M/S GAZI & ASSOCIATES, CHARTERED ACCOUNTANTS

TRANSITIONAL PROVISIONS UNDER THE GOODS & SERVICE TAX ACTS (PART – I)

Relevant Laws:

The CGST Act, 2017 & The IGST Act, 2017

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Preamble

Transitional provision is a statutory provision that regulates a process that starts before an amendment or enactment of the statute comes into force, and ends after the amendment or enactment of the statute has come into force. Transitional provisions in GST Acts are quite lengthy and bit complex to understand, because almost all indirect tax laws have been merged into one i.e. GST. In this article we are trying to present the transitional provisions as prescribed in the GST Acts in a manner so that it can be understood easily. Transitional provisions for Input tax credit/ CENVAT credit in the GST Acts have been presented by us in two parts. Following discussions are under Part – 1. We will issue part – 2 shortly.

(1) ITC/ CENVAT credit carried forward in the returns filed under erstwhile laws

A registered person other than the person opting for composition levy, shall be entitled to brought forward such amount of Input Tax Credit (ITC)/CENVAT credit in his electronic credit ledger maintained under the GST Acts as was carried forward in the returns furnished by him, under any law prevailed until mid night of 30.06.2017, for the return period ending on or before 30th June, 2017. Such as returns under Central Excise, VAT, Service Tax, etc.

Provided in the following circumstances a registered person shall not be allowed to take in his electronic credit ledger carried forward ITC/CENVAT credit of any earlier law:-

(a) Where the said amount of ITC/CENVAT credit is not admissible under the Goods and Service Tax Acts.
(b) Where he has not furnished all the returns for the period from 01.01.2017 to 30.06.2017 as were required under the relevant laws prevailed until mid night of 30.06.2017.
(c) Where the said amount of ITC/CENVAT credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.

Note: Electronic credit ledger is actually a ledger of Input tax credit (ITC) of a registered person maintained electronically on the common portal on the basis of self declared ITC in the returns of such person.

(2) Unavailed ITC in respect of Capital Goods purchased before 01.07.2017

A registered person other than the person opting for composition levy, shall be entitled to take credit of unavailed ITC in respect of Capital Goods in his electronic credit ledger maintained under the GST Acts, as was not carried forward in the returns furnished by him, under any law prevailed until midnight of 30.06.2017, for the return period ending on or before 30th June, 2017.

Provided that such ITC on capital goods was allowable under the erstwhile laws and is also admissible as ITC under the GST Acts.

Note: According to the CENVAT credit rule, 2004, that was effective before 01.07.2017, 50% of CENVAT credit on capital goods (other than low value capital goods upto Rs. 10,000) could be availed in the year of acquisition and the rest portion in subsequent year. However, an SSI organization (i.e. turnover upto Rs.400 lacs p.a.) could avail 100% CENVAT credit in the year of acquisition of capital goods.

(3) Registered persons under the GST Acts but was not eligible to avail ITC/CENVAT credit under erstwhile laws.

Following persons who are registered under the GST Acts shall also be entitled to take ITC in his electronic credit ledger maintained under the said Acts in respect of inputs held in stock or inputs contained in semi finished goods or finished goods held in stock on the 1st day of July, 2017:

(a) A person who was not liable to be registered under the erstwhile laws.
(b) A person who was engaged in the manufacture of exempted goods or provision of exempted services under the erstwhile laws.
(c) A works contract service provider who was availing benefit of abatement under notification 26/2012 – Service Tax dated 20.06.2012.
(d) A first stage dealer under the Central Excise Act, 1944.
(e) A second stage dealer under the Central Excise Act, 1944.
(f) A registered importer.
(g) A depot of a manufacturer.

Provided that the above persons have to fulfill following conditions to take and avail ITC in respect of goods held in stock as on 01.07.2017:

(h) Such goods are used or intended to be used for making taxable supplies under the GST Acts
(i) They are eligible for ITC on such inputs under the GST Acts
(j) They are in possession of invoice or other prescribed documents evidencing payment of duties under the erstwhile laws in respect of such inputs.
(k) Such invoices or other prescribed documents were issued not earlier than 1st day of July, 2016.
(l) Where they are suppliers of service, they are not eligible to abatement, if any under the GST Acts.

(4) Registered person can avail ITC on input held in stock on 01.07.2017 even where invoice or any other documents evidencing payment of duty not retained by him.

Where a registered person other than a manufacturer or supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then such registered person shall be entitled to take ITC in his electronic credit ledger subject to following conditions:

(a) ITC shall be allowed @60% of GST on supply of such goods where such goods attract GST @18% or more.
(b) ITC shall be allowed @40% of GST on supply of such goods where such goods attract GST @5% or 12%.
(c) The registered person has actually paid tax (GST) on such supply.
(d) Such goods were not unconditionally exempted or nil rated under the erstwhile laws.
(e) The document for procurement of such goods is available with the registered person.
(f) Such goods shall be stored in such a manner that it can be easily identified by the registered person.
(g) The benefit under this provision can be available upto six tax periods. The sixth tax period under the GST Acts is December, 2017.

(5) Registered person under the GST Acts, who was manufacturing or providing service of taxable as well as exempted goods or service.

A registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 or providing taxable as well as exempted service under chapter V of the Finance Act, 1994 but which are liable to tax under the Goods and Service Tax Acts, shall be entitled to take in his electronic credit ledger, -

(a) the amount of CENVAT credit carried forward in a return furnished under the erstwhile laws; and
(b) the amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi finished or finished goods held in stock on 01.07.2017, relating to such exempted goods or services.

(6) Goods or service received by the registered person on or after 01.07.2017 but tax was paid by the supplier on such supply under erstwhile laws.

A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs of goods or services received on or after 01.07.2017 but the duty or tax in respect of which has been paid by the supplier under the erstwhile laws, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day.

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the commissioner for a further period not exceeding thirty days.

Provided further that the said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken in this case.

(7) A registered person who was paying tax under composite scheme under erstwhile laws.

A registered person who was paying tax under composition scheme under erstwhile laws shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to following conditions, namely:-

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;
(ii) the said registered person in not paying tax under composition scheme under the Goods and Service Tax Acts;
(iii) the said registered person is eligible for input tax credit on such inputs under the Goods and Service Tax Acts;
(iv) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the erstwhile laws in respect of inputs;
(v) such invoices or other prescribed documents were issued on or after 01.07.2016.

(8) ITC distributed by the Input Service Distributor

Input tax credit on account of any service received by the input service distributor before 01.07.2017 shall be eligible for distribution under the Goods and Service Tax Acts even if invoice relating to such services are received on or after 01.07.2017.

(9) A registered person was having centralized registration under the erstwhile laws.

Where a person was having centralized registration under the erstwhile laws has obtained a registration under the Goods and Service Tax Acts, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of CENVAT carried forward in a return furnished under the erstwhile laws in respect of the period ending on 30.06.2017 in such manner as may be prescribed.
Provided that a return for the period ending on 30.06.2017 shall be furnished on or before 30.09.2017 subject to the condition that the said return either an original return or in case of a revised return where the credit has been reduced from that claimed earlier.

Provided further that the registered person shall not be allowed to take credit unless the said amount is admissible as ITC under the Goods and Service Tax Acts.

Provided also that such credit may be transferred to any of the registered persons having the same PAN for which the centralized registration was obtained under the erstwhile laws.

(10) **ITC once taken for the input services and subsequently reversed under the erstwhile law due to non payment of consideration within three months.**

Such reversed credit can be reclaimed provided that the registered person has made the payment of the consideration for that supply of services on or before 30.09.2017.

(11) Procedural Aspects

(a) Every registered person entitled to take credit of input tax shall, within 90 days from 01.07.2017, submit a declaration electronically in Form GST TRAN – 1, duly signed, on the common portal specifying therein, separately, the amount of ITC of eligible duties and taxes to which he is entitled to bring forward.

Provided that the commissioner may, on the recommendation of the GST council, extend the period of ninety days by a further period not exceeding ninety days.

Provided further that where the inputs have been received from an Export Oriented Unit or a unit located in Electronic Hardware Technology Park, the credit shall be allowed to the extent as provided in sub-rule (7) of rule 3 of the CENVAT Credit Rules, 2004.

In addition to declaration in Form GST TRAN – 1, a registered person availing ITC according to provisions as discussed in point number 4 above, submits a statement in Form GST TRAN -2 at the end of each of the tax periods during which the said provisions is in operation indicating therein, the details of supplies of such goods effected during the tax period

(b) The amount of credit specified in the application in Form GST TRAN – 1 shall be credited to the electronic credit ledger of the applicant maintained in Form GST PMT – 2 on the common portal.