



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

GST & INDIRECT TAXES COMMITTEE – WEBINAR

GST Helpdesk: Navigating ITC Eligibility and Compliance

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Query 1 – Cloud kitchens

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Query

I have a cloud-kitchen business in Delhi-NCR operating from multiple locations in Gurugram, Delhi and Noida. The warehouse and the central kitchen are situated in Gurugram. All the procurement is done at this warehouse. Raw materials are transferred as it is from the warehouse to various cloud-kitchens across the NCR region. Also, some products are processed at the central kitchen and transferred to the various cloud-kitchens as a semi-finished product.

1. Am I eligible to claim ITC on the purchases made at the warehouse?
2. Can I set off the output liability on transfer of material from the warehouse to the various cloud-kitchens with the ITC available on the purchases?
3. Can I, in any case, get ITC on purchases made at the cloud-kitchen level?



Map the GSTINs before the ITC

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Section 25(4)

“A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.”

Schedule I, para 2 – supply even without consideration

“Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business”

- Warehouse + Gurugram kitchens – **one Haryana GSTIN**; internal movement is not a supply
- Gurugram → Delhi / Noida kitchens – **inter-State supply of goods to a distinct person**; IGST payable on transfer



Warehouse ITC – follow the use of the goods

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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 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 ...”

Purchases meant for	Outward supply by Haryana GSTIN	ITC
Delhi / Noida kitchens	Taxable inter-State supply of goods (stock transfer)	Eligible
Gurugram kitchens	Restaurant service at 2.5% + 2.5% – ‘ITC not taken’	Not eligible
Common (gas, rent, packing)	Both of the above	Apportion – next slide



The hidden reversal – Explanation (iv)

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S. No. 7(ii) – Supply of ‘restaurant service’ other than at ‘specified premises’ – 2.5%

“Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to Explanation No. (iv)]”

Explanation (iv)

“(a) credit of input tax charged on goods or services used exclusively in supplying such service has not been taken; and

(b) credit of input tax charged on goods or services used partly for supplying such service and partly for effecting other supplies eligible for Input tax credits, is reversed as if supply of such service is an Exempt supply and attracts provisions of sub-section (2) of section 17 ...”

Reading – Common credit of the Haryana GSTIN is reversed under rule 42 in the ratio of the aggregate value of exempt supplies (the Gurugram restaurant turnover, treated as exempt) to the total turnover in the State, which includes the value of stock transfers to the Delhi and Noida kitchens.



Paying tax on the transfer – and its value

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Section 49(4)

“The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act ...”

Rule 28(1) – second proviso

“Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.”

- Yes – IGST on transfer can be paid from the warehouse’s ITC
- But the kitchens are **not** eligible for full ITC → invoice value is **not** protected; value at open market value / like kind / rule 30
- 90% option (first proviso) needs goods for “**further supply as such**” – stock here is cooked, not resold



Kitchen-level ITC – the honest answer

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Circular No. 164/20/2021-GST – para 3.3

“... service by an entity, by way of cooking and supply of food, even if it is exclusively by way of takeaway or door delivery or through or from any restaurant would be covered by restaurant service. This would thus cover services provided by cloud kitchens/central kitchens.”

- IGST charged on transfer → **cost** at Delhi / Noida kitchens; tax on the transfer value cascades
- Same-line ITC (57th Council) covers only **restaurant service bought from another restaurant** – not stock transfers, not raw material



Query 2 – Utilisation of ITC

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Query

As per the GSTN advisory dated 19 February 2026, how can the accumulated SGST Input Tax Credit (ITC) be utilised to set off IGST, CGST, and SGST liabilities? We have attempted to follow the prescribed procedure on the GST portal, but the set-off is not going through. Kindly clarify the correct procedure and advise how this issue can be resolved.



Section 49(5) – the statutory lanes

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Section 49(5)(c)

“the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;”

“Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;”

Section 49(5)(e) and (f)

“(e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and

(f) the State tax or Union territory tax shall not be utilised towards payment of central tax.”



Section 49B and rule 88A override the order

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Section 49B

“Notwithstanding anything contained in this Chapter and subject to the provisions of clause (e) and clause (f) of sub-section (5) of section 49, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation ...”

Rule 88A – proviso

“... the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully.”



Order of utilisation – Circular No. 98

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Credit of	IGST liability	CGST liability	SGST liability
IGST	First	Any order, any proportion	Any order, any proportion
CGST	After IGST credit exhausted	Yes	Not permitted
SGST	After IGST credit exhausted	Not permitted	Yes

Circular No. 98, para 4 – IGST credit towards CGST and SGST “in any order”, once IGST credit is completely exhausted

Reading – section 49B overrides the order in section 49(5) – but expressly not the bans in clauses (e) and (f)



Advisory dated 19.02.2026

“... the functionality to utilise CGST or SGST ITC for payment of IGST liability, in any order of payment after complete exhaustion of IGST Credit (ref point no 3 of the advisory), shall be available from February-2026 period.”

Why the set-off fails on the portal

- Trying SGST against **CGST** – barred by section 49(5)(f); no utility can allow it
- IGST credit **not fully used** first – rule 88A proviso
- No IGST liability in the period – SGST has nowhere else to go
- Return period before February 2026 – the facility is prospective



Worked example – where SGST can go

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Head	Liability	ITC available	Set-off	Cash
IGST	₹500	₹200	IGST ₹200 + SGST ₹300	Nil
CGST	₹300	₹100	CGST ₹100	₹200
SGST	₹300	₹900	SGST ₹300	Nil

- SGST credit left: ₹900 – ₹300 – ₹300 = **₹300** – still cannot touch CGST
- Post Feb-2026, SGST could also be used ahead of CGST credit for IGST – CGST credit is then kept for CGST
- Lasting fix is in the supply mix (inter-State outward supplies create IGST liability)



Query 3 – Construction – sheds

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Query

Whether the ITC on a prefabricated shed can be availed? The said shed is movable, but it is being used as a building.



Section 17(5)(c) and (d) – the block

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Section 17(5)(c)

“works 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;”

Section 17(5)(d)

“goods or services or both received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.”

Explanation 1

“... the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;”



“Plant and machinery” – what is carved out

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Explanation to section 17

“... “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.”

Explanation 2 to section 17(5) – Finance Act, 2025

“... notwithstanding anything to the contrary contained in any judgment, decree or order of any court, tribunal, or other authority, any reference to “plant or machinery” shall be construed and shall always be deemed to have been construed as a reference to “plant and machinery”.”

Reading – a shed used as the factory building is a ‘building or civil structure’ – outside the carve-out



How the Supreme Court read clause (d)

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Chief Commissioner of CGST v. Safari Retreats Pvt. Ltd. – [2024] 77 TAXLOK.COM 001 (SC), dt. 03.10.2024

Para 65(b) and (c)

“The expression “plant or machinery” used in Section 17(5)(d) cannot be given the same meaning as the expression “plant and machinery” defined by the explanation to Section 17;”

“... Functionality test will have to be applied to decide whether a building is a plant.”

- Court built on the word **“or”** in clause (d) – a building could itself be a ‘plant’
- Finance Act, 2025 substituted “plant and machinery” **w.r.e.f. 01.07.2017** – the textual basis for the functionality test is removed



Movable or immovable – the permanence test

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- **Safari Retreats, para 47 – relying on Solid and Correct Engineering Works (2010) 5 SCC 122**
- Immovable = attached to the earth or permanently fastened; asphalt plants **not intended to be permanent** at one place were movable
- **Embassy Industrial Parks – AAR Haryana**
- Pre-engineered warehouses “requires permanence and stability” – immovable; ITC blocked under 17(5)(d)
- **VDM Hospitality – AAR Haryana**
- Bolted steel pandal on own premises, “not the case ... that it plans to dismantle and move” – immovable



Prefab shed – decision grid

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Fact pattern	Character	ITC
Shed used as factory building, on concrete foundation, no plan to shift	Immovable – building / civil structure	Blocked – 17(5)(d)
Shed erected under works contract	Works contract for immovable property	Blocked – 17(5)(c)
Structural support / foundation of a machine	Part of ‘plant and machinery’	Eligible
Site office shifted from project to project, not capitalised as building	Movable goods	Arguable – evidence of movement
Repair of shed, charged to revenue	Not ‘construction’ (Explan. 1)	Eligible



Query 4 – E-invoicing

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Query

What is the impact on ITC eligibility if no e-invoice is provided by the supplier due to time-barring, as e-invoice was mandatory to report within 30 days if turnover exceeds ₹10 crore? Also state the consequences for the supplier for that default.



Rule 48(4) and (5) – an invoice without IRN

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Rule 48(4)

“The invoice shall be prepared by such class of registered persons as may be notified ... by including such particulars contained in FORM GST INV-01 after obtaining an Invoice Reference Number by uploading information contained therein on the Common Goods and Services Tax Electronic Portal ...”

Rule 48(5)

“Every invoice issued by a person to whom sub-rule (4) applies in any manner other than the manner specified in the said sub-rule shall not be treated as an invoice.”

Notification No. 13/2020-Central Tax

... registered person ... whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds five crore rupees ... in respect of, (i) supply of goods or services or both to a registered person ...



The recipient's exposure

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Section 16(2)(a)

“he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;”

Rule 36(1)(a)

“an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;”

- Non-IRN document **“shall not be treated as an invoice”** – the first condition of section 16(2) fails
- Rule 36(2) proviso (missing particulars) does not cure it – the defect is the document itself
- Practice: pay GST to vendor only after IRN; build an indemnity clause



Consequences for the supplier

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Section 122(1)(i)

“supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;”

“... he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded ... whichever is higher.”

- Tax on the supply remains payable – the supply has taken place
- Supply without a valid invoice – penalty exposure under section 122(1)(i)
- Commercial loss – buyer cannot claim ITC, so the supplier's receivable is at risk



Query 5 – Restaurants

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Query

The business is largely a B2C business; however, some B2B sales are also done. Can I classify the B2B sales as sales of goods instead of the restaurant service and avail GST credit, which is otherwise blocked for the restaurant service provider?



Restaurant service – a mandatory rate

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Para 4(xxxii) – “Restaurant service”

“... supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied.”

S. No. 7, Explanation (a)

“... supplies covered by items (i), (ii), (iii), (iv) and (v) ... shall attract central tax prescribed against them ... which is a mandatory rate and shall not be levied at the rate as specified under this entry.”

Reading – the definition turns on what is supplied and by whom – not on whether the buyer is B2B or B2C



How the authorities drew the line

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- **Kundan Misthan Bhandar – AAAR Uttarakhand**
- Sweets and namkeen sold through the restaurant – composite supply, restaurant service principal, no ITC
- Same items from the **sweet-shop counter** – supply of goods at applicable rate, ITC allowed
- Separate records for restaurant and sweet shop – inputs, outputs, billing
- **Riddhi Enterprise – AAAR Gujarat**
- Ready-to-serve food **not prepared** in the restaurant, sold over the counter – supply of goods



Bulk orders from companies – classification

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What is supplied	Classification	ITC
Food cooked in the restaurant, delivered to office	Restaurant service (door delivery)	No
Food served at client's function / venue	Outdoor catering – S. No. 7(iv)	No (other than specified premises)
Packed goods bought and resold, not cooked	Supply of goods	Yes – with reversal on common inputs

Take-away – re-labelling a B2B invoice as ‘goods’ does not change the nature of supply; a genuinely separate goods line with separate records can carry ITC



Query 6 – Real estate – leasing

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Query

I am building a warehouse only to lease it out. The rent will attract 18% GST. Can I set off the GST my contractor charges me against the GST on rent? Has Safari Retreats settled this?



From Safari Retreats to Finance Act, 2025

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Stage	Position on a warehouse built for leasing
Up to 03.10.2024	Department: blocked u/s 17(5)(d) – immovable property
Safari Retreats (SC), 03.10.2024	“Plant or machinery” wider than defined term; building can be ‘plant’ on functionality test – fact-specific, remanded
Review petition dismissed, 20.05.2025	[2025] 84 TAXLOK.COM 140 (SC) – judgment stands
Finance Act, 2025 (Noti. 16/2025-CT)	“plant or machinery” → “plant and machinery” w.r.e.f. 01.07.2017 + Explanation 2 overriding judgments

Result – a building given on rent is excluded from ‘plant and machinery’ (“land, building or any other civil structures”) – ITC on the shell is blocked



What still qualifies inside a warehouse

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Circular No. 219/13/2024-GST – ducts and manholes in OFC network

“... ducts and manholes are covered under the definition of “plant and machinery” as they are used as part of the OFC network for making outward supply ...” and are “neither in nature of land, building or civil structures nor are in nature of telecommunication towers or pipelines laid outside the factory premises.”

- Test after 2025: **apparatus, equipment, machinery fixed to earth** and used for outward supply – plus its foundation
- Racking systems, cold-chain refrigeration plant, dock levellers, fire-fighting equipment – argue ‘plant and machinery’
- Civil shell, flooring, roof, boundary wall – blocked
- Bill such items separately; capitalise them separately



Query 7 – Real estate – mixed projects

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Query

My project has residential apartments under the concessional rate without ITC, and a few commercial shops. How do I work out the ITC I can keep, and what happens to flats still unsold when I get the completion certificate?



Step 1 – Is it a ‘residential’ project?

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Para 4(xix) – RREP

“the term “Residential Real Estate Project (RREP)” shall mean a REP in which the carpet area of the commercial apartments is not more than 15 per cent. of the total carpet area of all the apartments in the REP;”

Project	Flats (CGST)	Shops (CGST)	ITC
Shops up to 15% of total carpet area (RREP)	0.75% / 3.75% – S. No. 3(i), (ia)	3.75% – S. No. 3(ib)	None – flats and shops
Shops above 15% of total carpet area	0.75% / 3.75% – S. No. 3(ic), (id)	9% – S. No. 3(if)	Only for the shops

First answer – if the shops are a small part (up to 15%), even the shops go at the concessional rate and the whole project gets no ITC



The 'no ITC' condition – in its own words

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Condition against S. No. 3(i) to (id)

“Provided also that credit of input tax charged on goods and services used in supplying the service has not been taken except to the extent as prescribed in Annexure I in the case of REP other than RREP and in Annexure II in the case of RREP;”

Explanation 3

“Input Tax Credit not availed shall be reported every month by reporting the same as ineligible credit in GSTR-3B [Row No. 4 (D)(2)].”

- Flats at the concessional rate – no credit at all, every month
- ITC question arises only where shops are taxed at 9% + 9% – a project with shops above 15%



Step 2 – Splitting credit used for both flats and shops

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Rule 42(1)(f) – Explanation (construction phase)

“... inputs and input services will be commonly used for construction of apartments booked on or before the date of issuance of completion certificate or first occupation of the project ... and those which are not booked by the said date.”

- **What it means in practice**
- During construction, every bill (cement, steel, contractor, architect) is treated as **common** to flats and shops
- Common credit is split **project-wise by carpet area**, not by sale value
- $\text{Credit kept} = \text{common credit} \times \text{shop carpet area} \div \text{total carpet area of the project}$
- $\text{Credit given up} = \text{common credit} \times \text{flat carpet area} \div \text{total carpet area}$



Step 3 – Units unsold on completion certificate

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Schedule II, para 5(b)

“construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.”

Schedule III, para 5

“Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.”

Rule 42(1)(i) – Explanation 1

“In the tax period in which the issuance of completion certificate or first occupation of the project takes place, ... shall also include aggregate carpet area of the apartments, which have not been booked till the date of issuance of completion certificate ...” – unbooked units move into the share on which credit is reversed



Worked example – shops above 15%

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Item	During construction	On completion certificate
Flats – carpet area	75,000 sq ft	75,000 sq ft
Shops unsold on CC date – carpet area	–	5,000 sq ft
Total carpet area of project	1,00,000 sq ft	1,00,000 sq ft
Common credit on construction	₹1.00 crore	₹1.00 crore
Credit given up (flats + unsold shops)	₹75 lakh (75%)	₹80 lakh (80%)
Credit kept (shops sold before CC)	₹25 lakh	₹20 lakh

Reading – an unsold shop on CC date costs its share of credit (₹5 lakh here); its later sale is a sale of building, outside GST



Step 4 – Project-end true-up and the 80% rule

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Rule 42(3) – final calculation

“... shall be calculated finally, for each ongoing project or project which commences on or after 1st April, 2019 ... for the entire period from the commencement of the project or 1st July, 2017, whichever is later, to the completion or first occupation of the project, whichever is earlier, before the due date for furnishing of the return for the month of September following the end of financial year in which the completion certificate is issued ...”

80% condition – shortfall

“... where value of input and input services received from registered suppliers during the financial year ... falls short of the said threshold of 80 per cent., central tax shall be paid by the promoter on value of input and input services comprising such shortfall at the rate of nine percent on reverse charge basis ...”

Keep – project-wise carpet-area register, booking dates, and a project-wise register of registered / unregistered purchases; cement from unregistered persons is under reverse charge in the month received



Query 8 – Hotels

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Query

My rooms are below ₹7,500 a night, so I charge 5%. Can I take ITC on renovation, linen and the rooms I hire from another hotel during peak season? Will declaring 'specified premises' help?



Hotel accommodation up to ₹7,500 – no choice

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S. No. 7(i)

“Supply of ‘hotel accommodation’ having value of supply of a unit of accommodation above one thousand rupees but less than or equal to seven thousand five hundred rupees per unit per day or equivalent.” – 2.5% – “Provided that credit of input tax charged on goods and services used in supplying the service has not been taken”

Para 4(xxxvi)(b) – ‘Specified premises’

“a premises for which a registered person supplying ‘hotel accommodation’ service has filed a declaration, on or after the 1st of January and not later than 31st of March of the preceding financial year, declaring the said premises to be a specified premises;”

- Room rate at 5% is **mandatory**; the declaration moves only the **restaurant / outdoor catering** to 18% with ITC



Same-line ITC – rooms bought from another hotel

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Press Release dt. 08.10.2026 – para 4

“To allow limited input tax credit in the same line of business, for the supply of restaurant/outdoor catering services, hotel accommodation services for value up to Rs. 7500 per unit per day, and gym/fitness services in the same manner as is currently available for passenger transportation services, tour operator services and renting of motor vehicles services.”

Inward supply	ITC from 01.11.2026
Rooms hired from hotel ‘C’ at ₹10,000 + 9% CGST (₹900)	Capped at 2.5% – ₹250 only
Linen, toiletries, renovation	No – condition of ‘ITC not taken’ continues



Query 9 – Automobile – company vehicles

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Query

We bought a sedan for our MD and hired a 20-seater bus and a 7-seater van to bring staff to the factory. Can we claim the GST on the car, its insurance and repairs, and on the hire charges?



Section 17(5)(a), (ab) and (b) – the text

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Section 17(5)(a)

“motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:— (A) further supply of such motor vehicles; or (B) transportation of passengers; or (C) imparting training on driving such motor vehicles;”

Section 17(5)(ab)

“services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):”

Section 17(5)(b) – proviso

“Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide to its employees under any law for the time being in force.”



Applying it to the three vehicles

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Vehicle	Provision	ITC
MD's sedan – purchase, insurance, repairs	17(5)(a) and (ab)	Blocked
20-seater bus hired for staff	Seating > 13 – outside clause (a); hiring not hit by (b)(i)	Eligible
7-seater van hired for staff	17(5)(b)(i) – hiring of clause (a) vehicles	Blocked – unless obligatory under law

- **AGS Health (AAR-TN, 2026)** – night-shift transport for women employees mandated by the TN Shops Act: ITC allowed, only for 8 PM–6 AM
- **Kirby (AAAR-Telangana, 2025)** – transport under employment contract is a perquisite, not a legal obligation: blocked



Query 10 – Automobile dealers

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Query

I am an authorised dealer under the new agency model – the manufacturer sells directly to the customer and I only keep demo cars for test drives. Is my ITC on demo cars blocked?



The earlier view – Circular No. 231, para 4.6

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Circular No. 231/25/2024-GST – para 4.6

“... the authorized dealer is merely providing marketing and/or facilitation services to the vehicle manufacturer and is not making the supply of motor vehicles on his own account. Therefore, the said demo vehicle cannot be said to be used by the dealer for making further supply of such motor vehicles.”

- Traditional dealer – demo ITC allowed; agency dealer – blocked under 17(5)(a)(A)
- Same vehicle, same purpose, different outcome – the industry’s grievance



Circular No. 262 – “such” motor vehicles

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Para 6

“... the use of the phrase “such motor vehicles” rather than “said motor vehicle” in section 17(5)(a)(A) ... indicates that ITC is permitted not only on the specific vehicle sold, but also on vehicles used for further supply of similar motor vehicles.”

Para 7

“... the clarification issued vide para 4.6 of circular No. 231/25/2024-GST dated 10.09.2024 is hereby withdrawn and it is clarified that the input tax credit on the demo vehicles is not blocked under clause (a) of section 17(5) of the CGST Act, to the dealer in the dealer-agency model.”

Impact – pending demands on agency dealers lose basis; on later sale at WDV, section 18(6) applies like any capital goods



Query 11 – Manufacturing – capital goods

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Query

Our accountant capitalised a new machine including the GST, claimed depreciation on the full cost, and we also took ITC on it. Is that a problem?



Section 16(3) – no double benefit

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Section 16(3)

“Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.”

Section 2(19) – “capital goods”

“... goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;”

- Choice is on the **tax component** – depreciation or ITC, not both
- Rectify the income-tax depreciation claim to the net cost before the department rejects the ITC



Query 12 – Manufacturing – disposal of assets

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Query

We are selling a three-year-old machine as scrap for ₹2 lakh plus GST. We had taken ITC of ₹9 lakh on it. Is GST on ₹2 lakh enough?



Section 18(6) – higher of two amounts

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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 ... determined under section 15, whichever is higher:”

Rule 40(2)

“... 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.”

Proviso to section 18(6)

“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 ...”



Worked example – machine sold after 3 years

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Step	Amount
ITC taken on machine	₹9,00,000
Quarters used – 12×5 percentage points = 60%	(₹5,40,000)
(A) ITC after reduction	₹3,60,000
(B) GST on transaction value – $₹2,00,000 \times 18\%$	₹36,000
Payable – higher of (A) and (B)	₹3,60,000

Rule 44(6) proviso – where (A) exceeds tax on transaction value, the amount “shall form part of the output tax liability” and is reported in GSTR-1



Query 13 – Pharma and FMCG

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Query

We distribute free physician samples and also destroy expired stock as required by drug law. Do we have to reverse ITC on both? Has the 57th Council changed this?



Section 17(5)(h) and Circular No. 92

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Section 17(5)(h)

“goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples;”

Circular No. 92/11/2019-GST

“... input tax credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration.”

- Samples to a **distinct person or related person** – Schedule I supply, taxable, ITC stays
- Expired stock destroyed under law – ‘destroyed / written off’, ITC reversed today



57th Council – relief recommended, not yet law

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Press Release dt. 08.10.2026 – para 9

“... remove the restrictions on availment of ITC inter-alia on the supplies of outdoor catering, health and life insurance, telecommunication towers, pipelines laid outside factory premises, free samples, goods destroyed or written off on expiry of shelf life as required by law.”

Item	Today	Proposed
Free samples	Blocked – 17(5)(h)	Recommended for removal
Expiry destruction required by law	Blocked – 17(5)(h)	Recommended for removal
Health / life insurance (not obligatory)	Blocked – 17(5)(b)(i)	Recommended for removal



Query 14 – Banks and NBFCs

56

Query

We are an NBFC. Our lending vertical can opt for 50% ITC under section 17(4), but our bullion-trading vertical is separately registered. Must every registration opt, and what happens to inter-branch invoices?



Section 17(4) – the 50% option

57

Section 17(4)

“A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to fifty per cent. of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse:”

Provisos

“Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year:

Provided further that the restriction of fifty per cent. shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number.”



Circular No. 261 – who opts, who follows

58

Situation	Clarification
Registrant only in bullion trading	“neither has the option nor is required to comply” – S. No. 1(a)
Registrant in lending, with other services	Has the option – S. No. 1(b)
One lending registrant opts	All lending registrants “will have to necessarily comply” – S. No. 1(c)
Same-PAN invoices	Relief only where the supplying registrant “has also opted” – S. No. 2
Past GSTR-3B reporting	No adverse view if ITC is in congruence – para 3



Query 15 – Healthcare – exempt and taxable

59

Query

Our hospital's treatment is exempt, but our pharmacy also sells to walk-in customers, which is taxable. How much ITC can we keep on common expenses like electricity, software and security?



Section 17(2) and (3) – apportionment

60

Section 17(2)

“Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies ... and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.”

Section 17(3)

“The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.”

Section 2(47) – “exempt supply”

“... supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax ... and includes non-taxable supply;”



Rule 42 – worked example for a hospital

61

Rule 42 element	Hospital example	₹ lakh
T – total input tax	All purchases of the month	20.00
T2 – exclusively exempt	Implants, OT consumables	6.00
T3 – blocked u/s 17(5)	Staff food, cars	1.00
T4 – exclusively taxable	Pharmacy stock for retail	8.00
$C2 = T - (T2 + T3) - T4$	Common credit	5.00
$D1 = E/F \times C2$	Exempt ₹9 cr / total ₹12 cr	3.75
Eligible = $T4 + (C2 - D1)$	Credit kept	9.25

Year-end – true-up for the full year before the due date of the September return; excess reversal carries interest from 1 April [rule 42(2)]



Query 16 – Multi-State businesses

62

Query

Our Chennai head office pays for audit fees, ERP and advertising for branches in six States. How do the branches get the credit? And do we have to raise invoices for the HO staff who support the branches?



ISD is now mandatory – section 20

63

Section 20(1)

“Any office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9 ... for or on behalf of distinct persons referred to in section 25, shall be required to be registered as Input Service Distributor under clause (viii) of section 24 and shall distribute the input tax credit in respect of such invoices.”

- Third-party input services for branches → **ISD route**, not cross-charge invoices
- Credit goes only to the branch to which it is attributable



S. No. 2

“It is the recipients of credit, who are liable to comply with the conditions for being eligible to the input tax credit, including the conditions stipulated in section 16 or section 17 of CGST Act, 2017 and rules made thereunder.”

- More than one ISD per State allowed – vertical-wise or location-wise [S. No. 1]
- Credit is ‘available’ when the ISD finds it prima facie eligible; distribute in that month, eligible and ineligible separately [S. No. 3]
- Reversals under 17(1), 17(2), 17(4) – by the recipient branch, not the ISD [S. No. 4]



Circular No. 199/11/2023-GST – S. No. 2

“... in cases where full input tax credit is available to a BO, the value declared on the invoice by HO to the said BO in respect of a supply of services shall be deemed to be the open market value of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not ...”

- Branch with full ITC – invoice value, even nil, is deemed open market value
- Branch with exempt supplies (hospital, bank, school) – **no protection**; value at open market value, salary cost included



Query 17 – Documents and GSTR-2B

66

Query

My supplier says he has uploaded the invoice, but it is not in my GSTR-2B. I have the bill, received the goods and paid him. Can I still take the credit this month?



Section 16(2)(aa) and rule 36(4)

67

Section 16(2)(aa)

“the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;”

Rule 36(4)

“No input tax credit shall be availed ... unless,— (a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1, as amended in FORM GSTR-1A if any, or using the invoice furnishing facility; and (b) the details of input tax credit in respect of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B ...”



What this means in practice

68

Situation	Position
Supplier filed GSTR-1 after the cut-off	Appears in next month's 2B – claim then, within section 16(4)
Supplier never uploads	No ITC from 01.01.2022 – possession of invoice alone is not enough
Periods before 01.01.2022 (2A mismatch)	CA / CMA certificate above ₹5 lakh per supplier; supplier certificate up to ₹5 lakh – Circulars 183 and 193
IMS – keep pending	For credit not yet eligible; rules for IMS recommended from return for April 2027 – Circular 261 Part B



Query 18 – Supplier default

69

Query

My supplier collected GST from me and reported the invoice, but never paid the tax to the Government. The department now wants me to reverse the ITC with interest and penalty. Is that fair, and what is the law today?



Section 16(2)(c), section 41(2) and rule 37A

70

Section 16(2)(c)

“... the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply;”

Section 41(2)

“The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest ...” – proviso permits re-availment once the supplier pays

Rule 37A

Supplier’s GSTR-3B not filed by 30 September following the year → recipient reverses in GSTR-3B by 30 November; otherwise payable with interest; re-avail when supplier files.



Calcutta HC – recover from the supplier first

71

Suncraft Energy Pvt. Ltd. – [2023] 63 TAXLOK.COM 001 (Calcutta), dt. 02.08.2023

Para 10

“... with a direction to the appropriate authorities to first proceed against the fourth respondent and only under exceptional circumstance as clarified in the press release issued by the Central Board of Indirect Taxes and Customs (CBIC), then and then only proceedings can be initiated against the appellant.”

- Court relied on CBIC’s clarification – no **automatic** reversal from the buyer
- Buyer reversal reserved for missing dealer, closed business, supplier without assets, collusion



VAT precedent – Shanti Kiran (SC, 2025)

72

Commissioner Trade and Tax, Delhi v. Shanti Kiran India (P) Ltd. – [2025] 89 TAXLOK.COM 193 (SC), dt. 09.10.2025

On Quest Merchandising (Delhi HC) para 63, affirmed

“In the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the Department would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC.”

- Decided under section 9(2)(g) of the **Delhi VAT Act** – seller registered on date of transaction, invoices not doubted



Supreme Court, July 2026 – no parity with VAT

73

Bhandari Scrap Traders v. Union of India – [2026] 98 TAXLOK.COM 165 (SC), dt.

SLP dismissed – Gujarat HC affirmed

“... there is no possibility of drawing parity between the provisions of the two enactments, so as to treat a purchasing dealer under the CGST Act on par with a purported bonafide purchasing dealer under the Delhi VAT Act in relation to ITC, when the supplier-dealer fails to pay the requisite tax.”

- Section 16(2)(c) neither unconstitutional nor read down; section 41 provides re-availment once the supplier pays



Shaurya Alloys Pvt. Ltd. – [2026] 101 TAXLOK.COM 001 (P&H) – 424 writ petitions

Para 103(i) and (v)

“Section 16(2)(c) shall not be invoked against a purchasing dealer in a routine or mechanical manner.”

“The fraud of the selling dealer shall not be attributed to the purchasing dealer unless the notice discloses the facts connecting the purchasing dealer with such fraud.”

- Retrospective cancellation or ‘nil’ return of seller – a **starting point for inquiry**, not a ground by itself
- Burden u/s 155 met by invoice, e-way bill, transport, weighbridge, stock and bank records [para 103(vi)]



Supplier default – the defence file

75

Stage	What to place on record
Before the notice	Vendor due diligence; GSTR-3B filing status; payment only by banking channel
Reply to SCN	Invoice, e-way bill, transport, weighbridge, stock register, bank proof – s.155 burden
Legal grounds	Recovery action against supplier; no ‘foundational facts’ for section 74 / 74A
After supplier pays	Re-avail under proviso to section 41(2) / rule 37A

Position today – 16(2)(c) is valid (SC, July 2026); the contest is now on process, evidence and recovery from the supplier



Query 19 – Payment to vendors

76

Query

We pay some MSME vendors late – sometimes after six months, sometimes only part of the bill. Do we lose ITC, and can we take it back once we pay?



Second and third provisos to section 16(2)

77

Second proviso

“... where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be paid by him along with interest payable under section 50 ...”

Third proviso

“Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him to the supplier of the amount towards the value of supply of goods or services or both along with tax payable thereon.”



Rule 37 – proportionate reversal

78

Rule 37(1)

“... fails to pay to the supplier thereof, the amount towards the value of such supply, whether wholly or partly, along with the tax payable thereon ... shall pay or reverse an amount equal to the input tax credit availed in respect of such supply, proportionate to the amount not paid to the supplier, along with interest payable thereon under section 50 ...”

Rule 37(4)

“The time limit specified in sub-section (4) of section 16 shall not apply to a claim for reavailing of any credit ... that had been reversed earlier.”

- Part payment – reverse only the unpaid proportion; Schedule I supplies and section 15(2)(b) additions deemed paid



Query 20 – Time limit for ITC

79

Query

We found invoices of last year that were never booked. Our annual return is already filed. Can we still take the ITC? Is the rule different for tax we paid under reverse charge?



Section 16(4) – earlier of two dates

80

Section 16(4)

“A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the thirtieth day of November following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.”

Circular No. 211/05/2024-GST – RCM from unregistered persons

“... the relevant financial year for calculation of time limit ... will be the financial year in which the invoice has been issued by the recipient under section 31 (3) (f) ...”

- Annual return filed early → window closes early
- Validity upheld – Safari Retreats (SC), para 65(a)



Relief provisions and what is coming

81

Provision	Relief
Section 16(5)	FY 2017-18 to 2020-21 – ITC in any return filed up to 30.11.2021
Section 16(6)	Registration cancelled and revoked – ITC in return filed within 30 days of revocation order
Rule 37(4)	Re-availment of credit reversed earlier – outside section 16(4)
57th Council	Align time limits of GSTR-1 / GSTR-3B (sections 37, 39) with section 16(4) – recommended



Query 21 – Trading – bill to, ship to

82

Query

My steel supplier delivers directly to my customer's site on my instructions. The invoice is in my name, but the goods never come to my godown. Can I take ITC? What proof do I need?



Section 16(2)(b) – deemed receipt

83

Section 16(2)(b) – Explanation

“(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.”

- Delivery to your customer on your direction = **receipt by you**
- Same for services – hotel stays or courier for your client, on your account



Section 155 – the burden is on you

84

Section 155

“Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.”

Shaurya Alloys (P&H) – para 103(vi)

“The purchasing dealer may discharge the burden by producing material such as the tax invoice; proof of receipt of goods or services, including e-way bills, transport receipts, weighbridge slips and stock and consumption records etc..”

Keep – e-way bill with correct ‘ship-to’, your purchase order directing delivery, customer’s receipt / GRN, freight proof



Query 22 – Sale of used machinery

85

Query

We are a manufacturer in Pune. We took ITC on a machine and now want to sell it as used machinery. Someone told us we can pay GST only on our margin, like used-car dealers do. Can we, or does section 18(6) decide the tax?



Margin options – who can use them

86

Rule 32(5)

“Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price ...”

Notification No. 8/2018-CT(R) – para 2

“This notification shall not apply, if the supplier of such goods has availed input tax credit ... on such goods.” – Table covers only old and used motor vehicles (S. No. 1 to 4, Chapter 87)

- Manufacturer is not a dealer in second-hand goods, has taken ITC, and the item is not a vehicle – **neither margin route is open**



Section 18(6) – the rule that applies

87

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:”

Rule 40(2)

“... 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 – ITC ₹5 lakh, used 7 quarters → $₹5 \text{ lakh} \times 65\% = ₹3.25 \text{ lakh}$; sale value ₹10 lakh × 18% = ₹1.80 lakh; pay ₹3.25 lakh



Query 23 – Fuel retail – mixed business

88

Query

I run a petrol pump and a vehicle service workshop from the same premises. Both use the same staff, electricity, software and building. Petrol and diesel are outside GST. Does that reduce my ITC on these common costs, and how do I work out the reversal?



Petrol and diesel count as ‘exempt’ for ITC

89

Section 17(2)

“Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies ... and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.”

Sections 2(47) and 2(78)

“exempt supply” means ... “and includes non-taxable supply;” – “non-taxable supply” means “a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;”

Applied – Kwaliti Auto Services, [2023] 61 TAXLOK.COM 132 (AAR-Kerala): HPCL dealer selling petrol, diesel and lubricants – only proportionate credit on common input services under rule 42



Working the reversal – rules 42 and 43

90

- **Common inputs and services (rule 42)**
- Reverse: $\text{common credit} \times \text{fuel sales} \div \text{total turnover in the State}$
- **Common capital goods (rule 43)**
- Credit spread over 60 months; each month's share reversed in the same ratio
- **The nuance – rule 42(1)(i) Explanation**
- Fuel sales and total turnover “shall exclude” excise duty (entry 84, List I) and VAT (entry 54, List II) – take fuel value net of these

Reporting – monthly in Table 4(B)(1) of GSTR-3B as a permanent reversal (Circular 170, para 4.3B); year-end true-up by the September return with interest on any shortfall [rule 42(2)]



Query 24 – Transport – GTA

91

Query

Mr. A is a partner in M/s X & Co., a GTA that pays GST itself (forward charge) and took ITC on its trucks. He also runs his own firm, M/s A Transport, a GTA whose customers pay GST under reverse charge. X & Co. hires out some trucks to A Transport.

- (1) Can one PAN hold one GSTIN for forward charge and another for reverse charge?
- (2) Can X & Co. choose forward charge for some customers and reverse charge for others?
- (3) Must X & Co. charge GST on hiring trucks to A Transport?
- (4) Do related-person valuation rules apply?



Q1 – Separate GSTINs and distinct persons

92

Section 25(2)

“A person seeking registration under this Act shall be granted a single registration in a State or Union territory: Provided that a person having multiple places of business in a State or Union territory may be granted a separate registration for each such place of business, subject to such conditions as may be prescribed.”

- Separate registration in a State is by **place of business**, not by tax option
- X & Co. (firm) and A Transport (Mr. A's proprietorship) have **different PANs** – two persons; each takes its own registration and its own GTA option
- One PAN wanting forward and reverse charge in the same State – needs two genuine places of business (rule 11)



Q2 – GTA option: once a year, for the GSTIN

93

S. No. 9(iii)(b) – GTA exercises the option to itself pay GST

“(1) In respect of supplies on which GTA pays tax at the rate of 2.5%, GTA shall not take credit of input tax charged on goods and services used in supplying the service. ... (2) The option by GTA to itself pay GST on the services supplied by it during a Financial Year shall be exercised by making a declaration in Annexure V on or after the 1st January of the preceding Financial Year but not later than 31st March of the preceding Financial Year:” – rate 2.5% or 9%

- Q2 – No: the option covers **all** GTA supplies of that GSTIN for the year; forward charge cannot be chosen customer by customer
- Within forward charge – 2.5% without ITC or 9% with ITC can differ supply by supply (“in respect of supplies on which ...”)



Q3 and Q4 – Hiring trucks to a GTA

94

S. No. 22(b), Notification No. 12/2017-CT(R) – Nil

“Services by way of giving on hire— ... (b) to a goods transport agency, a means of transportation of goods.”

- Q3 – Hire to A Transport (a GTA) is **exempt**; no GST
- Cost to X & Co. – trucks now partly used for an exempt supply → common capital goods; reverse credit under rule 43
- Q4 – Rule 28 values a taxable supply; for an exempt hire the related-person test has no tax effect
- Relationship still matters elsewhere – section 15 Explanation (a): “legally recognised partners in business”, control tests



Query 25 – Professionals – cancellation

95

Query

I was a practising CA and have now enrolled as an advocate. My legal services to businesses are under reverse charge, so I want to surrender my GST registration. My credit ledger has a balance, and I hold laptops, furniture and ACs on which I took ITC.

(1) What happens to the ledger balance? (2) What must I pay under section 29(5)? (3) What do I file?



Can he cancel? – yes

96

S. No. 2, Notification No. 13/2017-CT(R)

“Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly.” – recipient: “Any business entity located in the taxable territory.”

Notification No. 5/2017-Central Tax

“... persons who are only engaged in making supplies of taxable goods or services or both, the total tax on which is liable to be paid on reverse charge basis by the recipient ... as the category of persons exempted from obtaining registration ...”

Route – section 29(1)(c): “no longer liable to be registered under section 22 or section 24” – application for cancellation



Section 29(5) – what is payable

97

Section 29(5) – proviso

“Provided that in case of capital goods or plant and machinery, the taxable 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 under section 15, whichever is higher.”

Asset (ITC taken)	Used	Remaining life (rule 44(1)(b))	Payable
Laptops – ₹36,000	18 months	$42/60 \times ₹36,000$	₹25,200
Furniture – ₹27,000	40 months	$20/60 \times ₹27,000$	₹9,000
ACs – ₹18,000	62 months	Useful life over	Nil*

- *Compare each with tax on transaction value (market value) and pay the higher



Ledger balance and filings

98

Rule 44(4)

“The amount determined under sub-rule (1) shall form part of the output tax liability of the registered person and the details of the amount shall be furnished ... in FORM GSTR-10, where such amount relates to the cancellation of registration.”

- Q1 – Ledger balance pays the section 29(5) amount; the rest **cannot be refunded** – section 54(3) allows refund only for zero-rated supplies and inverted duty
- Q3 – File all returns up to cancellation; REG-16 with stock and capital goods details; final return GSTR-10 within three months of cancellation [s.45]



Query 26 – Automobile dealers – cess

99

Query

I am a car dealer in Mumbai. On 21 September 2025 I held vehicle stock on which I had paid compensation cess. From 22 September 2025 cess on vehicles became Nil, and a large cess credit is stuck in my ledger.

(1) Can I use it against CGST, SGST or IGST, get a refund, or will it lapse? (2) The department now wants me to reverse the cess on the entire stock held on 21.09.2025, not just the balance. Is that valid?



Cess credit can pay only cess

100

Proviso to section 11(2), Compensation Cess Act

“Provided that the input tax credit in respect of cess on supply of goods and services leviable under section 8, shall be utilised only towards payment of said cess on supply of goods and services leviable under the said section.”

Notification No. 2/2025-Compensation Cess (Rate)

Entries for motor vehicles – “Nil” substituted – “This notification shall come into force on 22nd day of September, 2025.”

- Cannot be used for CGST / SGST / IGST; no refund route in section 54(3) for this situation
- No transition clause either way – credit is stranded



Demand on the entire stock – the debate

101

- **Department's view**
- Cess at 'Nil' makes the supply exempt for cess; section 18(4) applied mutatis mutandis – pay back cess on stock
- 56th Council FAQ 9 – for supplies from 22.09.2025, ITC “will have to be reversed as per provisions of CGST Act”
- **Dealer's view**
- Vehicle remains a taxable supply under GST; no provision of the Cess Act requires reversal of cess already validly availed
- **Status**
- FADA's writ against removal of cess without a transition mechanism – notice issued by the Supreme Court on 15.12.2025



Query 27 – Multi-State – ISD or cross-charge

102

Query

Our head office is in Mumbai with branches in Pune and Ahmedabad. We have two kinds of shared costs: services bought from outside (audit, advertising) and work done by head office staff for the branches.

(1) Which goes through ISD and which is cross-charged? (2) After section 20 was amended from 1 April 2025, is ISD registration compulsory?



Two kinds of cost, two routes

103

Cost	Route	Basis
Third-party input services for branches (audit, advertising)	ISD – distribute credit	Section 20(1): office “shall be required to be registered as Input Service Distributor”
Work by HO staff for branches	Cross-charge – tax invoice	Schedule I para 2 – supply between distinct persons
Value of HO staff services	Invoice value deemed OMV if branch has full ITC	Rule 28, second proviso; Circular 199, S. No. 2

- Q2 – Yes: Circular 199 (2023) said ISD was optional; amended section 20 makes it mandatory from 01.04.2025
- Circular 260 (2026) – more than one ISD per State allowed; branches comply with section 16 and make reversals



Query 28 – Credit notes and IMS

104

Query

I issued credit notes to a customer and reported them in GSTR-1. The customer rejected them on IMS, and my output tax went back up. What does section 34 mean for me and for the customer, and what can I do now?



Section 34(2) – proviso

*“Provided that no reduction in output tax liability of the supplier shall be permitted, if the—
(i) input tax credit as is attributable to such a credit note, if availed, has not been reversed by the recipient, where such recipient is a registered person; or (ii) incidence of tax on such supply has been passed on to any other person, in other cases.”*

- Supplier – no reduction until the recipient reverses; tax stays payable
- Recipient – keeps ITC it should have reversed; exposed if the credit note is genuine
- Time limit for the credit note – 30 November after the year of supply [s.34(2)]



GSTN Advisory dt. 19.06.2025 – Q4

“At first instant the supplier’s liability will be added back in the open GSTR-3B return, because of original credit note rejection by the recipient. However, as the supplier furnishes the same credit note in GSTR-1A of same tax period or in amendment table of GSTR-1/IFF in any subsequent period, supplier’s liability for this amendment will get reduced again ...”

- Re-report the same credit note in GSTR-1A / amendment table; buyer accepts it on IMS
- Since October 2025 – buyer may keep a credit note **pending** for one tax period and modify the reversal amount (Advisory 17.10.2025)
- If the buyer disputes the discount itself – commercial issue; settle before the 30 November cut-off



Query 29 – Supplier flagged non-genuine

107

Query

I trade in steel. I received a show cause notice disallowing ITC on purchases from a supplier who was later flagged as a non-genuine taxpayer. I have tax invoices, e-way bills and transport records, I paid through the bank, and the invoices were in my GSTR-2B. Is it fair to deny me credit for tax I already paid, and how should I reply?



Building the reply

108

Section 16(2) condition	Evidence to attach
(a) tax invoice	Invoices; supplier registration valid on invoice date
(aa) in GSTR-2B	2B extract for each month
(b) goods received	E-way bills, LR / freight, weighbridge slips, stock and consumption records
(c) tax paid by supplier	Bank payments; ask for proceedings against supplier

- Section 16(2)(c) is valid (SC, July 2026) – contest how it is applied, not the provision
- ‘Flagged’ status, retrospective cancellation – “starting point for inquiry”, not a ground by itself [Shaurya, para 103(i)]



Points of law for the reply

109

- Ask for the material relied on – alert, inspection report, statements; seek cross-examination [para 103(iv), (xi)]
- Where section 74 / 74A is invoked – notice must state foundational facts linking **you** to the fraud [para 103(v)]
- Seller's fraud is not your fraud without a direct link [para 103(iii), (v)]
- Department must record recovery action against the supplier; same tax not collected twice [para 103(viii)]
- Suncraft – proceed against the supplier first; buyer only in exceptional cases



Query 30 – Blocked credits after the 57th Council

110

Query

Messages on professional WhatsApp groups say section 17(5) has been ‘removed’ after the 57th GST Council meeting. Can I now claim ITC on everything that was blocked?



What the Council actually recommended

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Press Release dt. 08.10.2026 – para 9

“The Council recommended amendment in section 17(5) of the CGST Act, 2017 to remove the restrictions on availment of ITC inter-alia on the supplies of outdoor catering, health and life insurance, telecommunication towers, pipelines laid outside factory premises, free samples, goods destroyed or written off on expiry of shelf life as required by law.”

- Section 17(5) is **not removed** – only specific items are proposed for relief
- A recommendation is not law – needs a Finance Act amendment and a date of effect; not part of the notifications of 26/27.10.2026
- Motor vehicles, food and beverages (other than same-line), construction, personal consumption – remain blocked



Query 31 – Supplier did not file GSTR-3B

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Query

In FY 2025-26 we took ITC on invoices of suppliers who filed GSTR-1 but never filed GSTR-3B. By when must we reverse it and in which table? What if we reverse it in the October 2026 GSTR-3B? If the supplier files later, how do we take it back, and how do we show all this in GSTR-9 for 2025-26 and 2026-27?



Rule 37A – dates and tables

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Rule 37A

“... has not been furnished by such supplier till the 30th day of September following the end of financial year in which the input tax credit ... has been availed, the said amount of input tax credit shall be reversed by the said registered person, while furnishing a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year:”

FY 2025-26 ITC	Answer
Supplier's GSTR-3B not filed by	30.09.2026
Reverse in GSTR-3B filed by	30.11.2026 – Table 4(B)(2) (reclaimable)
Reversed in October 2026 GSTR-3B	In time if filed by 30.11.2026 – no interest
Not reversed by 30.11.2026	Payable with interest u/s 50 (first proviso)
Supplier files later	Re-avail in Table 4(A)(5), show in 4(D)(1) (second proviso)



Reporting in GSTR-9 – ₹20,000 illustration

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Table	GSTR-9 for 2025-26	GSTR-9 for 2026-27
6B – ITC availed (first time)	₹20,000	—
7A1 – reversed under rule 37A	Nil	₹20,000
12 – reversed in next year’s return up to 30 November	₹20,000	—
6A1 – previous year’s ITC availed this year	—	Nil
6H – ITC reclaimed	—	₹20,000

Instruction for 6A1 – credit reversed under rule 37 or 37A and reclaimed “shall not be reported here as this will be reported in the Table 6H below”



Query 32 – Imports – ASMT-10

115

Query

I am an importer. I received an ASMT-10 under section 61 saying the IGST credit on imports in my GSTR-3B is more than what GSTR-2B shows. I have valid Bills of Entry and paid the duty. Why does this happen, and how should I reply in ASMT-11?



Bill of Entry is the document – not GSTR-2B

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Rule 36(1)(d)

“a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;”

- Section 16(2)(aa) and rule 36(4) speak of the supplier’s **invoice or debit note** furnished in GSTR-1 – not a Bill of Entry
- Biocon (Kar HC, 30.04.2026) – Bill of Entry is the relevant document; demand of ₹20 crore on 2A mismatch for imports quashed

Usual causes – BoE in another GSTIN / PAN; port not linked; BoE amended or of a later period; import shown in 4(A)(5) instead of 4(A)(1); SEZ purchases



Section 61(2)

“In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.”

- BoE-wise reconciliation: BoE number, date, port, IGST paid, period of claim, 2B period
- Copies of BoE, ICEGATE payment proof, and BoE's GSTIN field
- Explain timing and reporting differences; correct in GSTR-9 Table 6E where needed
- Reply within 30 days; ask for ASMT-12 closure



Query 33 – Supplies exempted from 22.09.2025

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Query

Firm X makes only one product, which became fully exempt from 22.09.2025. Firm Y makes taxable products and also a product that became exempt from that date. On 21.09.2025 both held ITC on stock, semi-finished and finished goods, and capital goods. (1) Must they pay back ITC under section 18(4)? (2) What happens to the balance left in the ledger? (3) Is rule 42 reversal needed after 22.09.2025? (4) Is credit already used before that date affected?



Section 18(4) – when all supplies become exempt

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Section 18(4)

“Where any registered person who has availed of input tax credit ... where the goods or services or both supplied by him become wholly exempt, he shall pay an amount ... equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date ... of such exemption: Provided that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.”

- Firm X – pays ITC on stock (invoice-wise) and capital goods (remaining life ÷ 60) as on 21.09.2025; files ITC-03 [rule 44(4)]; balance lapses



Firm Y – partly exempt

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56th Council FAQ 9

“The ITC can be utilized to discharge outward liability for supplies of goods/services or both made till 21st September, 2025. However, for supplies made on or after i.e 22nd September, 2025 when the rate change is effected, ITC will have to be reversed as per provisions of CGST Act, 2017.”

- Q1 – Section 18(4) speaks of supplies that “become wholly exempt”; Y still makes taxable supplies – reversal is through section 17(2)
- Q2 – Y’s ledger balance does not lapse; usable for taxable supplies [FAQ 8, section 49(4)]
- Q3 – Yes: common inputs and capital goods used after 22.09.2025 – rules 42 and 43 each month
- Q4 – Credit validly taken and used before 22.09.2025 stays; stock used only for the exempt product – credit reversed when used



Thank You

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