Transitional Provisions under Revised GST law

There are 33 Sections [Earlier 22 Sections]under transitional provision of Revised GST Law when all major indirect tax Act's going to subsumed under the GST Law. This is most important provisions as these are applicable from the appointed day means when the GST Law shall be applicable. Why this is important and relevant because of the fact that on very first day we need to apply these provisions with due intelligence after extracting the exact meaning of law. Otherwise this will lead to wrong brought forward of CENVAT . Though the provision will be applicable one time but carry due weight as long as transition is concern .How the CENVAT will be available on appointed day whether on the basis of last return filed under earlier law or as per the opening stock is answered in Revised GST Law which has been described as below:

1. **General provision [S. 165]**

   Officer appointed in law by Central and State Govt. for discharging various function relating to taxes on goods and services and how the order may be issued or rule can be make consistent with the smooth transition of GST.

2. **Migration of existing taxpayer to GST [S.166]**

   Every registered person under earlier law shall be issued provisional certificat on the appointed day and certificate will be valid for six months . Such validity may be extended on the recommendation of GST council.

   Every person to whom provisional certificate is issued, within prescribed time, submit information as prescribed then the final registration shall be issued u/s 23 of the Act.

   Provision certificate may be cancelled, if application is filed by person that he is not liable to be registered u/s 23.

   Person eligible to pay u/s 9, may opt to do so as prescribed otherwise he shall be liable to pay u/s 8.

3. **CENVAT credit amount Carry forward in return to be allowed as Input Tax Credit[S.167]**

   Registered taxable person other than opting to pay tax u/s 9 ,shall be allowed to take in his electronic credit ledger a/c the amount of CENVAT carry forward in his return filed under earlier law immediately proceeding the appointed day. Both under CGST and SGST.

Central tax like excise and service tax shall be brought forward under CGST electronic credit ledger and State tax like VAT and Entry tax Input shall be carry forward under SGST electronic credit ledger.

Any amount wrongly taken as credit in CGST and SGST shall be recovered as arrear under this Act weather before or after the appointed day.

4. **Unavailed CENVAT Credit on capital goods, not forward in return, will be allowed in certain situation; [S.168]**

A registered taxable person other than person opting to pay u/s 9 shall be allowed to take credit in Electronic ledger a/c for the CENVAT on capital goods, not carry forward in return in earlier law, in such manner as prescribed.

"Unavailed CENVAT Credit" Means the amounts remains after subtracting the amount of CENVAT credit availed on capital goods under earlier law. "Explanation -1"

" Capital Goods Means " as defined under Rule 2(a) of CENVAT Rule,2004.

Any CENVAT wrongly taken shall be recovered as arrear under the ACT. Explantion-2

Example : 50% of CENVAT on capital goods under service tax can be availed only in next year or if 100 cenvat on capital goods have not availed in first year which can be taken under this Act.

Q : if RTP purchased capital goods and received the invoice before 31st March but not received the capital good. Capital Goods has been received in April,2017. Will he entitle for ITC.

Ans: Yes

Q; A purchased capital goods on which VAT credit was not available though in GST it is available. Will the A will get the credit.

Ans ; No .Since he was not entitle for ITC under the earlier Law.

These provision are applicable both under CGST and SGST.

5. **Credit of eligible duties and taxes in respect of input held in stock to be allowed in certain situations [S. 169]**

Person who was not liable to be registered in earlier law or manufacturer of exempted goods or provision of exempted services or who was providing work contract services and was availing benefit of notification no. 26 / 2012 or first stage dealer or second stage dealer, but become taxable person under this Act which are liable to pay tax shall be entitle to take credit in Electronic credit ledger A/c of eligible duties and taxes in respect of input containing semi and finished goods held in stock on the appointed day subject to the following conditions;

- Such input / goods shall be used for making taxable supplies under this Act.
- Said taxable person pass on the credit by way of reduced price to recipient.
- Such taxable person are eligible for credit under this Act.
- Said taxable person is holding valid invoice or document under the earlier law and having evidence that tax were paid on input.
- Such invoice or documents must not be older that 12 months immediately proceeding the appointed day . Means if appointed day is 1.4.2017 then invoice from 1.4.2016 shall be treated as valid documents.
- Supplier of services is not eligible for any abatement [only for CGST]

These provision will apply for CGST and SGST both.

6. **Credit of eligible duties and taxes in respect of input held in stock to be allowed in certain situation [S.170]**

- RTP who was engaged in Taxable and Exempted goods and provision of taxable and exempted services shall be entitle to take credit
- Amount of cenvat credit carry forward in return in earlier law
- Cenvat credit held in stock including semi finished and finished goods relating to exempted goods or services.

Provision will apply to CGST law

7. **Credit of eligible duties and taxes in respect of input or input services during transit [S.172]**

- RTP can take credit of input or input services , tax on which has been paid before appointed day subject to the condition that invoice for the same has been issued within 30 days or extended 30 days from the appointed day

Applicable for CGST and SGST

8. **Credit of eligible duties and taxes on input held in stock to be allowed to taxable person switching from composition scheme. [S.172]**

RTP [Registered Taxable Person] who was paying tax at fixed rate or in lieu of the tax in earlier law shall be entitles to take credit on input held in stock in semi finished or finished form on appointed date. Provided

- Such input are used for making taxable goods.
- Said person is not paying tax u/s 9 of this Act means composition scheme under this Act.
- Eligible to take credit under this act.
- Said taxable person is holding valid invoice or document under the earlier law and having evidence that tax were paid on input.

- Such invoice or documents must not be older that 12 months immediately proceeding the appointed day .

These provision will apply for CGST and SGST both.

9. Exempted goods return to the place of business on or after the appointed date [s.173]

Any goods on which duty was exempted under earlier law , not being earlier than six months prior to appointed day, has been return back on or after the appointed day , no tax shall be payable under this act if such goods has been returned within six month from the appointed day.

Example : if appointed date is 1.4.2017 and exempted goods were sold after 30.09.2016 but returned on or before 30.9.2017, no tax shall be payable.

If the goods has been return after six months month from the appointed date then tax shall be paid by person returning the goods means purchaser.

If goods has been returned after six months , no tax shall be payable if goods are returned by non registered person.

Applicable for both CGST and SGST.

10. Duty [TAX -in SGST Act]paid goods return to the place of business on or after the appointed date[S.174]

Any goods on which duty was paid under earlier law , not being earlier than six months prior to appointed day, has been returned by non taxable person on or after the appointed day , RTP shall be eligible for refund under the earlier law if such goods has been returned within six month from the appointed day by person other than RTP.
If the said goods are returned by RTP then return of goods shall be deemed to be supply.

Applicable both for CGST and SGST.

11. Input removed for Job work and returned on or after the appointed date [S.175]

Where any input has been received in factory and has been removed as such or after partial processing to job worker for further processing, testing, repair, reconditioning , has been return back on or after the appointed day , no tax shall be payable under this act if such goods has been returned within six month from the appointed day
The period of six month on sufficient cause may extend to another two months

If the goods has been returned after six months or extended period of two months by Job worker from the appointed date then ITC shall be reversed .

The above provision will apply only If manufacturer and job worker declare the goods held in stock on appointed date within time as prescribed .

Applicable both under CGST and SGST.

12. Semi finished goods removed for Job work and returned on or after the appointed date [S.176]

Where any semi finished goods has been removed from the factory for further manufacturing process in accordance with earlier law prior to appointed date , has been return back on or after the appointed day , no tax shall be payable under this act if such goods has been returned within six month from the appointed day

The period of six month on sufficient cause may extend to another two months

If the goods has been returned after six months or extended period of two months by person returning goods from the appointed date then ITC shall be recovered manufacturer .

This clause will be applicable if the goods dispatch for further export on payment of duty or without payment of duty.

The above provision will apply only If manufacturer and job worker declare the goods held in stock on appointed date within time as prescribed

Applicable both under CGST and SGST.

13. Finished goods removed for carrying our certain process and returned on or after the appointed date [S.177]

Where any finished goods has been removed from the factory without payment of duty or for further process in accordance with earlier law prior to appointed date , has been return back on or after the appointed day , no tax shall be payable under this act if such goods has been returned within six month from the appointed day

The period of six month on sufficient cause may extend to another two months

If the goods has been returned after six months or extended period of two months by person returning goods from the appointed date then ITC shall be recovered from manufacturer .

This clause will be applicable if the goods dispatch for further export on payment of duty or without payment of duty.

The above provision will apply only If manufacturer and job worker declare the goods held in stock on appointed date within time as prescribed

Applicable both under CGST and SGST.

14. Issue of supplementary invoices , debit or credit note where price is revision in pursuance of contract [S.178]

Where any contract has been entered prior to appointed day and wherein price of any goods or services has been revised upward on or after the appointed day, person sold the goods, issue supplementary invoice or debit note containing such particulars as prescribed to the receiver of goods or services within 30 days . Such invoice or debit note shall be issued in respect of Outward supply made under this act.

Where any contract has been entered prior to appointed day and wherein price of any goods or services has been revised downward on or after the appointed day, person sold the goods, issue invoice or credit note containing such particulars as prescribed to the receiver of goods or services . This will reduce the input tax credit of recipient of the invoice or credit note.

Applicable both under CGST and SGST

15. Pending refund claims to be disposed of under earlier law [S. 179]

Any amount of refund for duty and taxes and interest thereon filed by the person before the appointed date shall be dispose off under earlier law only and any amount if any due shall be paid in cash. If any amount is rejected then it will lapse.

If the same amount has been carry forward, no refund will be paid.

Applicable both under CGST and SGST

16. Refund claims file after the appointed day for goods cleared or service provided before the appointed day and exported before or after the appointed day to be disposed under the earlier law [S.180]

Every claim of refund of any duty or tax paid under earlier law but filed after the appointed day for any goods and services exported before or after the appointed day shall be disposed under earlier law.

if any claim is fully or partially rejected shall be lapsed

if any amount out the said amount is carry forward will not be entitled for refund. **CGST**

17. Refund claims after the appointed day for payment received and tax deposited before the appointed day in respect of services not provided .[S.181]

Every claim for refund of tax deposited under the earlier law in respect of services not provided and filed after the appointed day shall be disposed of under earlier law. Amount if any payable shall be paid in cash

18. Claim of CENVAT credit to be disposed of under earlier law [S.182]

Any proceeding appeal , revision or review or reference relating to claim for CENVAT credit under earlier law before the appointed date shall be dispose off under earlier law only and any amount if any due shall be paid in cash. If any amount is rejected then it will lapse.

If any amount of claim has been carry forward then the same shall not be allowed as refund.

if any amount of credit is recoverable as result of appeal , revision and review , the same shall be recovered as arrear of tax and the same shall not available as ITC.

Applicable both under CGST and SGST

19. Finalisation of proceeding relating to out put duty or tax liability [S. 183]

Any proceeding appeal , revision or review or reference relating to any output tax liability under earlier law before the appointed date shall be dispose off under earlier law only and if any credit becomes recoverable as result of appeal , revision or review or reference shall be recovered as arrear of this Act and the amount so recovered shall not be admissible as input credit under this Act

Any proceeding appeal , revision or review or reference relating to output tax liability under earlier law before the appointed date shall be dispose off under earlier law only and any amount if any due shall be paid in cash and shall not be admissible as input tax credit under the law.

Applicable both under CGST and SGST

20. Treatment of amount recovered or refunded pursuance to assessment proceeding or adjudication proceeding. [S.184]

If because of Assessment or adjudication proceeding before or after the appointed day under the earlier law , any tax, interest, fine or penalty , becomes recoverable shall be recovered as an arrear under this act and the amount recovered shall not be admissible as input tax credit.

If the tax, interest ,fine or penalty become refundable, the same shall be refunded in cash under the earlier law.

Applicable both under CGST and SGST

21. Treatment of amount recovered or refunded pursuance to revision of return.[S.185]

If because of revision of return under the earlier law , any tax becomes recoverable shall be recovered as an arrear under this act and the amount recovered shall not be admissible as input tax credit.

If because of revision of return under the earlier law , any tax found to be refundable shall be paid in cash .

Applicable both under CGST and SGST

22. Treatment of long term construction/ work contracts [S.186]

The goods or services supplied on or after the appointed day for contract entered before the appointed day shall be dealt under this act only.

Applicable both under CGST and SGST

23. Progressive or periodic supply of goods or services [S.187]

Besides the provision in S.12 and 13 , tax under this act shall not be paid under this act if the consideration of goods and service has been received before the appointed date and tax thereon has already been paid.

Applicable both under CGST and SGST

24. Taxability of supply of services in certain cases [S.188]

If the point of taxation in respect of any service is before the appointed day then tax shall be payable as per earlier law only irrespective of provision of S.13 and S.14. If the portion of supply of services is not taxable under this section such portion shall be taxable under this Act.

25. Taxability of supply of goods in certain cases [S.189]

If the point of taxation in respect of supply of goods falls before the appointed day , tax in respect of such goods shall be payable as per earlier law irrespective of anything provided in S.12 and S.14. If the portion of supply of goods is not taxable under this section such portion shall be taxable under this Act.

26. Credit distribution of service tax by ISD [S.190]

Input tax credit in respect of any services received before the appointed day shall be admissible to ISD even the invoice for such services has been received after the appointed day.

CGST Law

27. **Provision for transfer of unutilized CENVAT credit by taxable person having centralized registration under the earlier law [S. 191]**

Where the person was having centralized registration under the earlier law and registered under the act can carry forward the ITC balance as per the last return filed by him before the appointed day.

Provided that if the RTP filed his return within three month from the appointed day, the balance of credit ,if any, can be claimed .

Such credit may be transferred to any business unit under the same PAN.

28. **Tax Paid on goods lying with the agent to be allowed as credit [S.192]**

If any goods lying at the premises of the agent on the appointed day , agent shall be entitled to take credit of the same subject to the following conditions :

- Agent is RTP under the act.
- Both the agent and principal declare the detail of such goods before the appointed day as prescribed.
- Invoice of the same goods have not been issued earlier than twelve months before the appointed day.
- Principal has not availed the credit of the same goods.

Only under SGST law

29. **Tax Paid on capital goods lying with the agent to be allowed as credit [S.193]**

If any goods lying at the premises of the agent on the appointed day , agent shall be entitled to take credit of the same subject to the following conditions :

- Agent is RTP under the act.
- Both the agent and principal declare the detail of such goods before the appointed day as prescribed.
- Invoice of the same goods have not been issued earlier than twelve months before the appointed day.
- Principal has not availed the credit of the same goods

Only in SGST

30. **Treatment Branch transfer [S. 194]**

Ay amount of input tax reversed on branch transfer before appointed date ,shall not be admissible under this act.

Only in SGST

31. Goods sent on approval basis returned on or after the appointed day[S. 195]

Where the goods have been sent on approval not before the six month from the appointed date and rejected or not approved by the buyer and returned back within six months or within extended period of two months after the appointed date. No tax shall be charged on such goods . Tax shall be paid by buyer if the goods are returned after six month or extended period from appointed day ,if the goods are taxable.

Tax shall be paid by supplier if such goods are not returned within six months or extended period from the appointed day, if the goods are taxable.

32. Deduction of tax at source [S.196]

Where supplier has sold the goods and TDS was required to be deducted under earlier law has not deducted TDS . No tax shall be deducted u/s 46 under this act if the payment to the supplier is made after the appointed date.

33. Transition provision for availing CENVAT Credit in certain cases [S.197]

If any cenvat credit has been availed and payment has not been made to supplier within three months and reversed the same as per the earlier law. The same credit can be taken under this act if the payment to supplier has been made within three months of the appointed day.

Disclaimer :

The contents of this article are solely for information and knowledge and does not constitute any professional advice or recommendation. Author does not accept any liability for any loss or damage of any kind arising out of this information set out in the article and any action taken based thereon.

About the Author:

Author is practicing chartered accountant in Gurgaon and having specialisation in Service Tax and Haryana VAT. He can be reached at ca.sanjeevkumar@hotmail.com