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GST Transitional Provisions [Chapter-27: Section 165 to 197]

- **With Government releasing the 2nd Model GST Law on 25th November 2016 the government had signalled that 01.07.2017 could be the appointed day. In this regards it becomes important to understand the Transition provisions under the Law;**
- **As per GST model law every person registered under any of the earlier laws [Central Excise, VAT, and Service Tax etc.] shall be mandatorily given registration on provisional basis. Further on submission of the required documents and information the provisional registration of the taxable person shall be confirmed by the government.**
- **The Various issues which a business unit/service provider shall face in this migration from earlier law to GST law would be:**

  - ✓ **Carry forward of Cenvat Credit.**
  - ✓ **Un-availed Cenvat Credit on capital goods**
  - ✓ **Cenvat Credit in respect of stocks held in the date of enactment**
  - ✓ **Cenvat Credit issues for taxpayers covered under the composition scheme**
  - ✓ **Goods return/Movement of Goods and Services after the Appointed day to enact GST**
  - ✓ **Cenvat Credit in the case of Job Work**
  - ✓ **Revision of prices after the enactment of GST**
  - ✓ **Refunds pending in the earlier law**
  - ✓ **Issues relating to continuous supply of goods and services**
  - ✓ **Issues of tax in case of goods lying with the agent**
  - ✓ **Credit Distribution of service tax by Input Service Distributor**
  - ✓ **Treatment of long term construction/works contracts**

GST will bring in Business Transformation & Uniformity, hence it's important to understand the Transitional Provisions to ensure that the proposed tax system should take care of existing tax credits, payments and should not be a TAX COST BURDEN to the Assessee.

Due care should be taken while shifting over from Present set of Tax system to GST system so that the required compliances shall be complied with and taxes paid under present taxation system should be rolled over in GST Law.

Sec 165:- General Provisions

Sub Section (a)	Sub Section (b)
Officer under the existing law to be subsumed into GST To be appointed as GST authority under respective act Provided they are continuing in office as on appointed day	C/S Govt may issue order make rules for smooth transition in GST

Sec 166:- Migration of Existing Taxpayer to GST

1	Every registered person under the earlier law will be issued a provisional registration Certificate [PRC]
2	Such PRC will be valid for 6 Months/extended period
3	TP holding PRC shall furnish prescribed information within time u/s 166(2)
4	Final RC will be issued by C/S Govt on furnishing of the prescribed information
5	RC may be cancelled if Sec 166(3) not complied
6	The PRC issued to a person not liable for registration under GST Shall be deemed to have been cancelled upon filing application
7	TP may opt for Composition levy u/s 9 within prescribed time otherwise Sec 8 will be applicable

Sec 167:- Amount of Cenvat credit carried forward in a return to be allowed as Input tax credit

Input Tax/Cenvat credit must be carried forward through return → Such credit must be eligible under earlier tax law & GST → Credit can be taken in the electronic credit ledger → Excess Credit taken will be recovered as "Arrear of Tax" under GST law

Sec 168:- Unavailed Cenvat credit on Capital Goods, not carried forward in a return, to be allowed in certain situations

- A Registered person shall be eligible to take the credit
- In the electronic credit ledger
- Credit on capital goods [as per rule 2(a),CCR] not carried forward in a return
- Such credit must be eligible under the earlier law & under GST law
- Unavailed Credit = (Total eligible credit – Credit availed) under the earlier law
- Excess claim shall be recovered as “Arrear of Tax” under GST law

Sec 169:- Credit of eligible duties & Taxes in respect of inputs held in stock to be allowed in certain situations

1	Person eligible for input tax credit:- ✓ Who is not liable to be registered under earlier law but liable to be register under the GST law ✓ Who is engaged in manufacturing/sale of exempted goods under the earlier law but liable to tax under GST law Credit available on ✓ Inputs held in Stock & inputs contained in semi-finished goods or finished goods held in stock as on appointed day ✓ Such credit can be taken in the electronic credit ledger Condition for availment of credit ✓ Goods must be used for taxable supply ✓ Passes on the benefit of such credit by way of reduced price ✓ Eligible to take the credit under the GST ✓ Possession of Invoice or other prescribed documents ✓ Invoice should be within 12 months from appointed day
2	Eligible credit shall be computed in accordance with GAAP Excess claim will be recovered as “Arrear of Tax” under GST law

Sec 170:- Credit of eligible duties & Taxes in respect of inputs held in stock to be allowed in certain situations

Person eligible for input tax credit:-

- ✓ Registered Taxable person
- ✓ Who is engaged in manufacturing Taxable and non taxable goods under the earlier law but liable to tax under GST law

Credit available on

- ✓ The amount carried forward in a return furnished
- ✓ Semi finished/Finished/Inputs lying in stock as on appointed day
- ✓ Such credit can be taken in the electronic credit ledger

Sec 171:- Credit of eligible duties & Taxes in respect of inputs or input services during transit

1	Person eligible for input tax credit:- ✓ Registered taxable person under earlier law ✓ Which was rendered after appointed day but duty/tax paid before appointed day Credit available on ✓ Inputs/Input Services rendered after but tax paid before the appointed day ✓ Such credit can be taken in the electronic credit ledger Condition for availment of credit ✓ Invoices / Duty Paying documents shall be recorded in books of accounts within 30 Days or extended period [30 days] from the appointed day
2	Eligible credit shall be computed in accordance with GAAP Furnished prescribed statement in respect of credit

Sec 172:- Credit of eligible **Duties** & taxes on inputs held in stock to be allowed to a taxable person switching over from **Composition** scheme

1	Person eligible for input tax credit:- ✓ A registered taxable person paying taxes under the composition scheme under earlier law Credit available on ✓ Inputs contained in stock –RM/Semi-finished goods/Finished goods on appointed day ✓ Such credit can be taken in the electronic credit ledger Condition for availment of credit 1. Goods must be used for taxable supply 2. Person not paying taxes under composition scheme under GST 3. Eligible to take the credit under the earlier law & under GST Law 4. Possession of invoice or other prescribed documents 5. Invoice must be within 12 months from appointed day
2	Eligible credit shall be computed in accordance with GAAP Excess claim will be recovered as “Arrear of Tax” under GST law

Sec 173:- Exempted goods returned to the place of business on or after the appointed day

Tax shall not be payable when:-

- ✓ Exempted goods were removed not being prior to 6 months,
- ✓ Such goods are returned to the said place of business within 6 months and
- ✓ Such goods are identifiable to the satisfaction of proper officer

Tax Shall be payable when & By Whom:-

- ✓ Goods are liable for payment of taxes under GST and
- ✓ Such goods are returned after 6 months,
- ✓ Tax shall be payable by the person returning the goods

Sec 174:- Duty paid goods returned to the place of business on or after the appointed day

Tax shall not be payable when:-

- ✓ Duty paid goods were removed not being prior to 6 months,
- ✓ **Such goods** are returned to the said place of business within 6 months and
- ✓ **Such goods** are identifiable to the satisfaction of proper officer

Tax Shall be payable when & By Whom:-

- ✓ Goods are liable for payment of taxes under GST and
- ✓ Such goods are returned after 6 months,
- ✓ Tax shall be payable by the person returning the goods

Sec 175:- Inputs removed for Job work & returned on or after the appointed day

1	Tax Shall not be payable when:- ✓ Goods were removed /dispatched as such or after partial processing for Job Work ✓ **Such goods** are returned within 6 months or within the extended period (2 months) to the said factory /to the said place of business Tax Shall be payable when & By Whom:- ✓ Goods are liable for payment of taxes under GST and ✓ Such goods are returned after 6 months, ✓ Tax shall be payable by JOB WORKER , if goods are returned after 6 months or after the extended period, ✓ Tax shall be payable by MANUFACTURER , if goods are not returned after 6 months or within the extended period
2	Applicability of the Exemption:- ✓ Manufacturer & Job Worker should declare details of inputs held in stock by the job worker on behalf of the manufacturer on appointed day

Sec 176:- Semi Finished goods removed for Job work & returned on or after the appointed day

1	Tax Shall not be payable when:- ✓ Semi finished goods were removed /dispatched for processing and ✓ **Such goods** are returned within 6 months or within the extended period (2 months) to the said factory /to the said place of business Tax Shall be payable when & By Whom:- ✓ Goods are liable for payment of taxes under GST and ✓ Such goods are returned after 6 months or extended period, ✓ Tax shall be payable by PERSON RETURNING THE GOODS, if the goods are returned after 6 months or extended period, ✓ Tax shall be payable by MANUFACTURER/PERSON DISPATCHING THE GOODS , if goods are not returned within 6 months or extended period
2	Applicability of the Exemption:- ✓ Manufacturer & Job Worker should declare details of inputs held in stock by the job worker on behalf of the manufacturer on appointed day

Sec 177:- Finished goods removed for carrying out certain processes & returned on or after the appointed day

Tax Shall not be payable when:-

- ✓ Finished goods were removed without payment of duty/dispatched for processing under the earlier law prior to appointed day and
- ✓ **Such goods** are returned within 6 months or within the extended period from the appointed day

Tax Shall be payable when & By Whom:-

- ✓ Goods are liable for payment of taxes under GST and
- ✓ Such goods are returned after 6 months or extended period from the appointed day,
- ✓ Tax shall be payable by PERSON RETURNING THE GOODS

Dispatches of goods from other premises:-

- ✓ Manufacture or person dispatching the goods may transfer goods from such other places within 6 months on payment of taxes in india or export without payment of tax

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Sec 178:- Issue of Supplementary invoices, Debit or credit notes where price is revised in pursuance of a contract

Contract entered prior to the appointed day & price of goods and/or Services is revised on or after the appointed day

Sub Section	Direction of Change	Remark
1	Upward revision in the price	Issue of supplementary invoice or debit note within 30 days from such revision
2	Downward revision in the price	Issue of supplementary invoice or credit note within 30 days from such revision

Note: - Taxable person shall be allowed to reduce his tax liability, if the recipient of invoice or credit note has reduced his input tax credit corresponding to such reduction of tax liability.

Sec 179:- Pending Refund claims to be disposed of under earlier Law

- Refund claim of duty/tax and interest and any other amount due under earlier law
- An application must be filed before the appointed day

- Refund proceeding will be in terms of earlier law other than Section 11B (2) of Central Excise Act, 1944 [Doctrine of unjust enrichment]
- If eligible for refund, will be paid in cash and if fully or partially rejected; balance to lapse (CGST)
- Eligible refund to be paid in terms of provision of law and if fully or partially rejected; balance shall lapse (SGST)

Sec 180:- Refund Claim filed after the appointed day

- For goods cleared or service provided before the appointed day and
- Exported before or after appointed day
- To be disposed of under earlier law

▪ **Goods/ services exported** before/ after appointed day & claim of refund of duty/ tax paid under earlier law filed after appointed day disposed of in accordance with earlier law
▪ **Applicability:-** ➢ In case claim of refund rejected partly/ fully, amount rejected will lapse ➢ No refund allowed in cases where the same amount had been carried forward as Cenvat credit under this Act as on the appointed day

Sec 181:- Refund Claim filed after the appointed day

- ## For payments received and tax deposited before the appointed day in respect of service not provided

- **Services not provided**, however tax deposited under earlier law & claim of refund filed after appointed day
  - Disposed of under earlier law
  - Any amount that accrues eventually will be paid in cash

Sec 182:- Claim of Cenvat Credit to be disposed of under the earlier Law

1	✓ Proceedings of appeal revision, review or reference relating to claim of input tax / CENVAT credit initiated before/after appointed day will be disposed of in accordance with earlier law; ✓ Admissible CENVAT credit to be refunded in cash (CGST) ✓ Admissible input tax credit to be refunded in accordance with provision earlier law (SGST)
2	✓ Inadmissible Credit to be recovered as arrears of tax under GST law ✓ It shall not be eligible for claim of input tax credit under GST law

Sec 183:- Finalization of Proceedings relating to output duty or tax liability

1	✓ Proceeding of appeal revision, review or reference relating to any output duty liability initiated before/after appointed date disposed of in accordance with earlier law ✓ Any amount payable shall be recovered as arrears of tax under GST law ✓ It Shall not be eligible for claim of input tax credit under GST law
2	✓ Admissible amount to be refunded in cash (CGST) ✓ Admissible amount to be refunded in accordance with provision of earlier law (SGST)

Sec 184:- Treatment of the amount recovered or refunded in pursuance of assessment or adjudication proceedings

1	✓ Assessment or adjudication proceedings instituted under earlier law against recovery of tax, interest or penalty whether before/after the appointed day ✓ Amount payable to be recovered as arrears of tax under GST law ✓ It Shall not be eligible for claim of input tax credit under GST law
2	✓ Admissible amount to be refunded in cash (CGST) ✓ Admissible amount to be refunded in accordance with provision of earlier law (SGST)

Sec 185:- Treatment of the amount recovered or refunded in pursuant to revision of returns

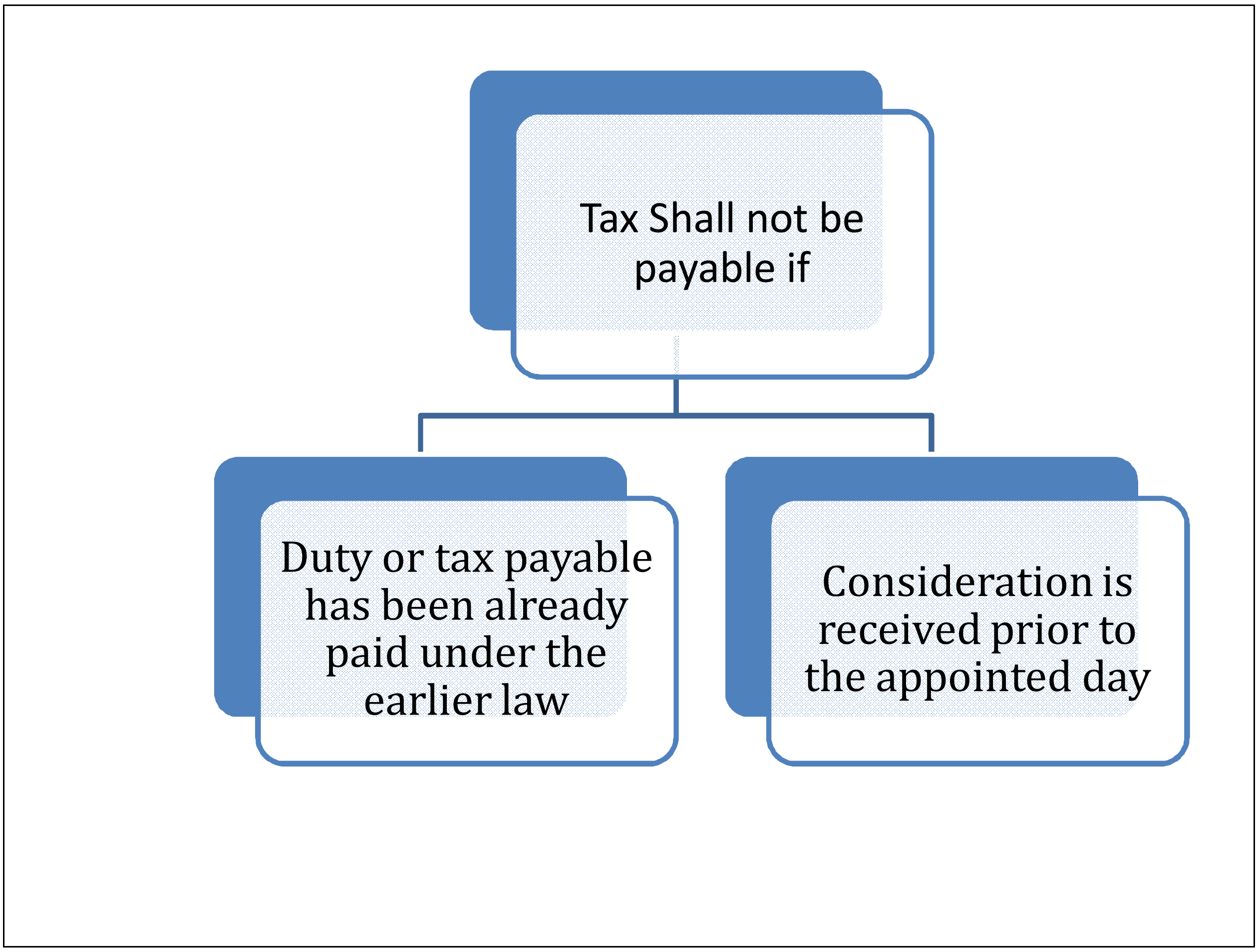
Revision of return furnished under earlier law after appointed day

Sub Section	Direction of Change	Remark
1	Amount payable on account of revision	Recovered as arrears of tax under GST and such amount shall not be eligible for input tax credit
2	Amount refundable on account of revision	Refunded in cash -(CGST) Refund in accordance with provision of law (SGST)

Sec 186:- Treatment of Long term construction /Works Contracts

- ✓ Goods and / or services supplied on or after appointed day
- ✓ Contract entered prior to the appointed day
- ✓ Liable for payment of taxes under the GST law

Sec 187:- Progressive or periodic supply of Goods or Service



Sec 188:- Taxability of Supply of services in certain cases

To the extent that **point of taxation arose before the appointed day,** tax on services will be payable under earlier law

Provisions to apply notwithstanding anything contained in Time of Supply Services

If portion of such supply not covered by this Section - such portion liable to GST

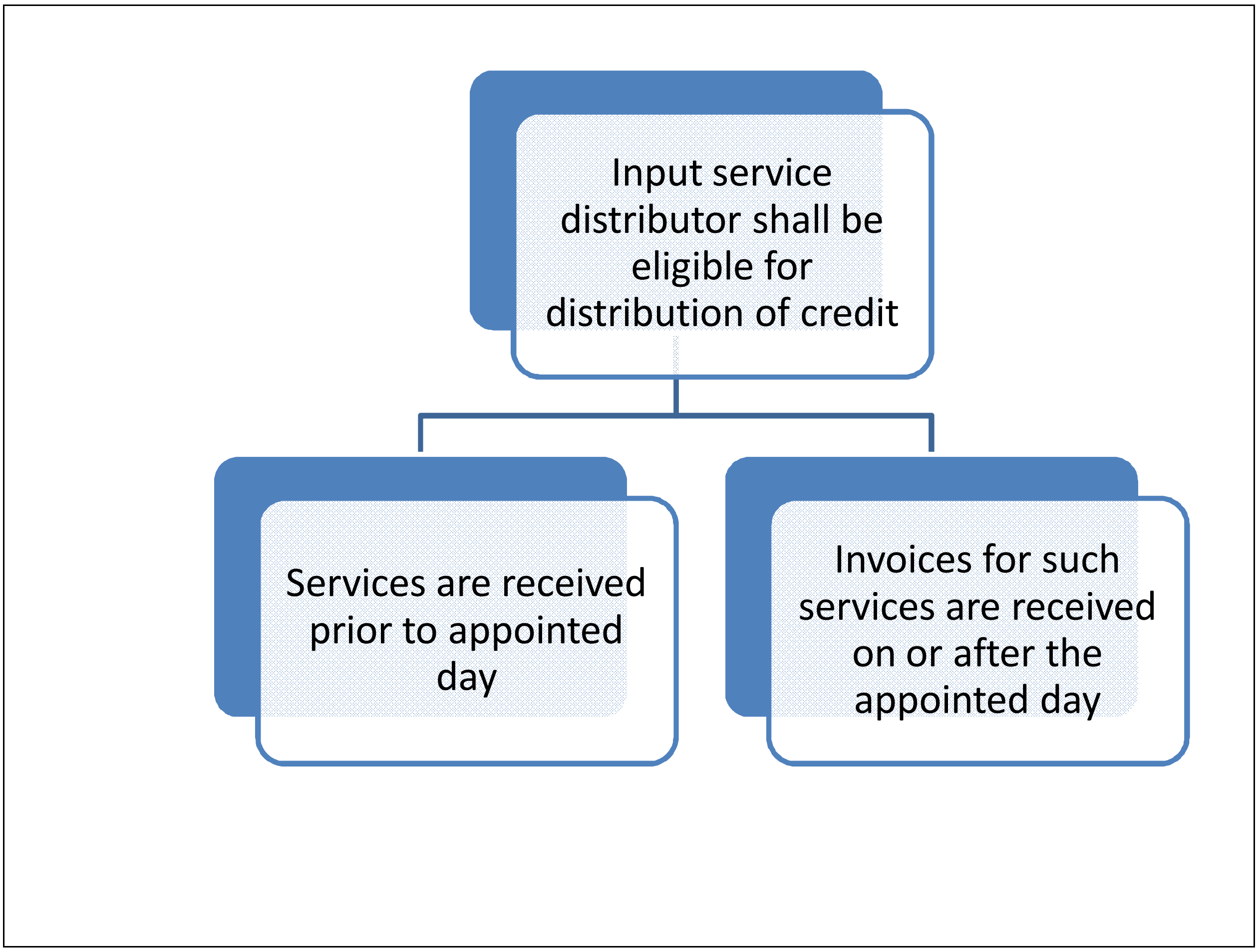
Sec 189:- Taxability of Supply of Goods in certain cases

To the extent that **point of taxation arose before the appointed day,** tax on goods will be payable under earlier law

Provisions to apply notwithstanding anything contained in Time of Supply of Goods

If portion of such supply not covered by this Section - such portion liable to GST

Sec 190:- Credit distribution of Service Tax by ISD [CGST]



Sec 191:- Provisions for transfer of unutilised Cenvat Credit by taxable person having centralised registration under the earlier law

Taxable person has centralised registration under earlier law → Obtained registration under GST law → Allowed to take credit of Cenvat carried forward in return furnished under earlier law in electronic credit ledger

For the period ending with the day immediately preceding the appointed day

- If the taxable person files an original/ revised return within 3 months of the appointed day
- Credit will be allowed if credit amount is reduced from that claimed earlier

Special Note:

- Only those credits which are admissible under GST laws will be allowed
- Credit may be transferred to any registered taxable person having the same PAN for which centralised registration was obtained under earlier law

Sec 192:- Tax paid on goods lying with agents to be allowed as credit [SGST]

Person eligible for input tax credit

- Agent is eligible for taking credit on tax paid goods

Credit available on

- Any goods belonging to the Principal; and
- Such goods are lying at the premises of Agent as on the appointed day

Conditions

- Agent must be a registered taxable person under GST
- Details of goods lying must be declared by the Agent and Principal
- Invoices pertaining to such goods must be within twelve months from the appointed day; and
- Principal either reversed or **should not** have availed credit

Sec 193:- Tax paid on Capital goods lying with agents to be allowed as credit [SGST]

Person eligible for input tax credit

- Agent is eligible for taking credit on tax paid Capital goods

Credit available on

- Any capital goods belonging to the Principal; and
- Such goods are lying at the premises of Agent as on the appointed day

Conditions

- Agent must be a registered taxable person under GST
- Details of goods lying must be declared by the Agent and Principal
- Invoices pertaining to such goods must be within twelve months from the appointed day; and
- Principal either reversed or **should not** have availed credit

Sec 194:- Treatment of Branch transfer [SGST]

- ✓ Any ITC on branch transfer reversed prior to the appointed day
- ✓ It Shall not be eligible for claim of input tax credit under GST law

Sec 195:- Goods sent on approval basis returned on or after the appointed day [SGST]

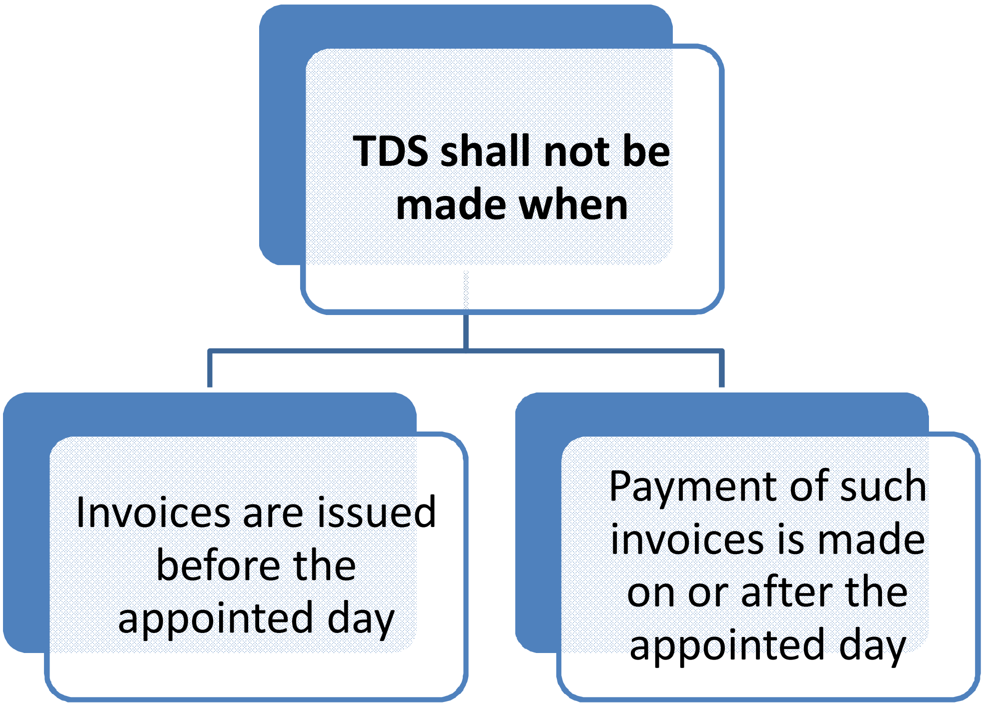
Tax Shall not be payable when:-

- ✓ Goods sent on approval basis under earlier law prior to six months from the appointed day;
- ✓ **Such goods** are returned within six months or within the extended period [2 months] from the appointed date

Tax Shall be payable when & By Whom:-

- ✓ Goods are liable for payment of taxes under GST; and
- ✓ **Such goods** are returned after six month or within the extended period from the appointed day
- ✓ Tax shall be payable by **person returning the goods**, if the goods are returned **after** a period of six months or extended period of time from the appointed day
- ✓ Tax shall be payable by **person who has sent** goods on approval basis, if the goods are not returned **within** the six months or extended period of time from the appointed day

Sec 196:- Deduction of tax at source



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Sec 197:- Transitional provisions for availing cenvat credit in certain cases

Input services provided under earlier law

Cenvat credit reversed due to non-payment of consideration within 3 months

Credit can be reclaimed if consideration is paid within 3 months from the appointed day

[Views & Opinions Expressed are strictly personal]