BASAVA **GOODS AND SERVICE TAX ACT-2017**

GST is considered as an indirect tax for the whole nation that would make India one unified common market. It is a tax which is imposed on the sale, manufacturing and the usage of the goods and services. It is a single tax that is imposed on the supply of the goods and services, right from the manufacturer to the customer. The credits of all the input taxes which are paid at each and every stage would be allowed in the subsequent stages of value addition that makes GST basically a tax on value addition only at every stage. The final consumers will bear only the tax charged by the last dealer in the supply chain with the set of benefits that are at all the previous stages.

It is charged at the national and state level at similar rates for the same products and it also replaces almost all the current indirect taxes that are imposed separately by the Centre and the States. Goods & Services Tax is a **destination based tax** which means that the tax is paid at the **place of supply.**

Business Vertical: Means a distinguishable component of an enterprise that is engaged in the supply of individual goods or services or a group of related goods or services which is subject to risks and returns that are different from those of the other business verticals.

***Explanation*: -** For the purposes of this clause, factors that should be considered in determining whether goods or services are related include:

(a) The nature of the goods or services;
(b) The nature of the production processes;
(c) The type or class of customers for the goods or services;
(d) The methods used to distribute the goods or supply of services; and
(e).The nature of regulatory environment (wherever applicable), including banking, insurance or public utilities;

Goods:

Means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

Service:

Means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Aggregate Turnover:

Means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;

Agent:

Means a person, including a factor, broker, commission agent, *arhatia*, *del credere* agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another

Voucher:

Means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument

Supply:

Supplier: in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied.

Outward Supply: in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business.

Inward Supply: in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means, with or without consideration.

Consideration: in relation to the supply of goods or services or both includes

A. Any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government.

B. The monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government.

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply

Principal Supply: Means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

Composite Supply: Means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply

For example: Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply.

- Composite supply shall be treated as supply of the principal supply.

Mixed Supply: Means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

For Example: A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.

- Mixed supply would be treated as supply of that particular goods or services which attracts the highest rate of tax.

Meaning & Scope of "Supply"

1. In GST Regime all supply such as sale, transfer, barter, lease, Import of services etc. of goods and/ or services made for a consideration will attract CGST and SGST.
    - A supply specified in **Schedule-I** made or agreed to be made without consideration.
2. **Schedule-II** in respect of matters mentioned therein shall apply for determining what is, or is to be treated as a supply of goods or a supply of services.
3. Following activities shall be treated neither as a supply of goods nor a supply of services.
    a) Activities or transactions specified in **Scheduled-III** or

b) Activities or transactions undertaken by the central Govt., a State Govt. or any local authority in which they are engaged as public authorities as specified in scheduled IV

Schedules-I (Supply without Consideration)

1. Permanent transfer/disposal of business assets where ITC has been availed on such assets.

2. Supply of goods and services between related persons, or between distinct persons as specified in section 10 when made in the course of business.

3. Supply of Goods- By a principal to his agent or by an agent to his principal.

Scheduled-II (Matters to be treated as goods or services)

1. **Goods**: - Transfer of title in goods, Transfer at a future date, Banks selling assets.

2. **Services**: - Transfer of right in goods without transfer of title, Lease of Immovable Property/Land, Use of business assets for private purpose, Declared Services, Treatment/Process which applied to another person goods.

Scheduled-III (Following shall be treated neither as a supply of goods nor a supply of services.)

1. Services by an employee to the employer in the course of or in relation to his employment.

2. Services by any court or tribunal established under any law for the time being in force.
3. The Functions performed by MP, MLA, Members of Panchayat / Muncipalities /Local Authorities etc.

4. The duties performed by any person as a Chairperson/Member/Director in a Body established by the CG or SG or Local Authority

5. Services by a foreign diplomatic mission located in India.

6. Services of Funeral, Burial, Crematorium or mortuary including transportation of the deceased.

GST Payable as per time of Supply (The Liability to pay GST arises at the earliest)

1. **Goods: -** Removal of goods or receipt of payment or issuance of Invoice or Date on which buyer shows receipt of goods.

2. **Services: -** Issuance of invoice or receipt of payment or date on which recipient shows receipt of services.

Determining Place of Supply could be the Key

1. At present Inter State supply of goods attract CST Now its provides that an interstate supply of goods and / or services will attract IGST.

2. In case of goods the place of supply would be location where the goods are delivered.

3. And In case of Services the place of supply would be Location of Service Recipient.

Valuation in GST

- GST would be payable on the 'Transaction value' is the price actually paid or payable for the said supply of goods and/or services between un-related parties.

- Includes packing, commission, subsidies and discounts/incentives if it is allowed after supply.

- Excludes Discounts/Incentives given before or at the time of supply will be permissible as a deduction from transaction value.

- Sections 15(4) explains that, where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

  Rule:

  1. Where the consideration is not wholly in money.
  2. Supply is between distinct/related persons, other than through an agent.
  3. Supply made or received through an agent.
  4. Supply based on cost.
  5. Residual Method.
  6. Determination of value in respect of certain supplies.
  7. Value of supply of services in case of pure agent.
  8. Value of supply inclusive of CGST, SGST, Integrated Tax, Union Territory Tax.

INPUT TAX CREDIT

Prologue:

Finally the long awaited Single Indirect Tax Regime GST Law received the assent of the President on the 12th day of April, 2017. GST Law extends to whole of India except the State of Jammu and Kashmir. It supercedes about 17 indirect tax laws which eliminate the Cascading-Effect ("Tax on Tax"). GST is destination/consumption based taxing method thus the term "supply" of goods/ services plays a vital role in GST. GST is similar to existing VAT system i.e., Tax on Value Addition. Input Tax Credit is the backbone of the GST regime

Input Tax Credit:

Input tax credit means the credit available in the Electronic Ledger (E-Cash Ledger or E-Credit Ledger) of a Registered Person in the form of Central tax (CGST), State tax (SGST), integrated tax (IGST) or Union territory tax (UTGST) charged on supply of goods or services or both made to another Registered Person. It includes tax paid on reverse charge basis and IGST charged on Import of Goods but does not include tax paid under composition levy.

Section 49 (5) specifies manner of utilizing the input tax credit as follows:

i) IGST shall first be utilized towards payment of IGST, then remaining towards payment of CGST and SGST / UTGST
ii) CGST shall first be utilized towards payment of CGST, then remaining towards payment of IGST
iii) SGST shall first be utilized towards payment of SGST, then remaining towards payment of IGST
iv) UTGST shall first be utilized towards payment of UTGST, then remaining towards payment of IGST
v) The CGST SHALL NOT be utilized towards payment of SGST or UTGST
vi) The SGST or UTGST SHALL NOT be utilized towards payment of CGST
vii) The remaining balance either in E- Cash Ledger or E-Credit Ledger after payment of Tax, Interest, Penalty, Fee or any other amount payable may be refunded in accordance with provisions of section 54

Eligibility and Conditions to Claim ITC:

1. To avail input tax credit in respect of any supply of goods or services or both the Registered Person should possess a tax invoice or debit note raised by registered supplier or any other document as listed below

    a. An Invoice issued U/S 31
    b. An Invoice prepared in respect of Reverse Charge basis U/S 9(3) and U/S 9(4)
    c. A Debit Note issued U/S 34
    d. Bill of Entry or similar documents under Customs Act,1962
    e. An ISD Invoice or ISD Credit Note or Any other document issued by Input Service Distributor U/R 7(1) for distribution of credit referred U/R 4(1)(g)

2. The document should contain all the prescribed particulars and the details are to be furnished in ***FORM GSTR-2.***

3. ITC is not available on any tax paid in pursuance of order demanded on account of fraud, willful misstatement or suppression of facts

4. Registered Person should have received the goods or service. If received in lots or instalments Registered Person is entitled to take input credit only upon receipt of last lot or instalment. Registered person is deemed to have received the goods if supplier delivers to an agent, by way of transfer of document of title, before or during the movement of goods as directed by him.

5. Tax should actually be paid either in cash or through utilization of input credit

6. Other than supplies on which tax is payable on reverse charge basis, the recipient should pay the amount towards the value of supply of goods or services or both along with tax payable within 180 days from the date invoice issued by the supplier. If not the ITC availed shall become output tax liability of that recipient along with interest. Such output tax liability is eligible to be taken as credit by that recipient

7. If Depreciation is claimed on the tax component of cost of capital goods and plant and machinery for Income Tax purposes then ITC is not allowed on such tax component

8. Return should be furnished under section 39 in ***FORM GSTR 2***

9. ITC in respect of invoice or debit note pertaining to F.Y.2017-18 is entitled for claiming only up to
   - Return filed U/S 39 for September 2018 (or)
   - Annual Return filed

   Whichever is earlier

Apportionment of credit:

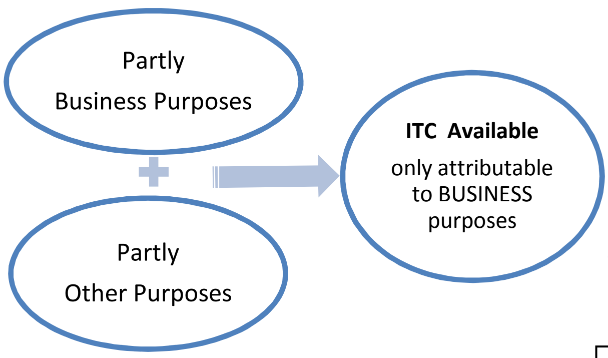
CASE A - ITC based on usage in business

Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

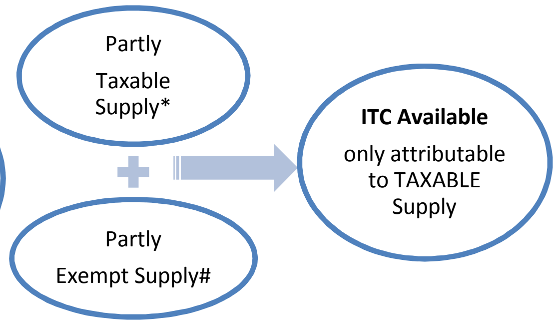
CASE B - ITC based on use of Inputs

Where the goods or services or both are used by the registered person partly for effecting taxable supplies and partly for effecting exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies.

CASE A



CASE B



*Taxable supply includes zero rated supply

#Exempt supply includes supply taxed on reverse charge basis, transaction in securities, sale of land & sale of building

CASE C -Banking & Finance

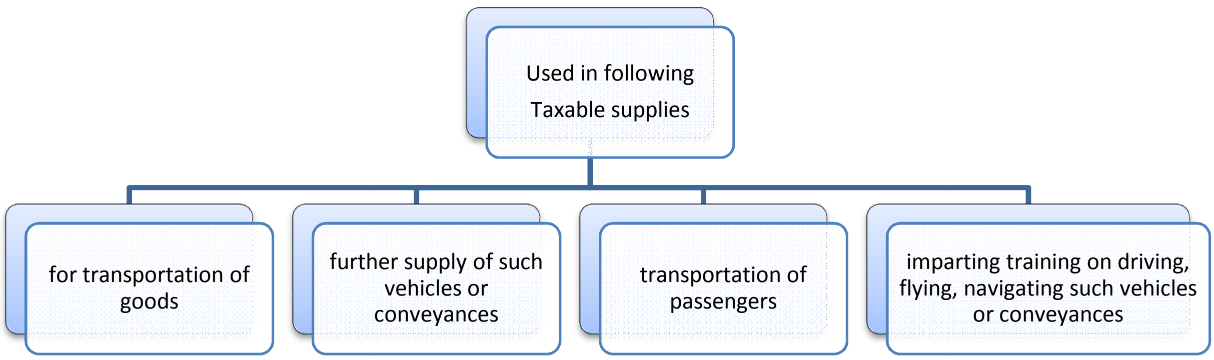
- Banks /FIs including NBFCs, engaged in supplying services by way of accepting deposits, extending loans or advances shall either
  i.) Follow CASE – B (above) or
  ii.) Furnish details in ***FORM GSTR – 2*** and avail 50% of admissible ITC every month

Note: The option once exercised is same throughout that F.Y

Blocked Credits / Ineligible ITC:

ITC shall not be available on the following

1. Motor vehicles and other conveyances except the following categories



2. Credit of Input tax is blocked on Supply of Goods or Services or Both as following.

*Food and Beverages *Outdoor Catering *Beauty Treatment *Health Services *Cosmetic & *Plastic Surgery "Note 1"	*Membership of i) A Club ii) Health & iii)Fitness Centre	*Rent-A-Cab *Life Insurance *Health Insurance "Note 1" "Note 2"	*Travel Benefits extended to employees on vacation such as leave or home travel concession.

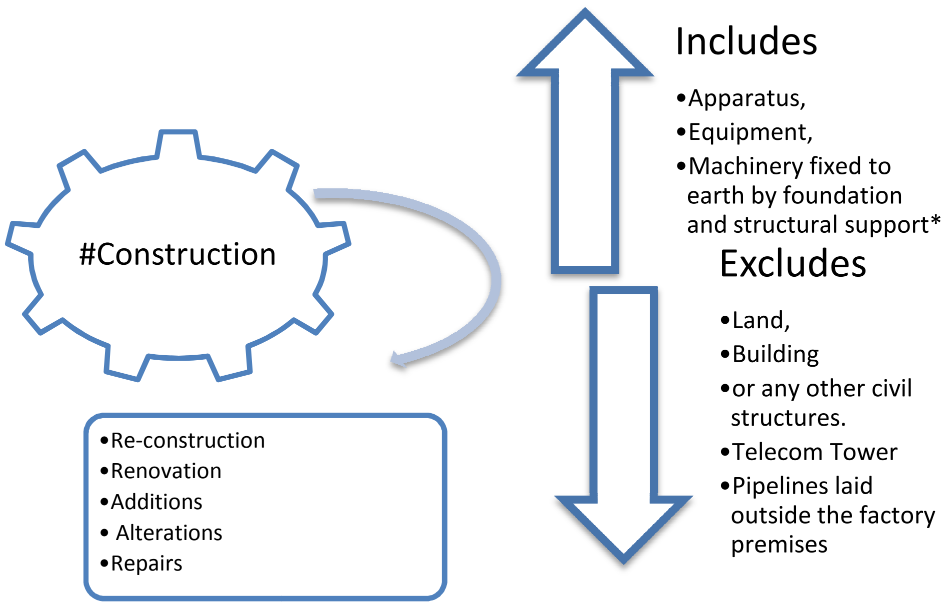
"Note1": ITC is eligible when these inward supplies of goods or services or both are used for making an outward taxable supply of the same category of goods or services or both or used as an element of a taxable composite or mixed supply

"Note2": ITC is eligible where the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force

3. Works contract services when supplied for construction of immovable property(other than *Plant & Machinery*), except where it is an input service for further supply of works contract service;

4. Goods or services received by a taxable person for *construction* of an immovable property on his own account, other than *plant and machinery*, **even when used in course or furtherance of business;**

Construction   Plant & Machinery



To the extent of capitalization, relating to such immovable property.

*That are used for making outward supply of goods or services or both and includes such foundation and structural support

5. Goods or Services or Both on which tax has been paid under section 10 (Composition Levy)

6. Goods or Services or Both received by a non-resident taxable person except on goods imported by him

7. Goods or Services or Both used for personal consumption

8. Goods lost/ stolen/ destroyed/written off or disposed of by way of gift or free samples

9. Any tax paid U/S 74, 129 or 130.

Availability of credit in special circumstances:

Circumstance 1 - Newly Registered Person

- ✓ When a person becomes liable to register he should apply for registration within thirty days from the date he becomes liable to register
- ✓ Consider he is liable to pay tax w.e.f. 1^{st} August 2017 but he is granted such registration on 15^{th} August 2017
- ✓ He is entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held on 31^{st} July 2017

Circumstance 2 - Voluntary Registration

- ✓ When a person applies registration U/S 25(3) (Voluntary Registration)
- ✓ Let's assume he applies on 5^{th} June 2017 and obtained registration on 22^{nd} June 2017
- ✓ He is 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 21^{st} June 2017

Circumstance 3 - Crosses the Compounding Threshold

- ✓ Hypothetically, a Registered Person who was paying tax U/S 10(Composition Scheme) becomes liable to pay tax under regular scheme w.e.f. 31^{st} July 2017.
- ✓ He shall take credit for ITC on the inputs held as stock, inputs contained in semi finished/finished goods in stock, even on capital goods (which shall be reduced by 5% points per quarter of a year or part thereof) held on 30^{th} July 2017.

Circumstance 4 - Exempted Goods became Taxable

- ✓ If a person dealing in exempted goods or services or both becomes taxable supply
- ✓ Hypothetically, such goods become taxable w.e.f. 1^{st}April 2018.

- ✓ He shall take credit for ITC on the inputs held as stock, inputs contained in semi finished/ finished goods in stock (relatable to such exempt supply), even on capital goods (used for such exempt supply)(which shall be reduced by 5% points per quarter of a year or part thereof) held on 31st March 2018.

Manner and conditions for claiming credit in above circumstances

- Within 30 days from the date of becoming eligible to avail of ITC on above 4 circumstances
- The registered person shall make declaration in ***FORM GST ITC – 01***and furnish details
- If the aggregate claim exceeds Rs.2 lakhs, then a Certificate from a chartered accountant should be obtained
- Tax invoice date must not be older than one year to claim ITC
- ITC of 3rd and 4th circumstances shall be verified with the corresponding details furnished by the corresponding supplier in ***FORM GSTR-1*** or ***FORM GSTR-4*** respectively

Circumstance 5 - Change in Constitution

- ✓ If there is UNUTILIZED ITC during the course of sale, merger, demerger, amalgamation, lease or transfer of the business with a specific provision for transfer of liabilities
- ✓ Registered Person shall furnish the details in ***FORM GST ITC – 02*** along with a Certificate from a Chartered Accountant to transfer the SAME into the Electronic Credit Ledger of the concerned party due to change in the constitution.

Circumstance 6 – Regular to Composition Scheme or Taxable to Exempt

- ✓ ***Situation 1:*** When a Registered Person who was taxable under regular scheme opts to pay tax U/S.10 (composition scheme) w.e.f. 1st July 2017
- ✓ ***Situation 2:*** When the taxable goods/services under regular scheme supplied by a Registered Person become wholly exempt w.e.f. 1st July 2017
- ✓ In both situations, he should first nullify his electronic credit or cash ledger by paying an amount equivalent to the credit of ITC on the inputs held as stock, inputs contained in semi finished / finished goods in stock, even on capital goods (which shall be reduced by 5% points per quarter of a year or part thereof) held on 30th June 2017
- ✓ If after payment of such amount, any balance of ITC in his electronic credit ledger shall lapse.

Circumstance 7 - Sale of Capital Goods

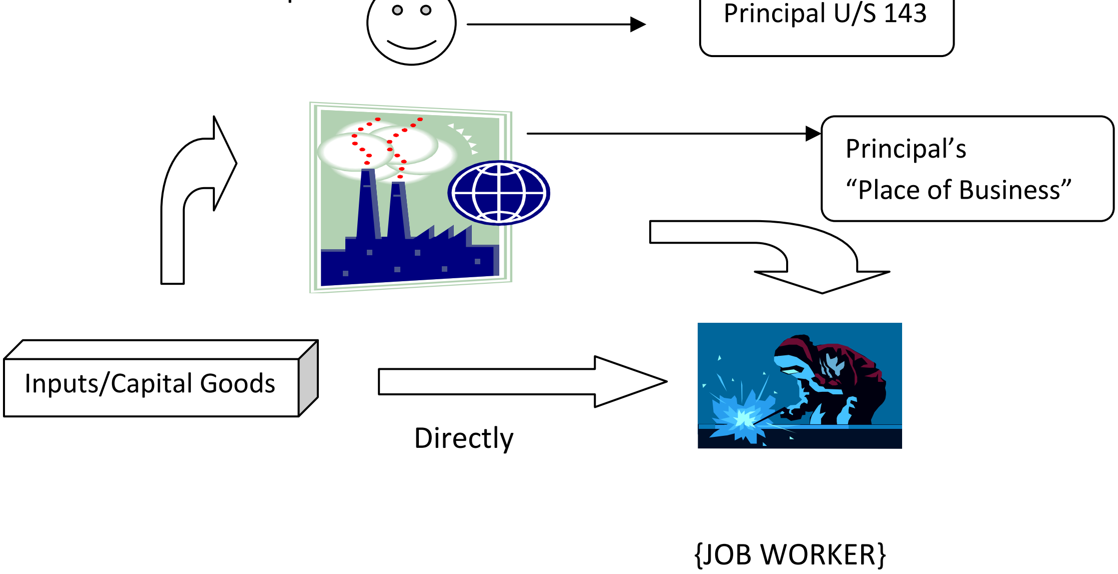
- ✓ If capital goods or plant and machinery is disposed after utilizing ITC in the first place, Registered Person shall pay an amount equivalent to
  - Input Tax Credit taken on Capital Goods (Reduced by 5% points every quarter or part thereof)
    Or
  - The tax on the transaction value of such Capital Goods

  Whichever is higher

- ✓ ***Note:*** But if refractory bricks, moulds & dies, jigs & fixtures are supplied as scrap, then tax may be paid on the transaction value as per Section 15
- ✓ *To summarize, the credit of input tax can be taken as and when the person applies for the registration but the entitlement of credit of inputs would be from the day liability to tax arises.*

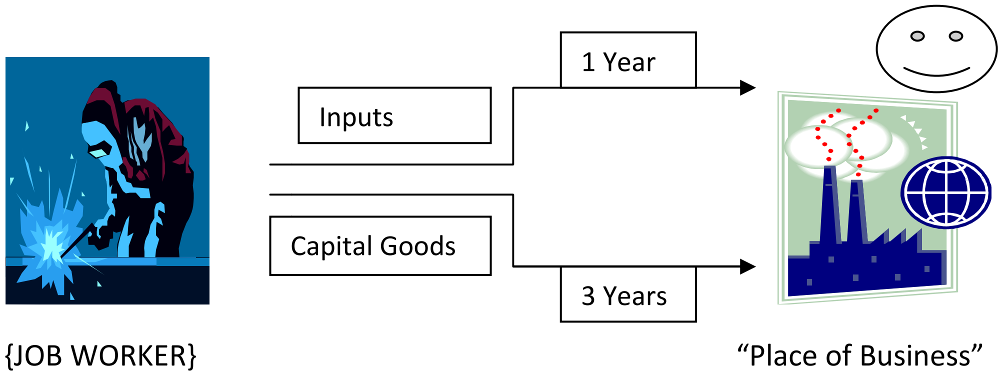
ITC on JOB Work:

Principal referred u/s 143 shall take ITC on Inputs/Capital Goods sent to job worker either Directly or through Principal's Place of Business provided within *TIME LIMITS* the job worker supplies back to Principal's Place of business else it is *DEEMED AS SUPPLY* of Input/ Capital goods in the hands of Principal.



Time Limits:

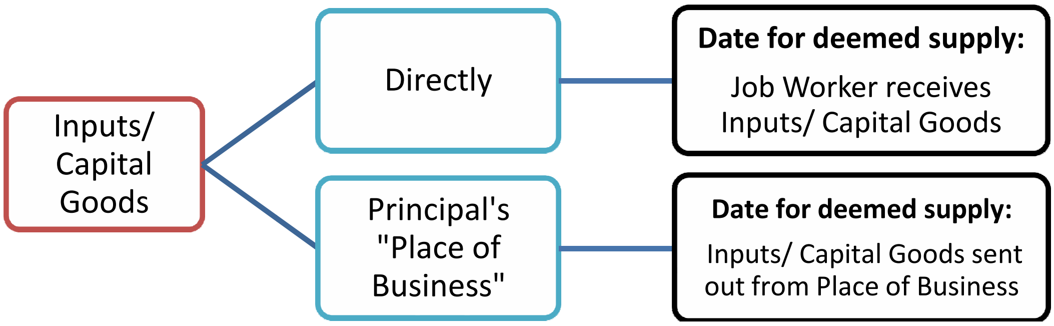
- ❖ Time limits on inputs sent for job work is that Job worker has to send back the inputs received by him within 1 year to the Principal's place of business. Likewise capital goods should be sent back within 3 years



Note: The Time Limits of 1 year or 3 year shall not be applied in case of moulds, dies, jigs and fixture, or tools sent out to job worker for job work.

Date of Deemed Supply:

- When Inputs / capital goods sent directly to job worker date of deemed supply is the date when job worker receives such inputs and capital goods
- If they are sent from principal's place of business then the date of deemed supply is when inputs/capital goods are sent out from principal's place of business



Conditions to Claim ITC on JOB work:

(1) The inputs, semi-finished goods or capital goods shall be sent to the job worker under the cover of a challan issued by the principal
(2) The challan issued by the principal to the job worker shall contain the details specified in rule Invoice.10
(3) The details of challan in respect of goods dispatched to a job worker or received from a job worker shall be included in **FORM GSTR-1**
(4) Where the inputs or capital goods are not returned to the principal within the time limits, the challan issued shall be deemed to be an invoice.

Set off Heads

Tax Credit (ITC)	IGST	CGST	SGST
IGST Credit	**YES (1^{st})**	**YES (2^{nd})**	**YES (3^{rd})**
CGST Credit	**YES (2^{nd})**	**YES (1^{st})**	**NO**
SGST Credit	**YES (2^{nd})**	**NO**	**YES (1^{st})**

Utilization of CGST & SGST is not available Cross

Reverse Charge

Introduction: - With the introduction of GST, a new provision is introduced which is not there is any of the earlier tax laws. As per the new law, in case one registered person receives any goods or services or both, which is taxable, from the unregistered person, registered person shall be required to pay tax and all the other liabilities like issue of invoice, filing return, assessment of the same shall be the responsibility of the recipient/registered person.

As per section 9(4) of the **CGST Act,** the central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Important Component

There are following elements which need to be present to trigger this section:-

1. There should be supply.
2. Supply should be in respect of taxable goods or services or both.
3. Supply must be by unregistered person.
4. Supply must be to registered person.

Analysis

1. If the transaction is not covered under the definition of supply, this section won't be applicable.

   Examples: - Sale of Land from unregistered person or agriculturist to ABC Ltd. who is registered in GST: - Sale of Land is not considered as supply so the provision of 9(4) is not applicable.

2. If the supply involved exempt goods or services or both this section won't be applicable.

   a) A registered person hire auto rickshaw for commuting from one place to another: - Section 9(4) won't be applicable since transportation of passenger by auto rickshaw is exempted services.

   b) A registered person stay in a hotel whose room tariff is less than Rs. 1,000/-:- Section 9(4) won't be applicable since services by a hotel having declared tariff less than Rs. 1,000/- per day is an exempt service.

3. The Section is applicable to intra state taxable supplies only. As per section 24, in case of inter-state taxable supply, registration is mandatory without any turnover limit. So there could not be any taxable supply between the two states.

4. Supplier should be unregistered whether he is liable to registered or not.

5. Recipient should be registered

Exemption to section 9(4) of CGST:- As per section 11(1) of the CGST Act, if the Government is satisfied that it is in interest of the public to exempt some goods or services or both, either fully or partly of the tax leviable thereon.

On using this power, Government has issued notification No. 8/2017- Central Tax (Rate) which shall be in force from July 1, 2017.

As per the notification, exemption shall be applicable where the aggregate value of such supplies of goods or service or both received by a registered person from any or all the suppliers, who is or are not registered, is upto five thousand rupees in a day.

Analysis

1. Exemption is on intra state taxable supply.

2. There is a limit of transaction value of Rs. 5,000/- per day: - means in case of supply more than Rs. 5,000/- per day, whole of such supply shall be taxable under reverse charge 9(4).

3. Limit is in respect of all suppliers: - This should be noted that the limit is not respect to one supplier.

What will be the time of supply in case purchase of goods / Service in Reverse charge mechanism?

The time of supply for purchase of **goods** in reverse charge mechanism will be the earlier of the following-

1. The date of receipt of goods or
2. Date on which payment is made or
3. The date immediately following 30 days from the date of issue of invoice.

For Examples:- If a taxpayer purchases stationary from an unregistered person on 25th July 2017 and he provides the bill for the same on 2nd August 2017 and if the consideration is paid on 28th August 2017, then according to the provisions of RCM the time of supply will be 25th July 2017.

The time of supply for **services** in reverse charge mechanism will be the earlier of the following-

1. The date on which payment is made.
2. The date immediately following 60 days from the date of issue of invoice.

Exemption under GST v/s RCM

Section.22 (1) of the CSGT Act (Persons Liable for Registration):- Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

Section 23 of the CGST Act (Persons not Liable for Registration):-

1. It provides that the following persons **shall not be liable** to registration, namely –

   (a) Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;
   (b) An agriculturist, to the extent of supply of produce out of cultivation of land.

2. The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.

Section 24 of the CGST Act (Compulsory Registration) starts with "Non-Obstante Clause" and states that: - Notwithstanding anything contained in sub-section **(*1*) of section 22**, the following categories of persons shall be required to be registered under this Act,–

(i) Persons making any inter-State taxable supply;
(ii) Casual taxable persons making taxable supply;
(iii) Persons who are required to pay tax under reverse charge;

Conclusion:

- It is clear from the above that Section 24 is superseding / overriding provisions of section 22 and not the provisions of section 23.

- It means if a person is exclusively engaged in the business of supplying of goods or services that are not liable to tax or wholly exempt from tax, there is no requirement of registration irrespective of the provisions of section 24, which is stipulating cases for "compulsory registration".

- Similarly, if the Govt., by notification, specify the category of persons, who may be exempted from obtaining registration, provisions of section 24 shall not apply on those persons.

The Central Govt., by virtue of provisions of Sec.23, has issued **Notification No. 5/2017-Central Tax dt.19.06.2017**, wherein it has exempted persons from obtaining registration **who are only engaged in making supplies of taxable goods or services or both, the total tax on which is liable to be paid on reverse charge basis by the recipient of such goods or services or both under sub-section (3) of section 9**

Credit Note and Debit Note

Credit Note:- Where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient a **credit note** containing such particulars as may be prescribed.

Debit Note: - Where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient a **debit note** containing such particulars as may be prescribed.

Accounts and Records under GST

Provisions relating to Accounts and Records under GST

1. Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of-

   [A]. Production or Manufacture of goods;
   [B]. Inward and Outward supply of goods or services or both;
   [C]. Stock of goods;
   [D]. Input Tax Credit availed;
   [E]. Output Tax payable and paid.

   Each volume of books of account maintained manually by the registered person shall be serially numbered.

2. **How long to be Kept Books of Accounts**:- 72 Months from the end of the due date of filing annual return i.e. the Records relating to FY 2017-18 would be kept up to 31st December, 2024 either in paper form or in electronic form. Proper electronic back-up of records shall be maintained and preserved in such manner that, in the event of destruction of such records due to accidents or natural causes, the information can be restored within a reasonable period of time.

3. **Place of Keeping Records**: - At his principal place of business as mentioned in the certificate of registration.

Assessments under GST

In term of Section 2 (11) of the CGST "Assessment" means determining the tax liability under GST Act. Assessment simply means calculation of the tax liability. It is integrating part of the GST as without assessment it is very much difficult to determine tax liability of a taxable person.

According to CGST act, Types of Assessment are as under: –

1. **Self-Assessment (Section 59)**:- Self-Assessment means an assessment by assessee or taxable person himself. Proper Officer has no role to play in this type of assessment. The GST regime always continues to promote the scheme of self-assessment.

   How liability is calculated in Self-Assessment?

   - In this type of assessment, every register taxable person would require calculating his/her tax liability according to the provision of GST act. A taxable person who is register under GST can calculate his own liability to the provisions of GST and it is always assumed that he acts in a good faith.

2. **Provisional Assessment (Section 60)**:- Provisional Assessment is the assessment the proper officer calculates the tax liability of tax assesses. When This type of assessment can be restored in following: –

   - When value of supply cannot be determined by the taxable person. It is difficult to in ascertaining: –
     i. Transaction Value of supply for determination of tax.
     ii. Inclusion or exclusion of any amount in the value of supply.
     iii. Circumstance causing failure of transaction value declared.

   - Rate of tax applicable on the supply cannot be determined:-
     I. For ex- an industry which provide Intra and Inter State supplies have uncertainty about the kind of taxes (CGST / IGST) application, time of supply etc in these cases, assess have to seek Provisional Assessment.

   - **Special Note:-** A Proper Officer have no right to give his judgement, unless and until the assess request officer in writing in **FORM GST ASMT-01** electronically along with the supported documents giving reason to get permit to pay tax on provisional basis.

   - **Time limit**: - The Proper Officer have to pass order of assessment within 90 days from the receipt of the request by the assessee on the surety or security for any differential tax that may be eventually grossed.

     Example, ABC ltd. Is a manufacturer, who supplies its material from Jaipur to Karnataka. Then, in this case he is not able to find out the rate and the type of taxes which is to be levied on him. So, this case is Provisional assessment.

3 **Scrutiny of Tax (Section 61)**:- It means scrutinize return filled by register person by Proper Officer to verify the correctiveness of the return. The Proper Officer has power to notice a registered person in any discrepancies. Any shortfall will be notified by the Proper Officer in **FORM GST ASMT-10** and Assessee must give reply in **FORM GST ASMT-11** within 15 days from the date of scrutiny. The notice contains amount of tax, interest and any other amount of discrepancy.

4 **Assessment of Non- filers of return (Section 62)**:- When registered taxable person failed to file returns as under section 39 or as the case may be or final return on cancellation of registration under Section 45 of this act, issuing notice under Section 46 appears to be a precondition for initiating proceedings under Section 62 of the act.

5 **Assessment of unregistered person (Section 63)**:- In this section, if an unregistered person i.e., persons who are liable to obtain registration under Section 22(Registration) and have failed to do so or case where registration was cancelled as per section 29(2) of the ACT.

6 **Summary assessment in certain special cases (Section 64)**:- This assessment is used in a tax legislation to denote "fast track assessment" based on return filed by the assessee. This assessment is when, there will be a loss of revenue to the government. Provided to enforce recovery of dues from potential defaulters and the requires an assessment of the tax liability. In this assessment, pre-supposes the fact that the Proper Officer be in possession of sufficient grounds to believe that any delay will adversely affect the revenue.

Audit under Goods and Services Act

Types of Audit

1. Audit by Tax Authorities
2. Special Audit

Audit by Tax Authorities

1. **Under What circumstances**: - Not Specific, means order can be given under any circumstances.
2. **Who can order: -** Commissioner or any officer authorised by him.
3. **What kind of order: -** General or Special in **GST ADT-01.**
4. **Period of audit: -** Such period as prescribed in order. It shall be a financial year or multiple thereof.
5. **Frequency of audit: -** as given in order.
6. **Manner of audit: -** as prescribed. (Rules)
7. **Place of Audit: -** Registered office of the taxable person or office of the proper officer.
8. **Notice period**: - not less than 15 days.
9. **Time Limit of Completed Audit:** – three months from the date of commencement.

10. **Extension of Time Limit of completed Audit: -** extend to further period of 6 months
11. **Who can extend**: - Commissioner
12. **How can extend: -** The Commissioner should record the reason in writing.
13. **What is the date of commencement of Audit: -** Date when the documents or other information is made available or Actual institution of Audit at the place of business whichever is later.
14. **Information for Audit:** – O. may require the registered person
    Afford the facility for the audit
    To furnish such information and render assistance for timely completion of audit.
15. **Time Limit of giving findings: -** within 30 days of completing the audit.
16. **What will be included in findings:** – Findings, Right, obligation and the reason of the findings. **(GST ADT-02).**
17. **Results of Audit**: - In case of tax not paid, short paid, erroneously refund or wrong tax credit availed or utilised, action under section 73 or section 74.

Special Audit

1. **Who can direct for special audit: -** Officer not below the rank of assistant commissioner with prior approval of commissioner to the registered person to get his account audited. **(GST ADT-03).**
2. **When such direction shall be made: -** At the stage any scrutiny, inspection, inquiry or any proceedings **before him,** having regard to the nature and complexity of the case and the interest of revenue.
    ♦ Value has not been correctly declared.
    ♦ Credit availed is not within the normal limit.
3. **Who will conduct the special audit: -** Chartered Accountant, Cost Accountant or person ***nominated by the commissioner.***
4. **Time Limit of Completion of special Audit and submit the report** :- within 90 days
5. **Extension of special audit**: - further period of 90 days.
6. **Who can apply for extension**: - Registered person or Auditor.
7. **Opportunity of being heard:** – The registered person shall be given the opportunity of being heard before the final audit report being submitted.
8. **Who will pay the cost of special audit: -** Expenses including remuneration shall be determined and paid by commissioner and such determination shall be final.
9. **Results of Special Audit: -** In case of tax not paid, short paid, erroneously refund or wrong tax credit availed or utilised, action under section 73 or section 74. **(GST ADT-04).**

Inspection, Search, Seizure and Arrest under Goods & Services Tax Act

1. In any tax administration the provisions for **Inspection, Search, Seizure and Arrest** are provided to protect the interest of genuine tax payers (as the Tax evaders, by evading the tax, get an unfair advantage over the genuine tax payers) and as a deterrent for tax evasion. These provisions are also required to safeguard Government's legitimate dues. Thus, these provisions act as a deterrent and by checking evasion provide a level playing field to genuine tax payers.

2. It may be mentioned that the options of Inspection, Search, Seizure and Arrest are exercised, only in exceptional circumstances and as a last resort, to protect the Government Revenue. Therefore, to ensure that these provisions are used properly, effectively and the rights of tax payers are also protected, it is stipulated that Inspection, Search or Seizure can only be carried out when an officer, of the rank of Joint Commissioner or above, has reasons to believe the existence of such exceptional circumstances. In such cases the Joint Commissioner may authorize, in writing, any other officer to cause inspection, search and seizure. However, in case of arrests the same can be carried out only where the person is accused of offences specified for this purpose and the tax amount involved is more than specified limit. Further, the arrests under GST Act can be made only under authorization from the Commissioner.

3. The circumstances which may warrant exercise of these options are as follows: –

A. Inspection: - 'Inspection' is a softer provision than search which enables officers to access any place of business or of a person engaged in transporting goods or who is an owner or an operator of a warehouse or go down. As discussed above the inspection can be carried out by an officer of **CGST/SGST** only upon a written authorization given by an officer of the rank of Joint Commissioner or above. A Joint Commissioner or an officer higher in rank can give such authorization only if he has reasons to believe that the person concerned has done one of the following actions:

- Suppression of any transaction relating to supply of goods or services or stock in hand.
- Claimed excess input tax credit
- Contravention of any provisions of the Act or the Rules to evade tax
- Transporting or keeping goods which escaped payment of tax or manipulating accounts or stocks which may cause evasion of tax

  Inspection can also be done of the conveyance, carrying a consignment of value exceeding specified limit. The person in charge of the conveyance has to produce documents/devices for verification and allow inspection. Inspection during transit can be done even without authorisation of Joint Commissioner.

B.Inspection in movement

- Any consignment, value of which, is exceeding Rs. 50,000/-, may be stopped at anyplace for verification of the documents/ devices prescribed for movement of such consignments.
- If on verification of the consignment, during transit, it is found that the goods were removed without prescribed document or the same are being supplied in contravention of any provisions of the Act then the same can be detained or seized and may be subjected to penalties as prescribed.

- To ensure transparency and minimise hardships to the trade, the law provides that if during verification, in transit, a consignment is held up beyond 30 minutes the transporter can feed details on the portal. This will ensure accountability and transparency for all such verifications. Moreover, for verification during movement of consignment will also be done through a Digital interface and therefore the physical intervention will be minimum and as has already been mentioned that in case of a delay beyond 30 minutes the transporter can feed the details on the portal.

C. Search & Seizure:- The provisions of search and seizure also provides enough safeguards and the GST Law stipulates that search of any place of business etc. can be carried out only under authorisation from an officer of the rank of Joint Commissioner and if he has a reason to believe that the person concerned has done at least one of the following:-

- Goods liable to confiscation or any documents/ books/record/things, which may be useful for or relevant to any proceedings, are secreted in any place then all such places can be searched

- All such goods/documents/books/record/things may be seized, however, if it is no practicable to seize any such goods then the same may be detained. The person from whom these are seized shall be entitled to take copies/extracts of seized records

- The seized documents/books/things shall be retained only till the time the same are required for examination/enquiry/proceedings and if these are not relied on for the case then the same shall be returned within 30 days from the issuance of show cause notice

- The seized goods shall be provisionally released on execution of bond and furnishing a security or on payment of applicable tax, interest and penalty

- In case of seizure of goods, a notice has to be issued within six months, if no notice is issued within a period of six months then all such goods shall be returned. However, this period of six months can be extended by Commissioner for another six months on sufficient cause.

- An inventory of the seized goods/documents/ records is required to be made by the officer and the person, from whom the same are seized, shall be given a copy of the same.

- To ensure that the provisions for search and seizure are implemented in a proper and transparent manner, the Act stipulates that the searches and seizures shall be carried out in accordance with the provisions of Criminal Procedure Code, 1973. It ensures that any search or seizure should be made in the presence of two or more independent witnesses, a record of entire proceedings is made and forwarded to the Commissioner forthwith.

D. Arrests: - In the administration of taxation the provisions for arrests are created to tackle the situations created by some unscrupulous tax evaders. To some these may appear very harsh but these are necessary for efficient tax administration and also act as a deterrent and instil a sense of discipline. The provisions for arrests under GST Law have sufficient inbuilt safeguards to ensure that these are used only under authorisation from the Commissioner. Besides this, the GST Law also stipulates that arrests can be made only in those cases where the person is involved in offences specified for the purposes of arrest and the tax amount involved in such offence is more than the specified limit. The salient points of these provisions are:

- Provisions for arrests are used in exceptional circumstance and only with prior authorisation from the Commissioner.

- The law lays down a stringent criteria and procedure to be followed for arresting a person. A person can be arrested only if the criteria stipulated under the law for this purpose is satisfied i.e. if he has committed specified offences (not any offence) and the tax amount is exceeding rupees 200 lakhs. However, the monetary limit shall not be applicable if the offences are committed again even after being convicted earlier i.e. repeat offender of the specified offences can be arrested irrespective of the tax amount involved in the case.

- Further, even though a person can be arrested for specified offences involving tax amount exceeding Rs. 200 lakhs, however, where the tax involved is less than Rs. 500 lakhs, the offences are classified as non-cognizable and bailable and all such arrested persons shall be released on Bail by Deputy/ Assistant Commissioner. But in case of arrests for specified offences where the tax amount involved is more than Rs. 500 lakhs, the offence is classified as cognizable and non-bailable and in such cases the bail can be considered by a Magistrate only.