

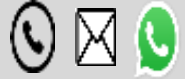


Lawgics

By Nidhi, Advocate



Serial No. 015
Dt.: 19-01-2023



Section 18 of CGST Act, 2017

18. Availability of credit in special circumstances.

(1) Subject to such conditions and restrictions as may be prescribed —

(a) a person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;

(b) a person who takes registration under sub-section (3) of section 25 shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration;

(c) where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed;

(d) where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed.

(2) A registered person shall not be entitled to take input tax credit under sub-section (1) in respect of any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply.

(3) Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilised in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.

(4) Where any registered person who has availed of input tax credit opts to pay tax under section 10 or, where the goods or services or both supplied by him become wholly exempt, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of exercising of such option or, as the case may be, the date of such exemption:

Provided that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

(6) In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher:

Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.

Relevant Rule	Subject	Relevant Forms
Rule 40	Manner of claiming credit in special circumstances	ITC-01, GSTR-1, GSTR-4
Rule 41	Transfer of credit on sale, merger, amalgamation, lease or transfer of a business	ITC-02
Rule 41A	Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory	ITC-02A
Rule 44	Manner of reversal of credit under special circumstances	ITC-03, GSTR-1, GSTR-10
Rule 44A	Manner of reversal of credit of Additional duty of Customs in respect of Gold dore bar	NIL

Our Interpretation

Section 18	<p><u>Availability of credit in special circumstances</u></p> <p>Statute provides for claiming ITC on stock as Raw Material, Semi Finished, finished goods or even on capital goods in below mentioned special circumstances subject to conditions and restrictions.</p> <p>Section 18 of CGST Act is applicable for ITC availability to a taxable person who becomes liable to pay GST at a later stage. The liability to pay GST at a later stage may arise due to the following reasons: -</p> <ul style="list-style-type: none"> (a) Turnover exceeds the limit from the prescribed limit for registration (b) Voluntary Registration is taken (c) Opts out of Composition scheme (d) Exemption to the Supply of Goods or Service is withdrawn. (e) Merger, Amalgamation, Sale of business (f) Sale of Capital Goods
Section 18(1)(a)	<p><u>Sec 18(1) prescribes the date when a person is entitled to take Credit in particular circumstances:</u></p> <p><u>Threshold Limit:</u> A taxable person who has applied for registration within thirty days from the date on which he becomes liable to registration is entitled to take Credit of input tax on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of the CGST Act.</p> <p><u>Example:</u> Mr. Krishan becomes liable to register (turnover exceeds 40 Lakhs) on 5th April, 2022 and applied for registration on 20th April 2022 (within 30 days from 5th April 2020), then he is entitled to take Credit of input tax held in stock on 4th April 2022.</p>
Section 18(1)(b)	<p><u>Voluntary Registration:</u> A person who has applied for voluntary registration is entitled to take Credit of input tax, on the day immediately preceding the date of grant of registration.</p>

	Example: Mr. Vinod applied for Voluntary registration on 20 th April, 2022 and was granted registration on 18 th May 2022, then he is entitled to take Credit of input tax held in stock on 17 th May 2022.
Section 18(1)(c)	Composition Scheme: Where any registered taxable person ceases to pay tax under composition scheme, he shall be entitled to take Credit of input tax on the day immediately preceding the date from which he becomes liable to pay tax as a normal taxpayer. He shall be eligible to take Credit of tax on Capital goods also.
Section 18(1)(d)	Exempt Supply becomes Taxable: Where an exempt supply by a registered taxable person becomes a taxable supply, such person shall be entitled to take Credit of input tax relatable to such exempt Supply on the day immediately preceding the date from which such Supply becomes taxable. He shall also be eligible to take Credit on capital goods exclusively used for such exempt Supply.
Rule 40(1)	<p><u>Manner of claiming credit in special circumstances.</u></p> <p>(1) The input tax credit claimed in accordance with the provisions of sub-section (1) of section 18 on the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or the credit claimed on capital goods in accordance with the provisions of clauses (c) and (d) of the said sub-section, shall be subject to the following conditions, namely: -</p> <p>(a) the input tax credit on capital goods, in terms of clauses (c) and (d) of subsection (1) of section 18, shall be claimed after reducing the tax paid on such capital goods by five percentage points per quarter of a year or part thereof from the date of the invoice or such other documents on which the capital goods were received by the taxable person.</p> <p>(b) the registered person shall within a period of thirty days from the date of becoming eligible to avail the input tax credit under sub-section (1) of section 18, or within such further period as may be extended by the Commissioner by a notification in this behalf, shall make a declaration, electronically, on the common portal in FORM GST ITC-01 to the effect that he is eligible to avail the input tax credit as aforesaid:</p> <p>Provided that any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.</p> <p>(c) the declaration under clause (b) shall clearly specify the details relating to the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or as the case may be, capital goods—</p> <ol style="list-style-type: none"> on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of the Act, in the case of a claim under clause (a) of sub-section (1) of section 18; on the day immediately preceding the date of the grant of registration, in the case of a claim under clause (b) of sub-section (1) of section 18; on the day immediately preceding the date from which he becomes liable to pay tax under section 9, in the case of a claim under clause (c) of sub-section (1) of section 18; on the day immediately preceding the date from which the supplies made by the registered person becomes taxable, in the case of a claim under clause (d) of sub-section (1) of section 18; <p>(d) the details furnished in the declaration under clause (b) shall be duly certified by a practicing-chartered accountant or a cost accountant if the aggregate value of the claim on account of central tax, State tax, Union territory tax and integrated tax exceeds two lakh rupees;</p> <p>(e) the input tax credit claimed in accordance with the provisions of clauses (c) and (d) of sub-section (1) of section 18 shall be verified with the corresponding details furnished by the</p>

	corresponding supplier in FORM GSTR-1 or as the case may be, in FORM GSTR- 4 , on the common portal.
Rule 40(1)	<p><u>Eligibility for ITC under special circumstances</u></p> <p>As per Rule 40(1)(a) in case “Composition dealer becomes a Regular dealer” or “Exempt supplies become taxable”, ITC on capital goods to such person shall be allowed after reducing ITC by 5% per quarter for the usage of the capital goods.</p> <p>Credit on capital goods shall be reduced by 5% for every quarter or part thereof, from the date of issue of invoice for the capital goods.</p> <p><u>Example:</u> Mr. Chandan, a Composition dealer, purchased capital goods on 1st April 2022 for Rs 1,00,000 and paid Rs. 18000/- as GST. On 2nd April 2022, he ceases to pay tax under the composition scheme and becomes a normal taxpayer. Credit on Capital goods shall be reduced @ 5% for four quarters (April 2022 to Mar 2023), and Credit available on capital goods will be 18000-(18000*5%*4) = 14400)</p> <p><u>Declaration in form GST ITC-01</u></p> <p>After becoming eligible for ITC u/s 18(1), the registered person makes a declaration on the common portal in GST ITC-01 clearly specifying the details relating to Input held in stock, semi-finished, finished goods and capital goods within 30 days from the date of his becoming eligible to avail of such input tax credit under section 18(1).</p> <p>In case: The aggregate value of ITC (CGST + SGST/UTGST + IGST) exceeds Rs. 2,00,000/- then, certification by CA or CMA is also required.</p>
Section 18(2)	<p><u>Time limit for taking ITC in special circumstances</u></p> <p>A taxable person shall not be entitled to take input tax credit after the expiry of one year from the date of issue of a tax invoice.</p>
Section 18(3)	<p><u>Transfer of credit in case of change in constitution</u></p> <p>Where there is a change in the constitution of a registered person on account of the sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provision for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business.</p>
Rule 41	<p><u>Transfer of credit on sale, merger, amalgamation, lease or transfer of a business.</u></p> <p>(1) A registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in FORM GST ITC-02, electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee:</p> <p>Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.</p> <p>Explanation: - For the purpose of this sub-rule, it is hereby clarified that the “value of assets” means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.</p> <p>(2) The transferor shall also submit a copy of a certificate issued by a practicing-chartered accountant or cost accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.</p> <p>(3) The transferee shall, on the common portal, accept the details so furnished by the transferor and, upon such acceptance, the un-utilized credit specified in FORM GST ITC-02 shall be credited to his electronic credit ledger.</p>

	(4) The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.
Rule 41	<p><u>Procedure for claiming ITC</u></p> <p>As per Rule 41, The transferor needs to file GST ITC-02 electronically on the Common Portal for transfer of un-utilized ITC in electronic credit ledger of the transferee (newly constituted entity).</p> <p>In the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme – proviso to rule 41(1) of CGST Rules.</p> <p>“Value of assets” means the value of the entire assets of the business, whether or not input tax credit has been availed thereon – Explanation to rule 41(1) of CGST Rules inserted, w.e.f. 29-3-2019.</p> <p>The transferor shall also submit a copy of a certificate issued by a practicing-chartered account or cost accountant certifying that the sale, merger, demerger, amalgamation, lease or transfer of business has been done with a specific provision for transfer of liabilities.</p> <p>The un -utilized ITC shall be credited to the credit ledger of transferee after his acceptance in ITC-02.</p> <p>The Inputs and Capital goods so transferred shall be duly accounted for by the transferee in his books of account.</p> <p>In case of death of sole proprietor, if business is continued then ITC can be transfer through ITC-02 by authorized person to newly constituted entity who shall be responsible for all past activity including past demands of tax, interest, late fee, penalty, etc, as per section 93(1) of CGST Act. Authorized person shall also conclude RC cancellation proceedings in such cases.</p> <p>Please note that unutilized ITC can be transferred but amount available in Cash Ledger cannot be transferred. It can be claimed as Refund as per law otherwise it would lapse.</p>
Rule 41A	<p><u>Transfer of credit on obtaining separate registration for multiple places of business within a State or Union territory</u></p> <p>(1) A registered person who has obtained separate registration for multiple places of business in accordance with the provisions of rule 11 and who intends to transfer, either wholly or partly, the unutilised input tax credit lying in his electronic credit ledger to any or all of the newly registered place of business, shall furnish within a period of thirty days from obtaining such separate registrations, the details in FORM GST ITC-02A electronically on the common portal, either directly or through a Facilitation Centre notified in this behalf by the Commissioner: Provided that the input tax credit shall be transferred to the newly registered entities in the ratio of the value of assets held by them at the time of registration.</p> <p>Explanation. - For the purposes of this sub-rule, it is hereby clarified that the ‘value of assets’ means the value of the entire assets of the business whether or not input tax credit has been availed thereon.</p> <p>(2) The newly registered person (transferee) shall, on the common portal, accept the details so furnished by the registered person (transferor) and, upon such acceptance, the unutilised input tax credit specified in FORM GST ITC-02A shall be credited to his electronic credit ledger.</p>
Rule 41A	<p><u>Transfer of credit on obtaining separate registration for multiple places of business within a State</u></p> <p>This rule has been inserted via Notification No. 03/2019 Central Tax dated 29.01.2019 in order to give effect to the new concept of registration based on multiple places of business introduced via CGST (Amendment) Act, 2018. All such changes shall be applicable w.e.f 01.02.2019. This rule provides:</p> <p>In case the registered person has obtained separate registration, and he intends to transfer his un-utilized ITC to such newly constituted entities on Multiple places of business basis either wholly or partly then he shall file GST ITC-02A electronically within 30 days of obtaining such new registration and such new registrant shall accept the same in ITC-02A for transfer of ITC in the credit ledger of transferee.</p>

Section 18(4)	In cases where registered person has claimed ITC on Input and Capital goods and subsequently, he opts for composition scheme or his taxable item becomes exempt then, law requires him to reverse ITC claimed on stock and capital goods held by him on immediately preceding day.
Rule 44 (1) to (5)	<p><u>Manner of reversal of credit under special circumstances</u></p> <p>(1) The amount of input tax credit relating to inputs held in stock, inputs contained in semi-finished and finished goods held in stock, and capital goods held in stock shall, for the purposes of subsection (4) of section 18 or sub-section (5) of section 29, be determined in the following manner, namely, -</p> <p>(a) for inputs held in stock and inputs contained in semi-finished and finished goods held in stock, the input tax credit shall be calculated proportionately on the basis of the corresponding invoices on which credit had been availed by the registered taxable person on such inputs;</p> <p>(b) for capital goods held in stock, the input tax credit involved in the remaining useful life in months shall be computed on pro-rata basis, taking the useful life as five years.</p> <p>Illustration: Capital goods have been in use for 4 years, 6 month and 15 days. The useful remaining life in months= 5 months ignoring a part of the month Input tax credit taken on such capital goods= C Input tax credit attributable to remaining useful life= C multiplied by 5/60</p> <p>(2) The amount, as specified in sub-rule (1) shall be determined separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.</p> <p>(3) Where the tax invoices related to the inputs held in stock are not available, the registered person shall estimate the amount under sub-rule (1) based on the prevailing market price of the goods on the effective date of the occurrence of any of the events specified in sub-section (4) of section 18 or, as the case may be, sub-section (5) of section 29.</p> <p>(4) The amount determined under sub-rule (1) shall form part of the output tax liability of the registered person and the details of the amount shall be furnished in FORM GST ITC-03, where such amount relates to any event specified in sub-section (4) of section 18 and in FORM GSTR-10, where such amount relates to the cancellation of registration.</p> <p>(5) The details furnished in accordance with sub-rule (3) shall be duly certified by a practicing-chartered accountant or cost accountant.</p>
Rule 44	<p><u>Reversal of credit under special circumstances (Opting composition scheme or taxable item becomes exempt item)</u></p> <p>The Input Tax Credit shall be calculated proportionately based on corresponding invoices on which Credit had been availed by the registered taxable person on such input.</p> <p>The amount to be reversed shall be determined separately for an input tax credit of IGST and CGST.</p> <p>Where the tax invoices related to the inputs lying in stock are not available, the registered person shall estimate the amount based on the prevailing market price of goods on the effective date of cancellation or the date goods/ services becomes exempted. The details shall be certified by a practicing CA/CMA.</p> <p>The amount to be reversed shall form part of the output tax liability of the registered person, and the details of the amount shall be furnished in form GST ITC-03, where such amount relates to taxable Supply becomes exempted and in form GSTR-10, where such amount relates to cancellation of registration Rule 44(5).</p>
Section 18(5)	The calculation of credit and reversal under this section shall be done in a manner prescribed in the CGST Rules.
Rule 40(2)	The amount of credit in the case of supply of capital goods or plant and machinery, for the purposes of sub-section (6) of section 18, shall be calculated by reducing the input tax on the said goods at

	the rate of five percentage points for every quarter or part thereof from the date of the issue of the invoice for such goods.
Rule 44(6)	<p>The amount of input tax credit for the purposes of sub-section (6) of section 18 relating to capital goods shall be determined in the same manner as specified in clause (b) of sub-rule (1) and the amount shall be determined separately for input tax credit of central tax, State tax, Union territory tax and integrated tax.</p> <p>Provided that where the amount so determined is more than the tax determined on the transaction value of the capital goods, the amount determined shall form part of the output tax liability and the same shall be furnished in FORM GSTR-1.</p>
Section 18(6) read with Rule 40(2) & 44(6)	<p><u>ITC on Sale of Capital goods or Plant and Machinery</u></p> <p>In case of sale of capital goods on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods reduced by @ 5% per quarter or the tax on the transaction value of such capital goods determined under section 15 of CGST Act, whichever is higher.</p> <p><u>Example:</u> Mr. Chandan purchased a machine on 1-7-2018 for Rs. 10,00,000 on which GST was paid @ 18%. On 2-10-2019, he sold the machinery for Rs 7,50,000.</p> <p>(a) Asset is utilized for 6 quarters (July 2018- Sep 2019)</p> <p>(b) GST Paid = 10,00,000@18% = 1,80,000</p> <p>(c) ITC on Capital Goods utilized = 1,80,000@5% *6= 54000/-</p> <p>(d) Amount to be paid towards ITC taken = 1,80,000- 54000 = 1,26,000</p> <p>Or the tax on the transaction value of such capital goods= 7,50,000@18% = 1,35,000/=</p> <p>whichever is higher.</p> <p>Thus, Rs 1,35,000 shall be added as output tax liability in form GSTR-1.</p> <p>If such amount exceeds the tax determined on the transaction value of the capital goods, the amount shall be added as output tax liability in form GSTR-1 – proviso to rule 44(6) of CGST Rules.</p> <p>However, in case of bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15 of CGST Act – proviso to section 18(6) of CGST Act.</p>
Rule 44A	<p><u>Manner of reversal of credit of Additional duty of Customs in respect of Gold dore bar.</u></p> <p>The credit of Central tax in the electronic credit ledger taken in terms of the provisions of section 140 relating to the CENVAT Credit carried forward which had accrued on account of payment of the additional duty of customs levied under subsection (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975), paid at the time of importation of gold dore bar, on the stock of gold dore bar held on the 1st day of July, 2017 or contained in gold or gold jewellery held in stock on the 1st day of July, 2017 made out of such imported gold dore bar, shall be restricted to one-sixth of such credit and five-sixth of such credit shall be debited from the electronic credit ledger at the time of supply of such gold dore bar or the gold or the gold jewellery made therefrom and where such supply has already been made, such debit shall be within one week from the date of commencement of these Rules.</p>
Rule 44A	<p><u>Rule 44A: Balance transitional ITC to be reversed on 1st July 2017 for gold dore bars</u></p> <p>This rule relates to ITC taken under the transitional provisions of the CGST Act.</p> <p>It is based on CENVAT credit available under the earlier scheme of taxation in respect of additional duty of customs (section 3(1) of the Customs Tariff Act, 1975) paid for importation of gold dore bars. Where stock of such gold dore bar (raw material) or gold jewellery (final product) lies with the taxpayer on 1st July, 2017, the ITC will be restricted to 1/6th of the credit availed in respect of such gold dore bar. Hence, 5/6th of the credit availed must be reversed at the time of supply of either the gold dore bar or the gold/gold jewellery made out of it.</p>