

SMOOTH
RIDE



GST
REGIME

Transitional Provisions

Chapter XX of the CGST Act

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OLD INDIRECT
TAX REGIME



MIGRATION – SEC 139



- Every person - registered under any of old laws & having a valid PAN, shall be issued a provisional registration certificate, person will have to give additional information in FORM GST REG-26, after verification of which, the final certificate of registration shall be granted. Provisional registration shall be cancelled, unless replaced by a final certificate of registration within due date.
- Person can file an application for cancellation of provisional registration, if he is not liable to register as per Sec 22/ 24. And the provisional registration certificate shall be deemed to have not been issued.

TRANSITIONAL ITC – SEC 140



CENVAT CARRY FORWARD

- An RTP (other than composition dealer) shall be entitled to carry forward the amount of CENVAT credit shown as remaining in the return for last period before GST, furnished by him under old law.
- Credit shall not be allowed in the following circumstances —
 - Where the said amount is not admissible as ITC under this Act
 - Where all returns for past 6 months before GST has not been furnished
 - Where said amount relates to goods manufactured and cleared under exemption notifications

UNAVAILED CENVAT ON CAPITAL GOODS

An RTP (other than composition dealer) shall be entitled to take credit of the unavailed CENVAT credit on capital goods, provided the said credit was admissible as CENVAT under old law and is also admissible as ITC under this Act.

[“Unavailed CENVAT credit” = CENVAT credit entitled to take (-) CENVAT credit already availed]

ITC ON STOCK

An RTP, who was –

not liable to be registered under old law	engaged in the supply of exempted goods/ services
providing works contract service under notification 26/ 2012 (under Abatement)	first stage dealer/ second stage dealer/ registered importer/ depot of a manufacturer

shall be entitled to take credit of excise duty paid on → inputs/ semi-finished/ finished goods held in stock on transition day (1st July 2017) subject to the following conditions —

Goods are used/ intended to be used for making taxable supplies	ITC on such inputs is eligible under this Act	If supplier of services → not eligible for any abatement under this Act
The RTP is in possession of invoice/ other prescribed documents evidencing payment of duty, not issued earlier than 12 months before the transition day		

NON –AVAILABILITY OF DUTY PAYING DOCUMENTS

Where an RTP (other than a manufacturer/ supplier of services) is not in possession of an invoice/ other document evidencing payment of duty, then such RTP shall be allowed to take ITC on stock, provided he shall pass on the benefit of such ITC by way of reduced prices to the recipient. The scheme shall be available for 6 tax periods (months) from the transition date.

Type of Goods	Amount of Eligible ITC	When person will get ITC
Goods attracting GST @ 18% or more	60% of the CGST/ 30% of the IGST applicable on supply (sale) of such goods	ITC shall be credited after the CGST payable on such supply (sale) has been paid
Other Goods	40% of the CGST/ 20% of the IGST applicable on supply (sale) of such goods	

CONDITIONS -

- Such goods were not unconditionally exempt from the whole of the excise duty or were not nil rated
- The document for procurement of such goods (invoice) is available with the RTP
- RTP availing of this scheme and having furnished the details of stock held by him in FORM GST TRAN-1 (discussed afterwards), submits a statement in **FORM GST TRAN 2** at the end of each 6 months during which the scheme is in operation, and indicating in it, the details of supplies of such goods effected during the month.
- Each month, on the basis of FORM GST TRAN-2, the amount of credit allowed shall be credited to the electronic credit ledger.
- The stock of goods on which the credit is so availed is to be stored in such a manner that it can be easily identified by the RTP. (So need to separate such stock from other stock)



TAXABLE AS WELL AS EXEMPT EARLIER, ALL TAXABLE NOW

A RTP, who was engaged in supply of both taxable & exempted goods/ services earlier, but which are wholly taxable under this Act, shall be entitled to take credit of —

- a) CENVAT credit carried forward in last return before GST; and
- b) Excise duties paid on inputs/ semi-finished/ finished goods held in stock on transition day, relating to such exempted goods or services. (Earlier, the output was exempted so corresponding inputs were not allowed, but now taxable, so allowed)

- RTP shall be entitled to take credit of excise duty/ service tax paid under earlier law, on inputs/ input services received on or after the transition day, provided the invoice or any/ other duty or tax paying document of the same was recorded in his accounts within 30 days from the transition day (Period of 30 days may be extended by the Commissioner for a further period not exceeding 30 days).

CREDIT OF OLD TAX PAID ON GOODS/ SERVICES RECEIVED AFTER TRANSITION DAY

COMPOSITION TAXPAYER EARLIER, NOW NORMAL RTP

- A RTP who was earlier, either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable, shall be entitled to take credit of excise duty paid on inputs/ semi-finished/ finished goods held in stock on transition day subject to the following conditions —
 - Such goods are used/ intended to be used for making taxable supplies
 - RTP is not paying tax u/s 10 (composition)
 - RTP is eligible for ITC on such inputs under this Act
 - RTP is in possession of invoice/ other duty paying document, which were not issued earlier than 12 months before transition day

SERVICES RECEIVED BY ISD BEFORE TRANSITION

- ITC on services received prior to the transition day by an ISD, shall be eligible for distribution as GST credit, even if invoices relating to such services are received on or after the transition day.

CENTRALISED REGISTRATION

- Where RTP had centralised registration under old law, such person shall be allowed to take credit of the CENVAT credit carried forward in last return before GST. The credit may be transferred to any of the RTPs having same PAN, Conditions —
 - i. If last return was furnished within 3 months of transition day, then credit allowed only if return was either an original return, or a revised return where credit was reduced.
 - ii. The said amount is admissible as ITC under this Act.

RE-AVAILMENT OF REVERSED CENVAT

- Where any CENVAT credit of service tax paid on input services had been reversed due to non-payment of consideration within 3 months, such credit can be reclaimed, provided RTP has paid the consideration within 3 months from the transition day.

Explanation: “Excise duty” includes —

- Additional duty of excise leviable u/s 3 of the Additional Duties of Excise (Goods of Special Importance) Act and the Additional Duties of Excise (Textile and Textile Articles) Act
- Additional duty leviable Sec 3(1) & 3(5) of the Customs Tariff Act, 1975;
- Excise Duty specified in the First & Second Schedule to the Central Excise Tariff Act, 1985;
- National Calamity Contingent Duty (NCCD) leviable u/s 136 of the Finance Act, 2001.

TRANSITIONAL PROVISIONS RELATING TO JOB WORK – SEC 141



- Where –
 - **Inputs** had been sent (as such or after being partially processed) prior to the transition day to a job worker for further processing, testing, repair, reconditioning or any other purpose,
 - **Semi-finished goods** were removed prior to the transition day to any other premises for carrying out manufacturing processes as per old law
 - **Any Excisable Goods**, were sent for carrying out tests or any other process not amounting to manufacture
- and they are returned on or after the transition day → no tax shall be payable if returned within 6 months from the transition day. [Period of 6 months may be extended by the Commissioner for a further period not exceeding 2 months]
- If not returned within the period specified, the ITC shall be liable to be recovered as per Sec 142(8)(a).
- In case of points (b) & (c), the manufacturer may, instead of receiving back, transfer the said goods within the period specified on payment of tax in India or without payment of tax for exports.
- Need to submit FORM GST TRAN-1 , specifying therein, the stock of the inputs, semi-finished goods or finished goods, as applicable, held by him on the transition day

FORM GST TRAN-1

1. Every RTP entitled to take credit under the transitional provisions, shall **submit FORM GST TRAN-1** within 90 days of the transition day. [Commissioner may extend the period by a further period not exceeding 90 days]
2. Where the inputs have been received from an EOU/ unit located in Electronic Hardware Technology Park, the credit shall be allowed to the extent as provided in Rule 3(7) of the CENVAT Credit Rules, 2004.
3. The amount of credit specified in **FORM GST TRAN-1** shall be credited to the electronic credit ledger of the applicant. Any amount credited may be verified and proceedings u/s 73 or 74 shall be initiated in respect of any credit wrongly availed, whether wholly or partly.
4. Every RTP who has submitted FORM GST TRAN-1 within the time limits as applicable, then he **may revise it once** and submit the revised declaration in FORM GST TRAN-1 within period as may be prescribed.

INFORMATION REQUIRED IN FORM GST TRAN-1 -

- a) Where claim of unavailed ITC on capital goods, specify separately the amount of ITC availed, and the amount of ITC yet to be availed till the transition day, in respect of every item of capital goods as on the transition day.
- b) Where claim of ITC in stock held, specify separately the details of stock held on the transition day.
- c) In the case where inputs/ input services were received on or after the appointed day but the excise duty/ service tax in respect of them has been paid by the supplier under the old law, then furnish the following details :—
 - i. Name of the supplier, serial number and date of issue of the invoice by the supplier/ any other document on the basis of which ITC was admissible under old law.
 - ii. Description and Value of the goods or services;
 - iii. Quantity in case of goods and the unit or unit quantity code thereof;
 - iv. The amount of eligible taxes/ duties, VAT/ entry tax charged by the supplier in respect of the goods or services; and
 - v. Date on which the receipt of goods or services is entered in the books of account of the recipient.

OTHER PROVISIONS – SEC 142

SALES RETURN

Where –

- Goods were removed within 6 months before transition day,
- Excise duty had been paid at the time of removal,
- They are returned on or after the transition day, within 6 months
- Such goods are identifiable to the satisfaction of the PO
- The person returning the goods is not registered in GST

→ RTP eligible for refund of excise duty paid

[If the goods are returned by a RTP, then it shall be deemed to be a supply. And thus, he will get input tax credit on it]

REFUND CLAIM

- If any **refund claim** has been filed before, on or after the transition day, in respect of –
 - CENVAT credit, duty, tax, interest or any other amount paid under old law, ,
 - Duty or tax paid under existing law in respect of the goods or services exported
 - Services not provided
- If any proceeding of appeal, review or reference relating to a **claim for CENVAT credit** was initiated before, on or after the transition day.

→ They shall be disposed as per old law only.

- Any amount accruing as refund shall be paid in cash, NWA to the contrary contained in old law [Except Sec 11B(2) of the Central Excise Act, 1944)]
- Where the claim fully or partially rejected, the amount so rejected shall lapse.
- No refund shall be allowed where the balance of the said amount has been carried forward under this Act.

PRICE REVISION

Where a contract was entered into prior to transition day, and in pursuance of it, the **price** of any goods/ services/ both is –

- Revised upwards** on or after the transition day → the registered supplier shall issue a supplementary invoice/ debit note, containing prescribed particulars, within 30 days of such price revision. It shall be deemed to be issued in respect of an outward supply made under this Act. (and thus there will be GST liability on it)
- Revised downwards** on or after the transition day → the registered supplier may issue a credit note, containing prescribed particulars, within 30 days of such price revision. It shall be deemed to have be issued in respect of an outward supply made under this Act. (and thus will be eligible to reduce the tax liability in GST, but only if the recipient of the credit note has reduced his ITC corresponding to such reduction of tax liability)

PROCEEDINGS AND REVISED RETURN

- If any proceeding of appeal, review or reference was initiated before, on or after the transition day, relating to –
 - Recovery of CENVAT credit
 - Any output duty or tax liability

→ Then they shall be disposed as per old law only.

- If any assessment or adjudication proceeding was instituted before, on or after the transition day

- Where any return furnished under old law is revised after the transition day, and if due to such revision –
 - (i) any amount is found to be recoverable or
 - (ii) any amount of CENVAT credit is found to be inadmissible

If any amount –

- Becomes recoverable → same shall be recovered as an arrear of GST (unless already recovered under old law) and the amount so recovered shall not be admissible as ITC under this Act.
- Found to be admissible/ refundable → it shall be refunded to him in cash, NWA to the contrary contained in old law [Except Sec 11B(2) of the Central Excise Act, 1944]], and if any amount rejected, it shall not be admissible as ITC under this Act.

DETERMINATION OF APPLICABLE LAW

Supply after transition, under an earlier contract	(Save as otherwise provided in this Chapter) Where goods/ services/ both are supplied on or after the transition day, as per a contract entered into prior to transition day → they shall be liable to tax under the this Act (GST will be leviable)
Tax paid under earlier law on any supply	NWA in Sec 12/ 13 (Time of Supply), GST shall not be payable on – (a) Goods, to the extent the tax was leviable under the VAT Act of the State. (b) Services, to the extent the tax was leviable under Service Tax Act (Chapter V of the Finance Act, 1994)
Refund of (VAT + ST) paid, and GST leviable	Where tax was paid on any supply made after the transition day, under both VAT Act and Service Tax Act (means it was works contract/ food supply) → GST shall be leviable, and person can take credit of VAT/ service tax paid under old law. Required to submit FORM GST TRAN-1, furnishing the proportion of supply on which VAT/ ST has been paid before the transition day but the supply is made after the transition day, and the ITC admissible thereon.
Goods sent on Approval Basis	Where any goods sent on approval basis within 6 months before transition day, and they are rejected or not approved by the buyer and returned to the seller on or after the transition day → no tax shall be payable thereon if such goods are returned within 6 months from the transition day. (Period of six months may be extended by the Commissioner for a further period not exceeding 2 months). Person must submit details of such goods sent on approval in FORM GST TRAN-1. ○ If returned after the specified period, then tax shall be payable by the person returning the goods ○ If not returned within specified period, then tax shall be payable by the person who had sent the goods on approval basis
TDS deducted under earlier law	Where a supplier had made any sale of goods in respect of which any TDS was to be deducted under any VAT law of any State/ UT, and has also issued an invoice for the same before the transition day → no TDS u/s 51 shall be deducted by the deductor where payment to the said supplier is made on or after the transition day.

End of Presentation!

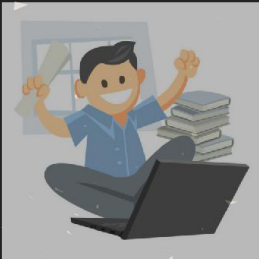
What we learned -

- Migration – Sec 139
- Transitional ITC – Sec 140
 - CENVAT Carry Forward
 - Unavailed CENVAT on Capital Goods
 - ITC on Stock
 - Non –Availability of Duty Paying Documents
 - Conditions
 - Taxable As well as Exempt Earlier, all taxable now
 - Credit of Old Tax paid on goods/ services received after transition day
 - Composition taxpayer earlier, now Normal RTP
 - Services received by ISD before transition
 - Centralised Registration
 - Re-Availment of Reversed CENVAT
- Transitional Provisions relating to Job Work – Sec 141
- Form GST TRAN-1
 - Information required in FORM GST TRAN-1
- Miscellaneous Transitional Provisions – Sec 142
 - Sales Return
 - Price Revision
 - Refund Claim
 - Proceedings and Revised Return
 - Determination of Applicable Law

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