ITC के लिए शर्ते

ITC कब नहीं मिलेगा
ITC का Negative लिस्ट

MAY/JUNE
2018 EXAM

Link to watch GST Lecture
https://www.youtube.com/channel/UCAcrP9ppCMI9rFpGvFPkybQ

Negative List for ITC under GST

GST Free Class

By CA Manish Kumar

Particulars
Meaning of key terms – Inputs, Input services, Capital goods
Eligibility and conditions for taking ITC
Negative list for GST ITC
Apportionment of credit and blocked credits
Availability of credit in special circumstances
Recovery of ITC and Interest thereon
Concept of ISD & Manner of distribution of credit by ISD
Manner of recovery of credit distributed in excess

Negative list of GST ITC

Motor Vehicles & Other conveyances – Sec 17(5)(a)

(a) Motor vehicle and other conveyances except when they are used

(i) for making the following taxable supplies, namely

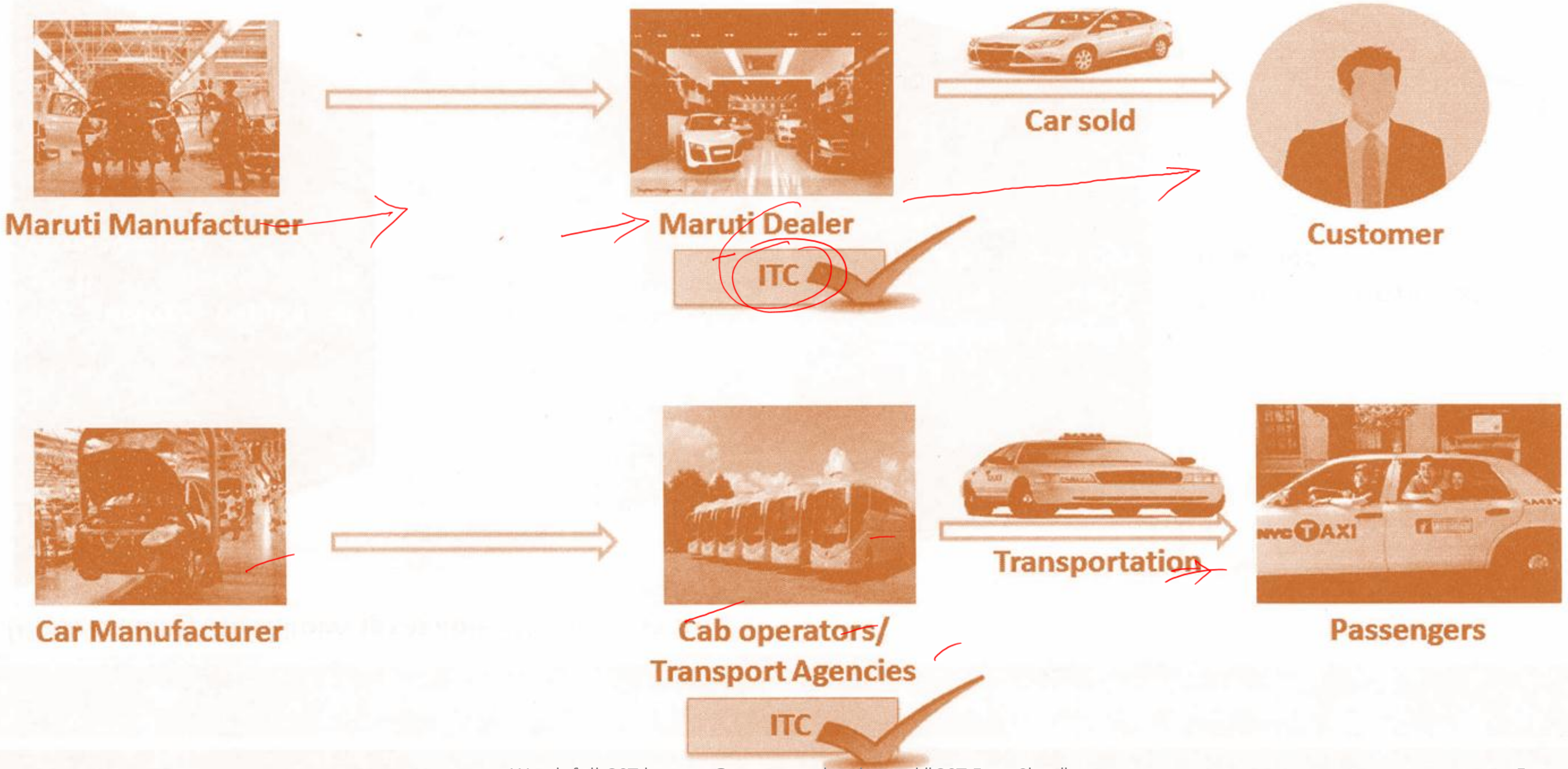
(A) **further supply** of such vehicles or conveyances; or

(B) **transportation** of passengers; or

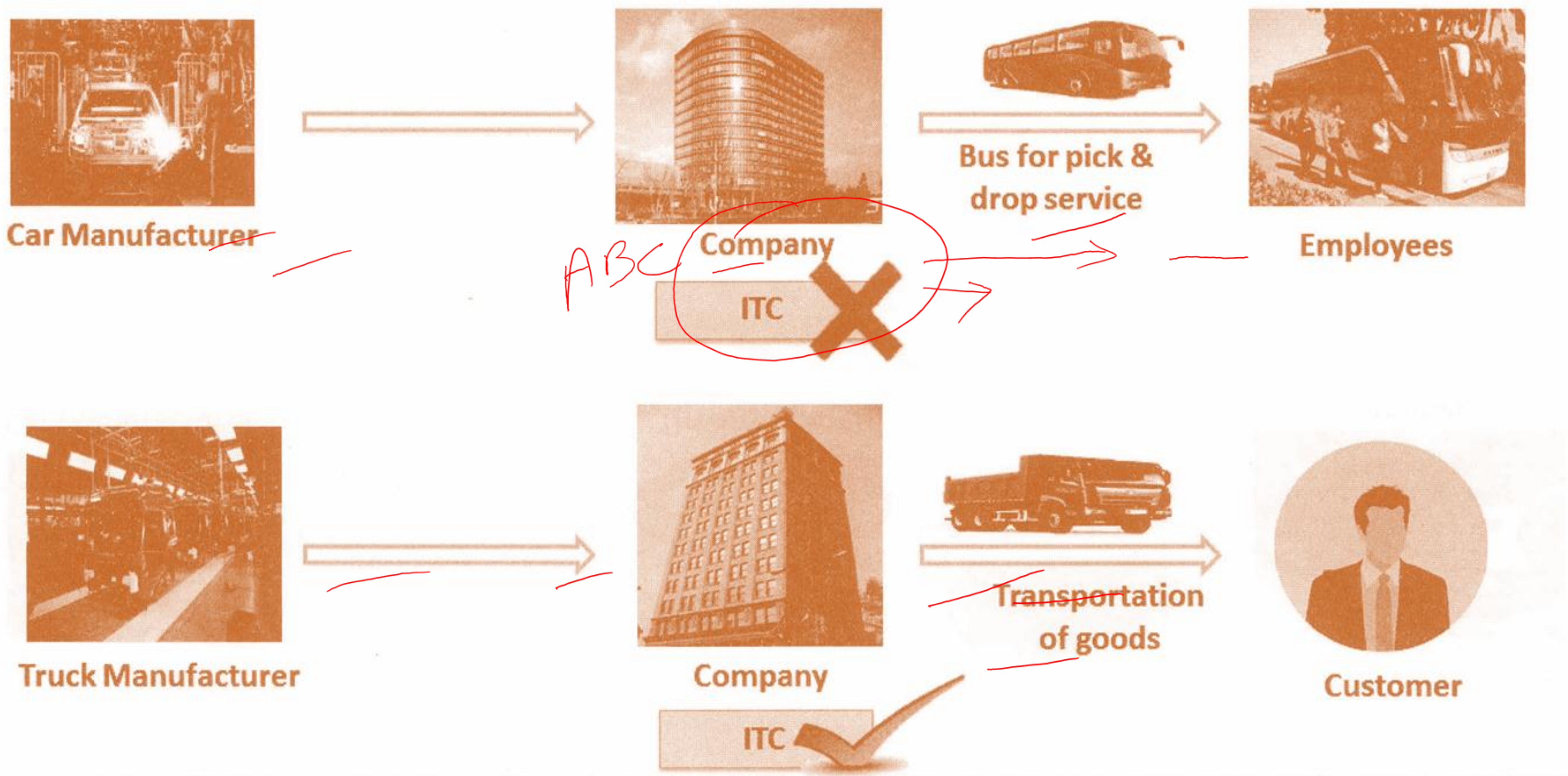
(C) **imparting training** on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods

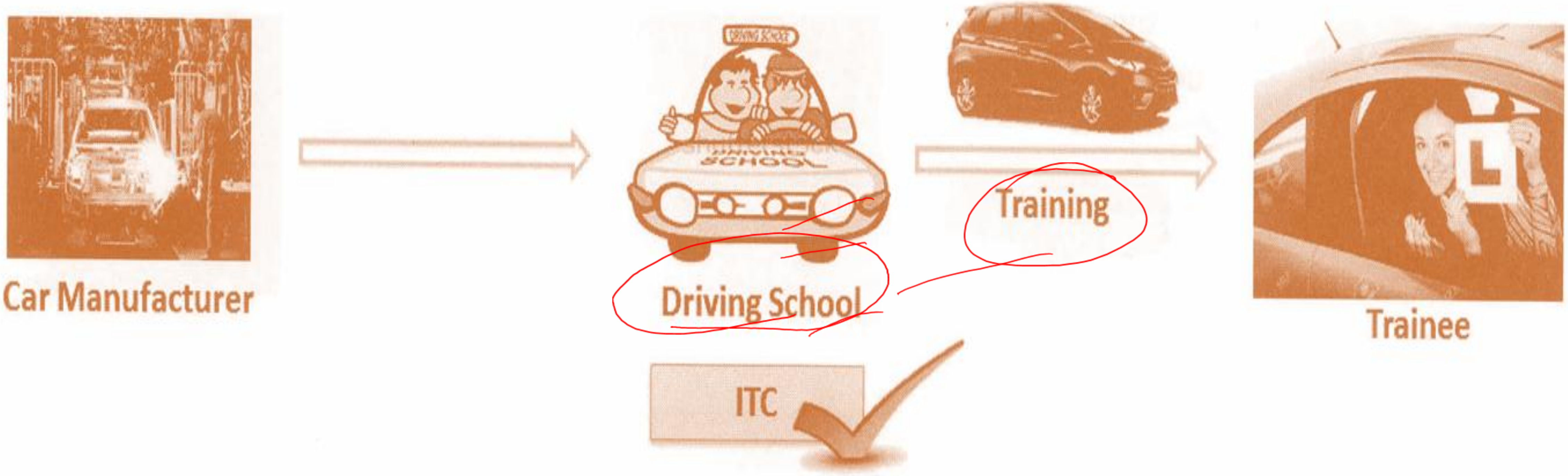
Case Studies: Motor Vehicles & Other conveyances – Sec 17(5)(a)



Case Studies: Motor Vehicles & Other conveyances – Sec 17(5)(a)



Case Studies: Motor Vehicles & Other conveyances – Sec 17(5)(a)



Outdoor catering, Rent-a-cab etc. – Sec 17(5)(b)

(b) Following supply of goods or services or both,

(i)
- Food and beverages
- Outdoor catering
- Beauty treatment
- Health services
- Cosmetic and Plastic surgery

Except where such inward supply of goods or services or both of a particular category is **used** by a registered taxable person for **making an** outward taxable supply of the same category **of goods or services or both or as an** element of a taxable composite or mixed supply

(ii) Membership of
- Club
- Health
- Fitness centre

Not allowed

(iii)
- Rent-a-cab
- Life insurance
- Health insurance

Except where:

(a) 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; or

(b) such inward supply of goods/ services of a particular category is **used** for **making an** outward taxable supply of the same category **of goods/services or as a** part of a taxable composite or mixed supply

(iv) Travel benefits extended to employees on vacation such as leave or home travel concession

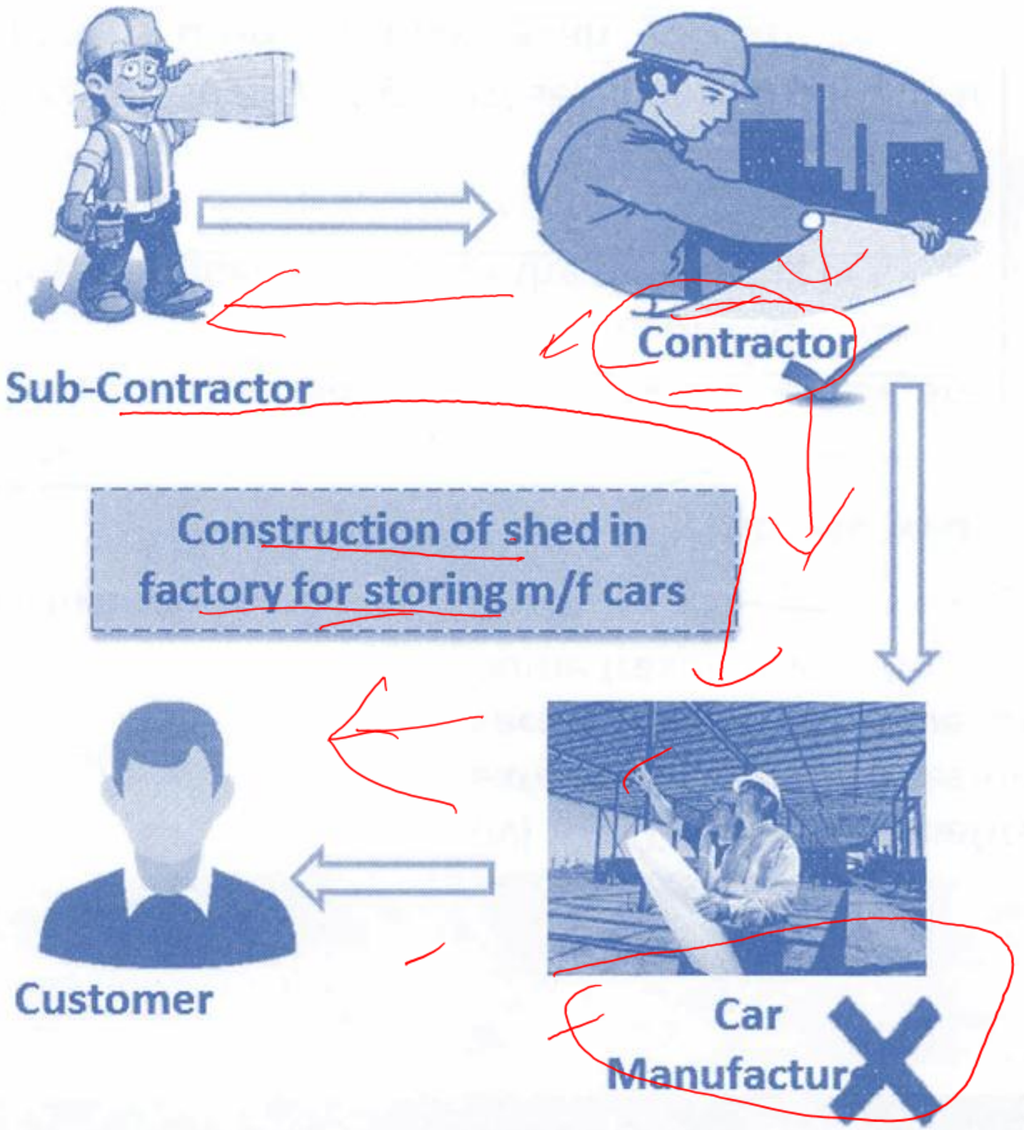
Not allowed

Works contract services – Sec 17(5)(c)

(c) Work contract services

When supplied for **construction of an immovable property** (other than plant and machinery)

Except where it is an **input service for further supply of works contract service**



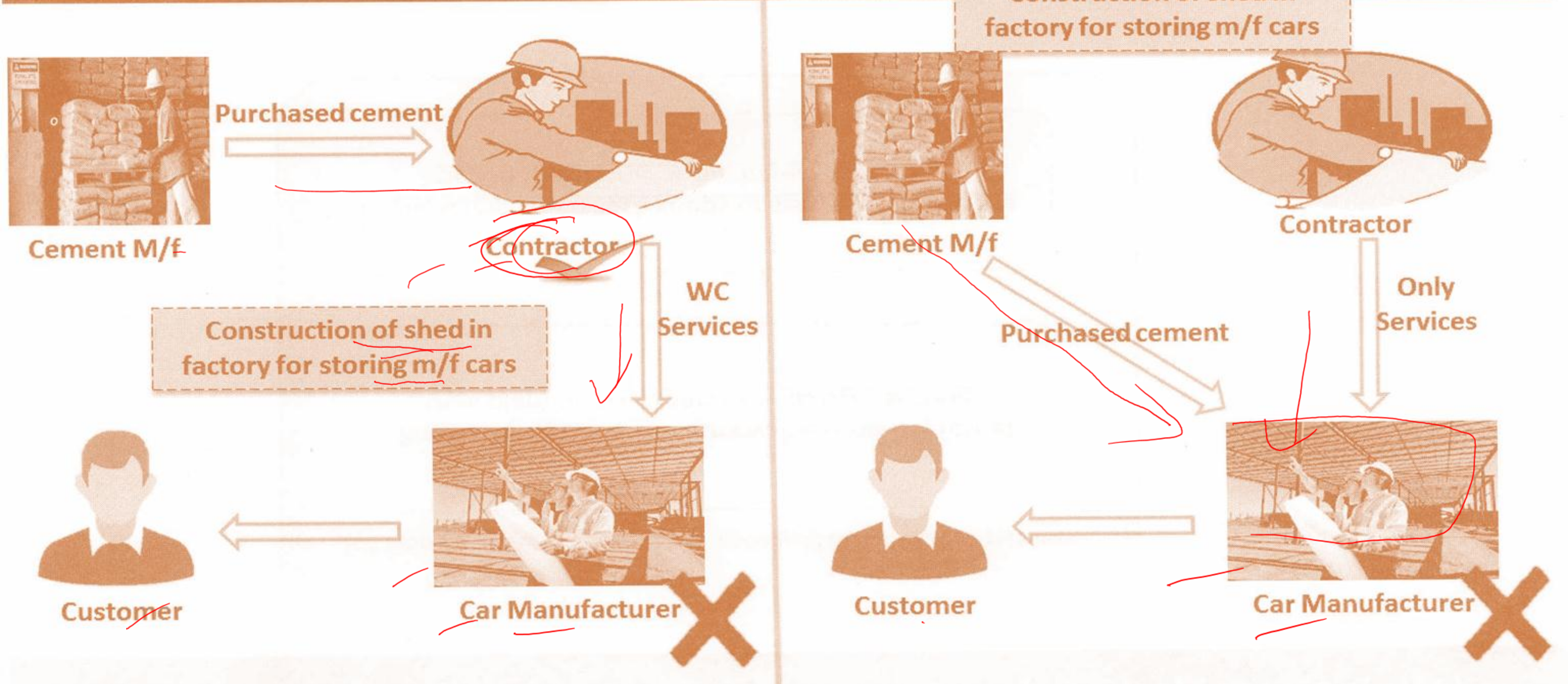
Goods/Services for construction of immovable property – Sec 17(5)(d)

(d) Goods or services or both received by a taxable person

For **construction of an immovable property** (other than plant or machinery) **on his own account**,

Including **when such goods or services or both are used in the** course or furtherance of business

Eg: Goods/Services for construction of immovable property on own a/c



Meaning of term 'Construction'

Sec	Provision (CGST Act, 2017)
	Meaning of term 'Construction'
17 (5)(d)	*Explanation: For the purpose of clauses (c) and (d), the expression* ***"construction" includes*** *re-construction, renovation, additions or alterations or repairs, to the* ***extent of capitalization****, to the said immovable property.*

Rule 2 of CCR, 2004 Vs. GST Law

ITC on WC services used in relation to **modernisation**, **renovation** or **repairs** of a factory, premises of provider of output service or an office relating to such factory or premises

Pre-GST regime → ITC available
GST → ITC not available (If capitalized)

Meaning of term 'Plant and Machinery'

Sec	Provision (CGST Act, 2017)
17	**Meaning of term 'Plant and Machinery'** *Explanation: For the purposes of this Chapter and Chapter VI, the expression **"plant and machinery"** means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are **used for making outward supply** of goods or services or both and includes such foundation and structural supports but **excludes**—* *(i) land, building or any other civil structures;* *(ii) telecommunication towers; and* *(iii) pipelines laid outside the factory premises*

Rule 2 of CCR, 2004 Vs. GST Law

Goods/Services used for laying of foundation or making of structures for support of capital goods – Excluded from purview of 'Inputs' [Rule 2(k)] and 'Input services' [Rule 2(l)] under CCR, 2004

But ITC available in GST

Meaning of term 'Plant and Machinery'

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WC → P&M → L&B, Tel, Pip

Cmpmo → P&M

Cap Cap

ITC: X ITC ✓

Rule 2 of CCR, 2004 Vs. GST Law

Goods/Services used for laying of foundation or making of structures for support of capital goods – Excluded from purview of 'Inputs' [Rule 2(k)] and 'Input services' [Rule 2(l)] under CCR, 2004

But ITC available in GST

Other items of Negative list of GST ITC

*(e) goods or services or both on which **tax has been paid under section 10**;* → Composition levy

*(f) goods or services or both **received by a non-resident taxable person** except on goods imported by him;*

*(g) goods or services or both **used for personal consumption**;*

*(h) goods **lost, stolen, destroyed, written off or disposed of** by way of gift or free samples; and*

Rule 3(5B) of CCR, 2004 Vs. GST Law

Rule 3(5B) of CCR, 2004 → If the value of any input, or capital goods before being put to use, on which CC has been taken is written off **fully or partially** or **where any provision to write off fully or partially has been made in the books of account** then, the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the CC taken in respect of the said input or capital goods.

GST - NO Dispute of provisional entry of writing off in BOA

Other items of Negative list of GST ITC

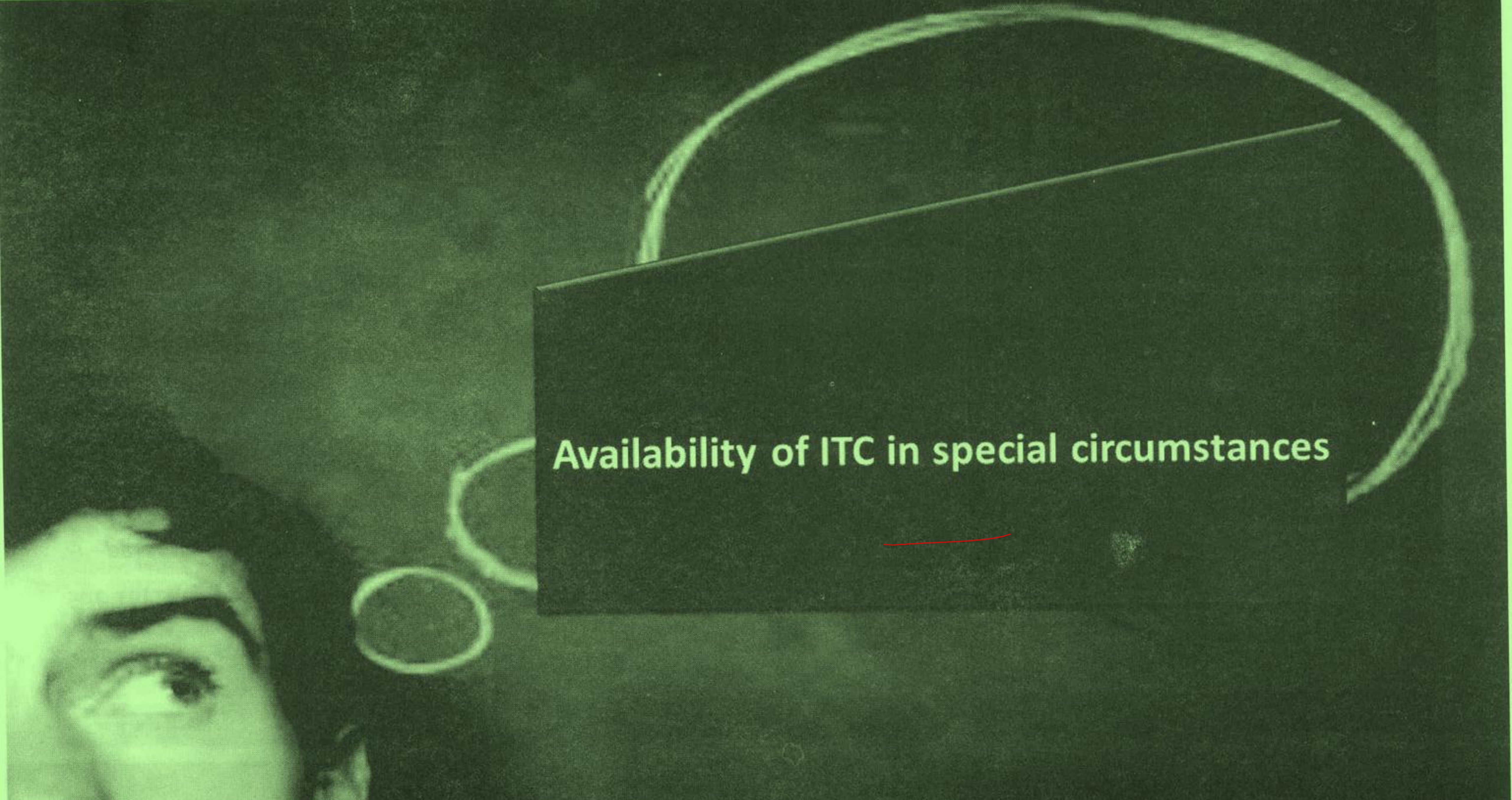
*(h) any tax paid in terms of **sections 74, 129 or 130***

Sec 74: *Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts*

Such

Sec 129: *Detention, Seizure and release of goods and conveyance in transit*

Sec 130: *Confiscation of goods or conveyance and levy of penalty*


Availability of ITC in special circumstances

Registration obtained in 30 days

Eligible person	ITC on					As on
	Inputs in stock	Inputs in SFG in stock	Inputs in FG in stock	Capital Goods	Input Services	
Sec 18(1)(a) read with Rule 40(1) of CGST Rules						
*A person who has applied for registration under this Act **within thirty days** from the date on which he becomes liable to registration and has been granted such registration*	✓	✓	✓	?	?	*on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act*

< 30

Credit lapse when registration not taken within 30 days

Rule 40(1): To claim ITC, registered person has to file a declaration on common portal in **Form GST ITC-01** within **30 days of becoming eligible to claim ITC:**

- ✓ Furnish details of stock – Inputs, Inputs in SFG/FG
- ✓ To be certified by CA or ICWA, where, Aggregate value of claim > Rs. 2 Lakhs

Sec 18(2) → *A registered person shall **not be entitled** to take input tax credit under sub-section **(1)**, in respect of any supply of goods or services or both to him **after the expiry of one year from the date of issue of tax invoice** relating to such supply.*

Voluntary Registration in GST

Eligible person	ITC on					As on
	Inputs in stock	Inputs in SFG in stock	Inputs in FG in stock	Capital Goods	Input Services	
Sec 18(1)(b) read with Rule 40(1) →						
A person, who takes **Voluntary Registration**	✓	✓	✓	?	?	*on the day immediately preceding the date of grant of registration*

Sec 18(2) → ITC shall not be available **after the expiry of one year from the date of issue of tax invoice** relating to such supply.

Rule 40(1) of ITC Rules: To claim ITC, registered person has to file a declaration on common portal in **Form GST ITC-01** within **30 days of becoming eligible to claim ITC:**

- ✓ Furnish details of stock – Inputs, Inputs in SFG/FG
- ✓ To be certified by CA or ICWA, where, Aggregate value of claim > Rs. 2 Lakhs

From Composition Dealer → to → Normal Taxable Person

Eligible person	ITC on					As on
Section 18(1)(c) read with Rule 40(1)	Inputs in stock	Inputs in SFG in stock	Inputs in FG in stock	Capital Goods	Input Services	
Where any registered person ceases to pay tax under **Composition scheme**	✓	✓	✓	✓	?	*on the day immediately preceding the **date from which he becomes liable to pay tax under section 9***

Rule 40(1)(a) → ITC shall be reduced by 5% per quarter of year or part thereof from the date of invoice/other document

Sec 18(2) → No Credit shall be available after the expiry of one year from the date of issue of tax invoice relating to such supply

Rule 40(1) of ITC Rules: To claim ITC, registered person has to file a declaration on common portal in **Form GST ITC-01** within **30 days of becoming eligible to claim ITC:**

- ✓ Furnish details of stock – Inputs, Inputs in SFG/FG, CG
- ✓ To be certified by CA or ICWA, where, Aggregate value of claim > Rs. 2 Lakhs
- ✓ Details to be verified with corresponding details of supplier in GSTR-1/GSTR-4

From Exempt Supply → to → Taxable Supply

Milk → 5%

Eligible person	ITC on					As on
Sec 18(1)(d) read with Rule 40(1)	Inputs in stock	Inputs in SFG in stock	Inputs in FG in stock	Capital Goods	Input Services	
*Where an **exempt supply of goods** or services or both by a registered person **becomes a taxable supply***	✓	✓	✓	✓ ***Exclusively used for such exempt supply***	?	*on the day **immediately preceding the date from which such supply becomes taxable***

Sec 18(2) → No Credit shall be available *after the expiry of one year from the date of issue of tax invoice* relating *to such supply*

Rule 40(1) of ITC Rules: To claim ITC, registered person has to file a declaration on common portal in **Form GST ITC-01** within **30 days of becoming eligible to claim ITC:**

- ✓ Furnish details of stock – Inputs, Inputs in SFG/FG, CG
- ✓ To be certified by CA or ICWA, where, Aggregate value of claim > Rs. 2 Lakhs
- ✓ Details to be verified with corresponding details of supplier in GSTR-1/GSTR-4

Change in constitution of registered taxable person – sale, merger etc.

Eligible person	ITC on					As on
Sec 18(3) read with Rule 41 of CGST Rules	Inputs in stock	Inputs in SFG in stock	Inputs in FG in stock	Capital Goods	Input Services	
Where there is a **change in the constitution** due to → sale, merger, demerger, amalgamation, lease or transfer of the business with the **specific provision for transfer of liabilities**	✓	✓	✓	✓	✓	**ITC remaining unutilized in E-credit ledger**

Person shall be allowed to ***transfer the ITC that remains unutilized in his electronic credit ledger*** *to such sold, merged, demerged, amalgamated, leased or transferred business*

Rule-41

1. Transferor shall Request in Form GST ITC - 02
2. Also Submit a copy of certificate by CA or ICWA to certify t/f of liabilities
3. Transferee shall accept the details furnished by transferor
4. Upon acceptance, the unutilized credit shall be credited to E-credit ledger
5. Inputs & Capital Goods so transferred shall be duly accounted for by Transferee

From Normal Taxable Person → to → Composition Dealer/ Exempt supplies

Section 18(4)

A Registered Person

Opt to pay under → Composition scheme

Goods/Services become → Wholly Exempt

Shall Pay an Amount

=

Credit of input tax in respect of:
(a) Input held in stock
(b) Inputs contained in semi finished in stock
(c) Inputs contained in finished goods in stock and;
(d) Capital Goods

Reduced by such % points as may be prescribed (Rule 44)

On the day immediately preceding the date of exercising such option/ date of such exemption

ITC involved in remaining useful life in months shall be computed on pro-rata basis, taking useful life as 5 years

By debit in the E-credit ledger or E-cash ledger

After payment of the **balance** of ITC, if any, lying in his E-credit ledger **shall lapse**

From Normal Taxable Person → to → Composition Dealer/ Exempt supplies

Section 18(4)

A Registered Person

- Opt to pay under → **Composition scheme**
- Goods/Services become → **Wholly Exempt**

Shall Pay an Amount = Credit of input tax in respect of:

(a) Input held in stock
(b) Inputs contained in semi finished in stock
(c) Inputs contained in finished goods in stock and;
(d) Capital Goods

Reduced by such % points as may be prescribed (Rule 44)

ITC involved in remaining useful life in months shall be computed on pro-rata basis, taking useful life as 5 years

On the day immediately preceding the date of exercising such option/ date of such exemption

By debit in the E-credit ledger or E-cash ledger

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After payment of the balance of ITC, if any, lying in his E-credit ledger shall lapse

ITC reversal on supply of CG and P&M

Sec	Provision (CGST Act, 2017)
18	ITC reversal on supply of CG and P&M *(6) In case of **supply of capital goods or plant and machinery**, on which input tax credit has been taken, the registered person shall **pay an amount** equal to the **input tax credit taken** on the said capital goods or plant and machinery **reduced by such percentage points** as may be prescribed **or** the **tax on the transaction value** of such capital goods or plant and machinery determined under section 15, whichever is **higher**:* *PROVIDED that where **refractory bricks, moulds and dies, jigs and fixtures** are supplied as **scrap**, the taxable person **may pay tax on the transaction value** of such goods determined under section 15.*

260 → 60

1000 × 5 = 50

Similar provision as Rule 3(5A) of CCR, 2004

BUT

When CG other than refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap – TV not applicable??

35% 25%

Rule 40(2) → ITC shall be reduced on said goods at the rate of 5 percentage points for every quarter or part thereof from the date of issue of invoice for such goods