

Hiregange Academy

(A Division of Empower Education Foundation®)

- Empowering Knowledge & Employability

Going Beyond!!! February 2019



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ITC ineligible – Changes w.e.f 1st Feb '19

This article is prepared considering the changes in ITC eligibility under GST which are effective from 01.02.2019.

The changes in credit restrictions is a product of ambiguity and scope of various interpretations of the law. The aim was to bring in clarity, and ensure common man is not burdened with the law. An analysis on the same has been provided below.

The changes in eligibility of Input tax credit (effective from 01/02/2019)

The objective while introducing GST was to provide seamless credit, and to avoid cascading effect of taxes due to various state and central indirect tax laws.

Although, the cascading effect has been significantly reduced (subject to a few exceptions such as IGST on Imports, IGST on Import Ocean Freight service, GST on TCS, etc.), the dream of seamless credit has not yet been realised. Adding to our woes, the recently introduced section 49A, provides for a change in utilisation of ITC, in such a manner which would result in higher accumulation of CGST credit and payment of SGST liability in cash.

ITC is eligible when used for the furtherance of business subject to specific restrictions under section 17(5) of CGST Act, on the following, namely:
ITC on Motor Vehicles

a) Motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when

- i. Further supply of such motor vehicles; or
- ii. Transportation of passengers; or
- iii. Imparting training on driving such motor vehicles;

Analysis:

Motor vehicles used for goods transport remain eligible – No change from earlier Act – only the wordings are simplified:

- ❑ The words 'motor vehicle and other conveyance' has been replaced with the words "transportation of passengers".
- ❑ The words "transportation of goods" have been removed from the exceptions listed as ineligible ITC under the Act through the recent amendment.

Motor Vehicle > 13 seaters is eligible for ITC

- ❑ ITC relating to any vehicle with approved seating capacity more than 13 persons (including driver) is eligible.
- ❑ Physical verification of the motor vehicle could be performed to confirm number of seats available.
- ❑ Verification of approved seating capacity could be based on registration certificate (RC-smart card) issued by State RTO for such vehicle.

Illustration 1:

A Tempo traveller has seating capacity of 20 persons, although while registering with RTO, owner has mentioned seating capacity as 12 persons (incl. driver) for the purpose of evasion of higher registration fee.

Now in this case, as per RC-smart card seating capacity will be 12 persons – ITC would be said to be ineligible. It is suggested to ensure checking of documentation (RC Card).

Illustration 2:

A Tempo traveller has seating capacity of 12 persons, although while registering with RTO, owner has mentioned seating capacity as 15 persons for the purpose of claiming ITC.

Now in this case, as per RC-smart card seating capacity will be 12 persons – ITC would be said to be ineligible. Physical verification of the vehicle could be performed.

ITC on Vessels & Aircrafts

(aa) Vessels and aircraft except when they are used -

(I) For making the following taxable supplies, namely:

- i. Further supply of such vessels of aircraft or
- ii. Transportation of passengers; or
- iii. Imparting training on navigating such vessels; or
- iv. Imparting training on flying such aircraft;

(II) For transportation of goods;

Analysis:

Earlier vessels and aircrafts were not specifically covered under the list of restricted credits. Although, they could have been construed to be covered under “other conveyances”.

It could be argued that as the ITC on the same is being restricted now under GST w.e.f 1st February 2019 onwards, i.e. the ITC was eligible from July 2017 – January 2019.

Section 17(5)(g) restricts ITC on goods used for personal consumption, and where such goods are not utilised for conditions specifically mentioned under Section 17(5)(aa), the department may dispute the credit eligibility.

This area could be litigable, with high risks/high benefits. If ITC is being taken for the past period, the same could be disputed by the department as there is no clarity. Tax payers could consider the option after cost benefit analysis. To support the view, expert legal opinion could be obtained from experts. Such opinions could be useful during departmental officer’s visit as well.

ITC on Insurance, repairs & maintenance, etc.

(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)

Conditions for claiming the ITC:

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

*Where received by a taxable person engaged—
in the manufacture of such motor vehicles, vessels*

Analysis:

It has now been clarified that, where ITC is eligible on motor vehicles, vessels and aircrafts, the ITC on repairs & maintenance and related insurance also would be eligible. The possible categories of above-mentioned goods are as follows:

- Motor vehicles – transport of goods
- Motor vehicle – passengers – when approved seating capacity > 13.
- Other Motor vehicle – passengers – satisfies approved conditions only
- Vessels & aircrafts – satisfies approved conditions only

Earlier there were various schools of thought, as represented below:

- Some claimed, as such expenses were not specifically mentioned under section 17(5), the ITC would be eligible. – ITC also has been claimed from July 2017 upto January 2019.
- Some claimed, as section 17(5) included the words “in respect of”, credit in relation to motor vehicles, i.e. repairs & maintenance & insurance are ineligible.

To read more [click here](#)

-CA Akshay Hiregange

Job work under GST

Introduction:

This article has been prepared considering the various changes and clarification through the Acts, Rules, Circulars, formats under GST with respect to job work.

The importance of a job worker to the principal is significant to the products cost, quality, lead time and therefore, becomes an integral cog in the OEM process. The major advantages are:

- Reducing and keeping in check of operational costs
- Improving company focus on core business
- Gaining access to world-class facilities
- Streamlining and increasing efficiency for time-consuming processes

This article intended to clarify the current issues faced by the manufacturers and job workers, and covers the following:

- Meaning & Nature of job work
- Registration under GST
- Job work procedure
- Transitional provisions relating to Job work
- Availment of ITC on goods sent for job work
- Time limit for returning goods sent for job work
- Consequence when goods not returned within time
- Waste and Scrap
- Various Rates in Job work
- Documents to be issued by manufacturer or Job worker
- Filing of ITC-04
- E- Way bill
- FAQ's on Job work

Meaning & Nature of job work:

In Section 2(68) of CGST Act, "Job work" means any treatment or process under taken by a person on goods belonging to another registered person.

For the purpose of this article, 'Principal' will be the persons who sends the goods for job work.

Treatment or process include packing, labelling, testing, re-conditioning, re-packing, inspection etc.,

Schedule II clause 3 of CGST Act, considers any treatment or process applied to another person goods as a supply of services.

To determine the value of job work charges, value of goods sent by the principal shall not be included.

Registration under GST

Where a job worker provides services of value greater than Rs. 20 lakh, he is required to register under section 22 of CGST Act 2017. To avail the benefits under GST, a job worker may also voluntarily register as provided under section 25(3) of CGST Act 2017.

It is important to note, government has provided exemption from registration for job workers making inter-state supply of services unless they are covered under the following:

- Job worker is registered under GST voluntarily/ or is registered as limit of 20 lakh is crossed, or;
- Job worker provides services in relation to goods such as - Jewellery, goldsmiths and silversmiths wares and other articles of Chapter 71.

Job work procedure:

According to Section 143(1) of CGST Act read with CGST Rule 45, Principal shall under intimation to the department through Form ITC-04 (based on Circular 38/2018), send any inputs or capital goods, without payment of tax, to a job worker for job work. Note, movement of goods without payment of tax from job worker to another job worker and likewise is acceptable.

The principal shall: -

- ❑ Bring back inputs or capital goods from job worker premises within time limit provided above in para (d) without payment of taxes, or;
- ❑ Supply inputs or capital goods after completion of job work directly from the job worker premises within the time limit provided in para (d) with payment of tax, or without payment of tax for zero-rated supplies. To supply goods directly from job worker premises, the following needs to be complied with:
 - ✓ Job worker requires to be registered under GST.
 - ✓ Supply of such goods are notified by Commissioner.
 - ✓ If not covered under (i) & (ii), to include as additional place of business

According to Section 143(2) the responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal.

Transitional provisions relating to Job work:

According to Section 141 of CGST Act, if any inputs/semi-finished goods/excisable goods sent for job work prior to 01/07/2017 for the purpose of further processing, testing and reconditioning etc., no tax shall be payable if goods returned within 6 months from 01/07/2017.

The period may be extended by 2 months by the commissioner, if further sufficient cause may be shown.

If not returned within the period specified, the ITC can be recovered in accordance with section 142(8)(a) of CGST Act, which is as follows:

- ❑ ITC recovered through assessments/proceedings under earlier law (pre-GST) (Eg: Excise)
- ❑ If not recovered under (i), ITC would be recovered as arrears under GST law.

According to Section 141(4) of CGST Act, the principal and job worker should submit a declaration electronically in form TRAN-01 specifying the goods held in stock at job worker premises.

Availment of ITC on goods sent for job work:

According to Section 19(2) of CGST Act, the principal can avail the ITC where goods are sent to job worker premises directly from the vendor location without coming to the principal's premises.

Analysis:

Principal can avail ITC on such goods sent to job worker, provided the vendor mentions -customer as the principal and consignee as the job worker on the face of the invoice.

In case of goods imported and directly sent to the job worker from the custom station the principal requires to raise a delivery challan under Rule 55. Note principal would be eligible for the ITC on imported goods.

Time limit for returning goods sent for job work:

According to Section 19(3) read with 143(3) of CGST Act, when inputs (goods) are sent for job work without payment of tax and neither received back within 1 year nor supplied from the job worker premises, it shall be deemed to be supplied by the principal to job worker as on the date when the goods were sent out for job work.

To read more [click here](#)

**- Kishore Bhandari and
CA Akshay Hiregange**

RCM on Import of Service & Intellectual Property Right

This article would help persons who have large number of foreign clients, persons who attend foreign business events held outside India, or have Holding company outside India.

Service sector plays an important role in technology diffusion especially in areas such as financial services, computing and information process or management consultancy. Under GST regime, Article 269A mandates that supply of goods or services or both in the course of import into the territory of India shall be deemed to be supply of goods, or of service or both in the course of inter-state trade or commerce.

Import of service

As per Section 2(11) of IGST Act Import of service means supply of service where

- a) Supplier of service is located outside India
- b) Recipient of Service is located in India
- c) The place of supply of service is in India.

Taxability of Import of Service under GST includes the following: -

- a) Import of service for a consideration whether or not in the course or furtherance of business
- b) Import of service without consideration by a taxable person from related person or from any of his establishment outside India, in the course or furtherance of business.

Applicability of RCM in case of Import of Service

As per Notification no.10/2017 IT(R) dtd 28.06.2017, one of the notified service for which RCM is applicable is “any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient”.

IGST payable under RCM in case of Import of service where the payment is made in cash, credit to the extent of IGST paid in cash to be utilized in the same month.

Place of Supply in case of Import of Service

In case of Import of service, if the nature of service does not fall under the one specified under Section 13(3) to 13(13) of IGST Act, then Place of supply shall be the location of the recipient of service. Hence IGST is to be discharged under RCM.

RCM would generally be applicable on the cases wherein the place of supply would be that of the recipient of service (generally located in India).

Following are few scenarios where IGST is not required to be discharged under RCM in case of Import of service due to place of supply concept :-

Commission Services:

M/s. XYZ receives service from M/s. ABC (US based company) towards procurement of customer for its business. M/s. ABC charges commission of 10% on all payments received from the prospect for services provided by M/s. XYZ to such customer.

In the above case, M/s. ABC is acting as an agent between M/s. XYZ and the customer which falls within the meaning of ‘Intermediary services’. Hence the Place of supply shall be location of the supplier of service i.e. M/s. ABC as per section 13(8)(b) of IGST Act. Service provider (M/s. ABC) and the place of supply (US) is located in non-taxable territory, IGST is not required to be discharged under RCM.

Event based Services:

M/s. A & Co. an architecture consultancy firm makes a payment to M/s. XYZ (foreign party) who is an organizer of exhibition. Few of the employees of M/s. A & Co. were sent to attend the exhibition which is held in Europe.

In the above case, as per section 13(5) of the IGST Act, the place of supply shall be the location where the event is held i.e. USA.

Service provider (M/s. XYZ) and the place of supply (Europe) is outside the territory of India. Hence IGST is not required to be discharged under RCM.

Services relating to Immovable Property:

Mr. A goes for a business trip to Dubai and incurs accommodation expense towards stay in JW Marriott located in Dubai.

In the above case, the place of supply shall be the location of immovable property i.e. Dubai as per section 13(4) of IGST Act. Here the service provider and the place of supply is Dubai which is outside the territory of India. Hence IGST is not required to be discharged under RCM.

A comprehensive examination of Form 15CA/CB (foreign remittances), various agreements entered between the service provider and recipient holds the key to understanding the taxation of such transactions.

Taxability of Intellectual Property Rights

Such a scenario is generally applicable when a holding company outside India agrees the right to use for its IP in terms of goods and/or IT Software and other related services.

Under erstwhile VAT laws, it is understood that where the transaction involves granting the right to use trademarks, patents, technical know-how or technology right etc. is constructed as transaction in goods.

To read more [click here](#)

- Varsha Vasante Gowda

Analysis of Circular on tax payment on supply of goods being deposited in custom bonded warehouse.

In the recent Circular No. 91/10/2019-GST dated 18 February 2019, CBIC has clarified on the issues faced in common portal in case of Supply of goods while being deposited in custom bonded warehouse which was subject to payment of IGST for the period 1 July 2017 to 31 March 2018.

For the said period the common portal did not have the facility to enable the taxpayer to report payment of IGST, for such supplies especially where the supplier and the recipient were located in the same State or Union territory. Hence, taxpayers engaged in such supplies had reported the said supplies as intra-state supplies and discharged CGST & SGST instead of IGST.

To address this issue, as a one-time exception, suppliers who had paid CGST & SGST on the above supplies would be deemed to have complied with the provisions of law to the extent that payment of tax on such supplies is concerned subject to the condition that CGST & SGST paid is equal to the amount of IGST on such supply.

Comments:

The Government considering the appropriate compliance of tax payment by taxpayer, though under a wrong head & acknowledging the system glitches in GST network, is a welcome move and might eliminate litigation.

-Parameshwar

Notifications & Circulars issued for the month February 2019

SI No	Subject	Notification / Circular No. & Date of Issue	Link to Download
1	Seeks to extend the due date for furnishing FORM GSTR-3B for the month of January, 2019 to 28.02.2019 for registered persons having principal place of business in the state of J&K; and 22.02.2019 for the rest of the States.	09/2019-CT ,dt. 20-02-2019	View
2	Seeks to extend the due date for furnishing of FORM GSTR – 7 for the month of January, 2019 till 28.02.2019	08/2019-CT ,dt. 08-02-2019	View
3	Seeks to rescind Sl. No. 10D of Notification No. 09/2017-Integrated Tax (Rate) dated 28.06.2017 in relation to exemption of IGST on supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees.	02/2019-IT (Rate) ,dt. 04-02-2019	View
4	Seeks to rescind notification No. 32/2017 - Integrated Tax (Rate) dated 13.10.2017 in view of bringing into effect the amendments (regarding RCM on supplies by unregistered persons) in the GST Acts	01/2019-IT (Rate) ,dt. 29-01-2019	View
5	Seeks to give clarification regarding tax payment made for supply of warehoused goods while being deposited in a customs bonded warehouse for the period July, 2017 to March, 2018.	Circular 91/2019	View
6	Seeks to clarify situations of compliance of rule 46(n) of the CGST Rules, 2017 while issuing invoices in case of inter- State supply.	Circular 90/2019	View
7	Seeks to clarify situations of mentioning details of inter-State supplies made to unregistered persons in Table 3.2 of FORM GSTR-3B and Table 7B of FORM GSTR-1.	Circular 89/2019	View
8	Seeks to make amendments in the earlier issued circulars in wake of amendments in the CGST Act, 2017 (which shall come into force w.e.f. 01.02.2019).	Circular 88/2019	View

1. [E-Capsule Compiler for Quick Revision - \(11-02-2019\)](#)
2. [Commencement of Live Virtual Classes for Final Course](#)
3. [Scholarships for CA Students](#)
4. [Announcement on Transition Scheme Credit of B.Com \(A&F\)](#)
5. [Registration for Practical Training Assessment Test on March 10, 2019](#)

Happenings at Academy

Upcoming Events

Mark your Calendar

Topic	Date	Venue & Brochure link
Workshop on Understanding Anti-profiteering under GST	11th March 2019	Hiregange Academy Seminar Hall http://www.hiregangeacademy.com/event/Workshop-on-Anti-profiteering-on-11.03.2019.pdf
Workshop on Understanding Key aspects of GSTR9, GSTR9A and GSTR9C	13th March 2019	Hiregange Academy http://www.hiregangeacademy.com/event/PDF_Workshop-on-13th-March-2019-GSTR9,-GSTR9A-&-GSTR9C-converted.pdf
Accountants Refresher Course	18th March 2019 to 23rd March 2019	Hiregange Academy http://www.hiregangeacademy.com/event/PDF_ARCBrochure-2nd-BatchMarch2019-converted.pdf

Concluded Events

Topic	Date	Venue & Brochure link
Workshop on GST Refunds	27th February 2019	Hiregange Academy and link as follows: http://www.hiregangeacademy.com/event/Workshop-on-GST-Refunds.pdf

Images taken from recently concluded events



We thank all the delegates and the speakers for making the seminar a marvelous learning experience!

We are encouraged by our readers and the complements received. In our endeavour to improve our quality we request you to give two minutes time to give feedback.

-Thanking you,
Newsletter team

Write us at-

<https://docs.google.com/a/hiregangeacademy.com/forms/d/1LprDBXq11Ld0rG7cn8p-dMW-1hkQRPcZtN6bwSXrr0/edit?usp=drive web>