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Treading the GST Path - V

Transitional Credit further Explained.



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1.0 The following situations for transitional credit are provided for in the Model GST law.

2.0 As per Section 16 (2) of the model Act, any person who is liable to be registered under the Act is entitled for input tax credit in respect of stock of inputs held in stock and inputs contained in semi finished goods or finished goods, on the day immediately preceding the date of from which he becomes liable to pay tax under this Act. It may be noted that this provision refer to "input tax" and hence it refers to CGST / SGST / IGST paid on the stock of inputs. For example, if a person is below the threshold limit under the model Act and when he becomes liable for registration, he is entitled for input tax credit of the above duties paid in respect of inputs in stock in various forms.

2.1 As per Section 16 (2A) of the model Act, though a person is not liable to be registered, but if he opts to obtain registration under Section 19 (3), he should also be entitled to similar input tax credit as above.

2.2 As per Section 16 (3) of the Act, any person who ceases to pay GST under the composition scheme as per Section 8 of the Act and hence switches over to normal method of taxation would also be eligible to take input tax credit in respect of the inputs held stock and contained in semi finished goods or finished goods.

2.3 In all the above three situations, the quantum of credit should be computed on the basis of generally accepted accounting principles (generally on FIFO basis or any other recognised method). The credit claimed in the above three situations should be supported by a valid invoice and such invoice should not be more than one year old on the date of taking credit. Further, it may also be noted that all the above situations under Section 16 deal with availment of input tax credit of CGST / SGST / IGST paid on inputs, in the given situations.

3.0 As per section 143 of the model Act, the credit balance in the Cenvat Credit Account and Input Tax Credit account, as per the last return filed under the earlier law, would be carried forward as CGST credit and SGST credit respectively in the first return under GST law, subject to a condition that such credit is admissible both under earlier law and GST law.

4.0 As per Section 144 of the model Act, the unavailed credit on capital goods, can be availed under GST law. For example, as per the Cenvat Credit Rules, 2004 for the capital goods received in a year, credit could be taken only to an extent of 50 %. The balance 50 % credit, if not availed under the earlier law, could be availed under GST law.

5.0 Section 145 of the model Act provides for transitional credit in certain situations. A person who was not liable to pay any tax under the earlier law (either the products dealt with by him are exempted or for any other reason) and who becomes liable to be registered under the GST law, shall be entitled to avail credit of eligible duties paid in respect of inputs held in stock and inputs contained in semi finished goods or finished goods on the date of introduction of GST. The credit claimed in the above situation should be supported by a valid invoice and such invoice should not be more than one year old on the date of taking credit.

6.0 As per section 146 of the model Act if a person was paying duties / tax under any composition scheme under the earlier law (where credit is not permissible), but who is liable to pay tax under GST law under normal scheme (not composition scheme under Section 8) is eligible to take input tax credit of the eligible duties paid on inputs held in stock and contained in semi finished goods or finished goods held in stock. The credit as above should be supported by a valid invoice and such invoice should not be more than one year old on the date of taking credit.

6.1 For example a service provider executing works contracts and paying service tax as per Rule 2 A of the Service Tax (Determination of Value) Rules, 2006 is not entitled for availing credit of the duties paid on inputs. Under the GST law, appropriate CGST / SGST / IGST would be payable on the works contracts executed by him and the differentiation between levy of service tax on services and levy of VAT / CST on the transfer of property in goods would vanish. Once such service provider becomes liable to pay CGST / SGST / IGST on the works contract executed by him, he should be allowed input tax credit of the duties paid on inputs in stock, which has been provided for under this section.

7.0 It may be noted that the situations dealt with in para 3.0 to 6.1 above deals with availment of input tax credit of "earlier duties" paid on inputs.

8.0 A careful reading of the above provisions would suggest that the following situations have not been contemplated under GST law.

8.1 If a person is not liable to pay any tax under the earlier law, due to product being exempted or he being within the threshold limit etc. Immediately on introduction of GST also, he is not liable to be registered (either due to product continue to

be exempted under GST law; he still being within the threshold limit under GST law, etc.). But after sometime subsequent to introduction of GST, he may become liable to be registered under GST law. At that time, he might have having stock of old inputs in various forms, on which "earlier duties" are paid and new inputs in various forms, on which "GST" has been paid. There would be no problem in availing credit of the GST paid on such inputs, as per Section 16 (2). Credit of earlier duties paid on inputs is allowed under Section 145 is allowed, only when he becomes liable to pay GST, on the date of introduction of GST and does not cover a situation where such person is not liable to be registered under GST also, but becomes liable to be registered at a later date. In this situation there is no mechanism to avail credit of the earlier duties paid on inputs in stock.

8.2 The various provisions relating to availment of input tax credit of either earlier duties or GST in various situations, refer to duties paid on inputs held in stock and inputs contained in semi-finished or finished goods. The use of the word "or" above would create hurdles as the same can be interpreted that credit would be admissible either for the stock of semi-finished goods or for the stock of finished goods and not both. Though in the above situation "or" has to be read as "and", to avoid litigations on this issue, the word "or" may be replaced with "and".

8.3 There may be a situation where certain inputs have been despatched just prior to introduction of GST and received after introduction of GST. There is no mechanism available for availing input tax credit of earlier duties paid on such inputs, received after introduction of GST. Let us assume that GST is introduced from 01.04.2017. On 30.03.2017, certain goods have been despatched by the supplier, on payment of Excise duty or certain services have been billed with service tax. An assessee receives such goods / invoices after 01.04.2017. In such situation, there is no mechanism available to avail input tax credit of the Excise duty / Service Tax paid on inputs and input services, as CGST credit.

9.0 Further, it may also be noted that all the above provisions would be contained both under CGST law and SGST law. (Published in www.taxindiaonline.com on 06.09.2016)

