

The Implications of GST on

Sale of Capital Goods

Questions arises in relation to this are

1. Implications of GST on Capital Goods that are bought under the erstwhile Indirect Taxes Regime (Excise, VAT)
2. Implications of GST on the Sale of those Capital Goods whose ITC is not allowed under GST.
3. Implications of GST in respect of Capital Goods that are lost, stolen, destroyed or disposed of by way of gift;
4. Applicability of Margin Scheme on the Sale of Capital Goods;



Summary

Definition of Business as per 2(17)(d)

Supply or acquisition of goods including capital goods and services in connection with commencement or closure of business

<u>Conditions</u>	<u>In Course of Furtherance of Business</u>	<u>Consideration or Without Consideration</u>	<u>Legal Position</u>	<u>Tax Liability</u>
<u>When ITC Availed</u>	Yes	Yes	Covered by Section 7(1)(a)	Supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business
			Section 18(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:
	<u>Yes</u>	<u>No</u>	Considered as Supply as per Schedule-I, entry no. 1	Permanent transfer or disposal of business assets where input tax credit has been availed on such assets
<u>When ITC Not Availed</u>	<u>No</u>	<u>Yes or No (In Both case)</u>	Not Eligible to take credit if not in course or furtherance of Business as per Section 16(1)`	Every registered person shall, subject to such conditions and restrictions as may be prescribed and, in the manner, specified in section 49, be <u>entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business</u> and the said amount shall be credited to the electronic credit ledger of such person.
			Schedule-I, Entry no. 1 not Applicable here	As Schedule-I, Entry No. 1 applies only when ITC has been claimed; as capital goods are not in course or furtherance of business; No ITC Allowed
	<u>Yes</u>	<u>Yes</u>	Covered by Section 7(1)(a)	Supply includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business
			As per Para 4(a) of Schedule II of the Act	<u>Transfer of business assets shall be treated as supply of goods:</u> Where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person

	<u>Yes</u>	<u>No</u>	Before Amendment Para 4(a) of Schedule II of the Act	the activities mentioned in Para 4(a) Schedule II of the Act, were de-facto considered as supply in the same way as the activities mentioned in Schedule I of the Act
				<u>Transfer of business assets shall be treated as supply of goods:</u> Where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person.
			After Amendment	CGST Amendment Act, 2018 made a retrospective amendment clarifying that the purpose of Schedule II was only classification of a supply into a supply of good or service. For a transaction to be a supply, the essential criteria to be satisfied in the involvement of consideration, with the only exceptions being the activities mentioned in Schedule I and import of services Thus, where no consideration is involved, and the activity is neither specified in Schedule I nor in the nature of import of services, (As Schedule-I, Entry No. 1 Specifies “Permanent transfer or disposal of business assets where input tax credit has been availed on such assets”) Schedule-I, Entry No. 1 not applies here since ITC has not been claimed the activity shall not be a supply under the provisions of the Act.
			Interpretation after Amendment	Para 4(a) of Schedule-II, Requirement of consideration for a transaction to be supply of goods is not mandatory, It is pertinent to note that, in the light of the amendment to the definition of Supply, Schedule II cannot be read in isolation. Schedule II is relevant only for the purpose of classification of a supply into a supply of good or a supply of service. For a transaction to be a supply, the requirement of consideration is a sine-qua-non except in the case of import of services and activities mentioned in Schedule I. Therefore, in the absence of consideration and where no ITC has been availed, sale of capital goods shall not be a supply in accordance with the provisions of Section 7 of the Act and hence, GST shall not be chargeable.

Valuation

Once, it has been determined that GST shall be leviable on the transfer of capital goods, the next step is to determine the value on which tax is to be paid. The same is explained below:

Where ITC has been availed

Section 18(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 Under rule 40(2) or;
- The tax on the transaction value of such capital goods or plant and machinery determined under section 15,

Whichever is higher:

Rule 40(2) of CGST Rules, 2017

The amount of credit in the case of supply of capital goods or plant and machinery, for the purposes of sub-section (6) of section 18, shall be calculated by reducing the input tax on the said goods at the rate of five percentage points for every quarter or part thereof from the date of the issue of the invoice for such goods.

Illustration:

Capital goods have been in use (from the date of the issue of the invoice for such goods) for 4 years, 3 months and 15 days.

The useful life remaining in Quarter = 2 Quarter ignoring a part of the Quarter Input tax credit taken on such capital goods = C

Input tax credit attributable to the remaining Quarter = C multiplied by 2/20

Example:

Purchase cost of Asset: Rs. 10,000 + GST@18% (1,800) = Rs. 11,800, ITC availed = Rs.1,800

Asset used for 4 Yrs and 2 Quarter, so balance life = 2 Quarter

So ITC of balance useful life = 1,800 x 2/20 = Rs. 180 (AMOUNT)

Lets Assume actual consideration is Rs. 800 Tax determined = 800 x 18% = Rs. 144

(TAX)

Now on comparing AMOUNT and TAX i.e. Rs. 180 and Rs. 144 AMOUNT is greater. Therefore Rs. 180 is payable and has to be reported in GSTR 1

Rule 44(6) of CGST Rules, 2017 can also be applicable here

The amount of input tax credit for the purposes of sub-section (6) of section 18 relating to capital goods shall be determined in the same manner as specified in clause (b) of sub-rule (1) and the amount shall be determined separately for input tax credit of central tax, State tax, Union territory tax and integrated tax:

Provided that where the amount so determined is more than the tax determined on the transaction value of the capital goods, the amount determined shall form part of the output tax liability and the same shall be furnished in FORM GSTR-1

Illustration:

Capital goods have been in use for 4 years, 3 months and 15 days.

The useful life remaining in months = 8 months ignoring a part of the month Input tax credit taken on such capital goods = C

Input tax credit attributable to the remaining useful life = C multiplied by 8/60

Example:

Purchase cost of Asset: Rs. 10,000 + GST@18% (1,800) = Rs. 11,800, ITC availed = Rs.1,800

Asset used for 4 Yrs and 4 Months, so balance life = 8 months

So ITC of balance useful life = $1,800 \times 8/60$ = Rs. 240 (AMOUNT)

Lets Assume actual consideration is Rs. 800 Tax determined = $800 \times 18\%$ = Rs. 144

(TAX)

Now on comparing AMOUNT and TAX i.e. Rs. 240 and Rs. 144 AMOUNT is greater. Therefore Rs. 240 is payable and has to be reported in GSTR 1

Points to Note:

- **Where capital goods on which ITC has been availed, have been lost or destroyed due to any accident or are gifted to any unrelated person,** the above comparison between the ITC attributable to the balance useful life and tax on the transaction value shall not have to be made as the transaction value shall be zero. In that case, only the ITC attributable to the remaining useful life shall be paid by the person.
- **However, where capital goods (on which ITC availed) are gifted to a related person,** For example – an employee, in order to determine the TAX, the valuation rules have to be referred in accordance with the provisions of Section 15 of the Act. The TAX, thus arrived that shall be compared with The ITC attributable to the remaining useful life of the asset (AMOUNT) and higher of TAX or AMOUNT shall be the tax liability.
- **In case of capital goods such as refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap,** Tax shall be paid on the transaction value and the method of comparing the tax with the ITC attributable to the remaining useful life of the asset shall not apply.

Margin Scheme for valuation of capital goods

Another important area for discussion is the margin scheme under the Act and its applicability in case of transfer of capital goods.

The margin scheme was implemented for a dealer dealing in second hand goods who does not claim input tax credit on the goods purchased and who sells the goods as such or after minor processing which does not change the nature of the goods.

Under the margin Scheme, GST has to be paid at the applicable rate on the excess of selling price over the purchase price of the goods.

Where the sale is made at a loss, NO GST shall be payable.

Vide Notification 8/2018- Central Tax (Rate) dated 25 January 2018,

The margin scheme was made applicable to all taxpayers on the sale of motor vehicle held as capital asset. In this regard,

- **Where depreciation has been claimed by the taxpayer**

GST has to be paid on the excess of selling price over the written down value as per the Income Tax Act, 1961.

- **Where NO depreciation has been claimed**

GST shall be paid on the difference in the selling price and the purchase price.

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