #33, second floor, 26th Main road, Jayanagar, 4 <sup>th</sup> ‘T’ block, (above Just books, opposite to Taaza Thindi) <a href="http://hiregangeacademy.Com/event/one-day-workshop-on---understanding-ms-excel.Pdf">http://hiregangeacademy.Com/event/one-day-workshop-on---understanding-ms-excel.Pdf</a>
Seminar on “Recent changes in real estate”	22 <sup>th</sup> April 2019	Hiregange Academy, #33, second floor, 26th Main road, Jayanagar, 4 <sup>th</sup> ‘T’ block, (above Just books, opposite to Taaza Thindi) <a href="http://hiregangeacademy.Com/event/seminar-on-real-estate-for-hiregange-academy.Pdf">http://hiregangeacademy.Com/event/seminar-on-real-estate-for-hiregange-academy.Pdf</a>
Seminar on “How to do GST Audit”	13 <sup>th</sup> April 2019	Hiregange Academy, #33, second floor, 26th Main road, Jayanagar, 4 <sup>th</sup> ‘T’ block, (above Just books, opposite to Taaza Thindi) <a href="http://hiregangeacademy.Com/event/how-to-do-gst-audit-13-04-2019-converted.Pdf">http://hiregangeacademy.Com/event/how-to-do-gst-audit-13-04-2019-converted.Pdf</a>
Free workshop for “How to prepare and excel in CA exam, [May 2019]”	02 <sup>nd</sup> April 2019	Hiregange Academy, #33, second floor, 26th Main road, Jayanagar, 4 <sup>th</sup> ‘T’ block, (above Just books, opposite to Taaza Thindi) <a href="http://hiregangeacademy.com/event/free-workshop-2nd-april-2019-converted.pdf">http://hiregangeacademy.com/event/free-workshop-2nd-april-2019-converted.pdf</a>

## Photos from recent seminars in Hiregange Academy



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