INPUT TAX CREDIT
UNDER PROPOSED REVISED GST LAW

Introduction

'Tax on tax' popularly known as 'tax cascading' had been one of the major problems in present indirect taxation regime in India. It not only increases the cost of a product but also creates a disadvantage for Indian manufacturers and traders, not only in the national market but also internationally.

Through the introduction of CENVAT credit mechanism, problem of tax cascading has been resolved only partially. However, due to certain restrictions in the CENVAT scheme, Indian indirect tax structure has been unable to overcome the problem of 'tax on tax' completely.

Tax cascading arises in a situation where the taxes paid at any previous stage of the supply chain are taxed at the next stage, since they are included in the cost. This gives rise to a situation of 'tax on tax'.

Reasons for tax cascading are:

i. Non-availability of cross credits between excise duty/ service tax and value added tax ('VAT') or vice-versa.
ii. Non-creditable nature of Central Sales Tax ('CST') and Entry tax in some states.
iii. No credit in respect of Basic Customs Duty ('BCD') levied under Customs Act, 1962.
iv. No credit of Swachh Bharat Cess to both manufacturers and service providers and that of Krishi Kalyan Cess to manufacturers.

With this background, the importance of input credit should be examined in detail. In this article, an attempt has been made to highlight the Input Tax Credit ('ITC') provisions contained in Revised Model GST law ('MGL').

Chapter V of the MGL provides for detailed provisions, on eligible credit, conditions and/ or restrictions for the availment thereof, manner of utilization of availed credit, input credits in case of job work, as well as provision relating Input Service Distributor ('ISD').

ITC

ITC under MGL, means Integrated GST ('IGST') including that on import of goods, Central GST ('CGST') and State GST ('SGST') charged on any supply of goods or services to a taxable person and includes tax payable under reverse charge mechanism of taxation but excludes tax paid under composition scheme.

Credit eligible to a taxable person on supply of goods and/ or services used in the course or furtherance of business shall be credited to electronic credit ledger of such taxable person and shall be utilized for the payment of output tax. However, ITC in respect of pipeline and telecommunication towers fixed to earth by foundation or structural support shall be allowed to be taken in installments.

Conditions for entitlement of ITC

1. Tax invoice, debit note or any other taxpaying document should be available
2. Goods and/ or services should have been received by the taxable person, or by another person from the supplier on the direction of the taxable person
3. Tax charged on invoice in respect of supply should have been paid to the Government either by utilizing the input credit admissible in respect of such supply or in cash and a valid return should have been furnished by such person
4. Credit should be availed within the time allowed.

Reversal of ITC

The recipient of service has to pay within 3 months from the date of issue of invoice, by the supplier, or else the ITC entitlement will be removed.

Time limit for availment of ITC

ITC can be availed before the filing of the Annual Return or before filing the monthly return for September of the following year, whichever is earlier.

Restrictions on availment of ITC

1. Input credit on goods and/ or services shall not be admissible to the extent such goods and/ or services are used for personal purposes.
2. Where goods and/ or services are used for effecting both taxable including zero rated supplies and exempted supplies, input credit shall be restricted to the extent as attributable to the taxable supplies. Supplies on which tax is payable under reverse charge, shall be considered as exempt supplies for this purpose.
3. A banking company or a financial institution including a NBFC shall have an option to avail on monthly basis, 50% of eligible input tax credit on input, capital goods and input services in that month.
4. Input tax credit shall not be available in respect of :

Motor vehicles and other conveyances	Supply of goods and services	Works contract services	Goods or services received for construction of	Others
Except when used: i) For making following taxable supplies a) further supply of such motor vehicles and other conveyances b) Transportation of passangers c) Imparting training on * Driving * Flying * Navigating ii) Transportation of goods	i) Food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery <u>except</u> whe used in making outward taxable supply for same category of goods or services ii) Membership of club, health and fitness centre iii) Rent a cab, life & health insurance except when provided to emplyees under an obligation as notified by the Government iv) Travel benefits to employees on vacations	When supplied for construction of immovable property other than plant and machinery **<u>Except</u>** Where it is an input service for further supply of works contract service	Immovable property on his own account **<u>other</u>** than plant and machinery Even when used in course or furtherance of business	i) Goods and/ or services received from a composition supplier ii) goods and/or services used for personal iii) goods lost, stolen, destroyed, written off or disposed off by way of gifts or free samples

Availability of credit in special situations

Situation 1	Situation 2	Situation 3	Situation 4
Person becoming liable for registration applies for resigtration within 30 days from the date when such liability arises and granted such registration	Person opting for voluntary registration, though not liable for such registration	Person opting to pay tax under normal scheme i.e taking an exit from composition scheme	Person becoming liable to pay tax under GST due to his supplies becoming taxable which were earlier exempt
Credit entitlement To be entitled to input tax credit in respect of inputs held in stock, inputs contained in semi-finished goods or finished goods held in stock On the date immediately preceding the date on which liability to pay tax under the Act arises	**Credit entitlement** To be entitled to input tax credit in respect of inputs held in stock, inputs contained in semi-finished goods or finished goods held in stock On The date immediately preceding the date on which registration to such person is granted	**Credit entitlement** To be entitled to input tax credit in respect of inputs held in stock, inputs contained in semi-finished goods or finished goods held in stock and **on capital goods** On The date immediately preceding the date on which liability to pay tax under normal scheme arises	**Credit entitlement** To be entitled to input tax credit in respect of inputs held in stock, inputs contained in semi-finished goods or finished goods held in stock and **on capital goods used exclusively for such exmept supplies** On The date immediately preceding the date on which such supply becomes taxable

Notes:

1. Credit in respect of capital goods shall be reduced by a percentage as may be specified
2. Credit in respect of above situations shall not be admissible after the expiry of one year from the date of issue of invoice in respect of supply of goods and/ or services as the case may be

Input tax credit in respect of inputs sent for job work

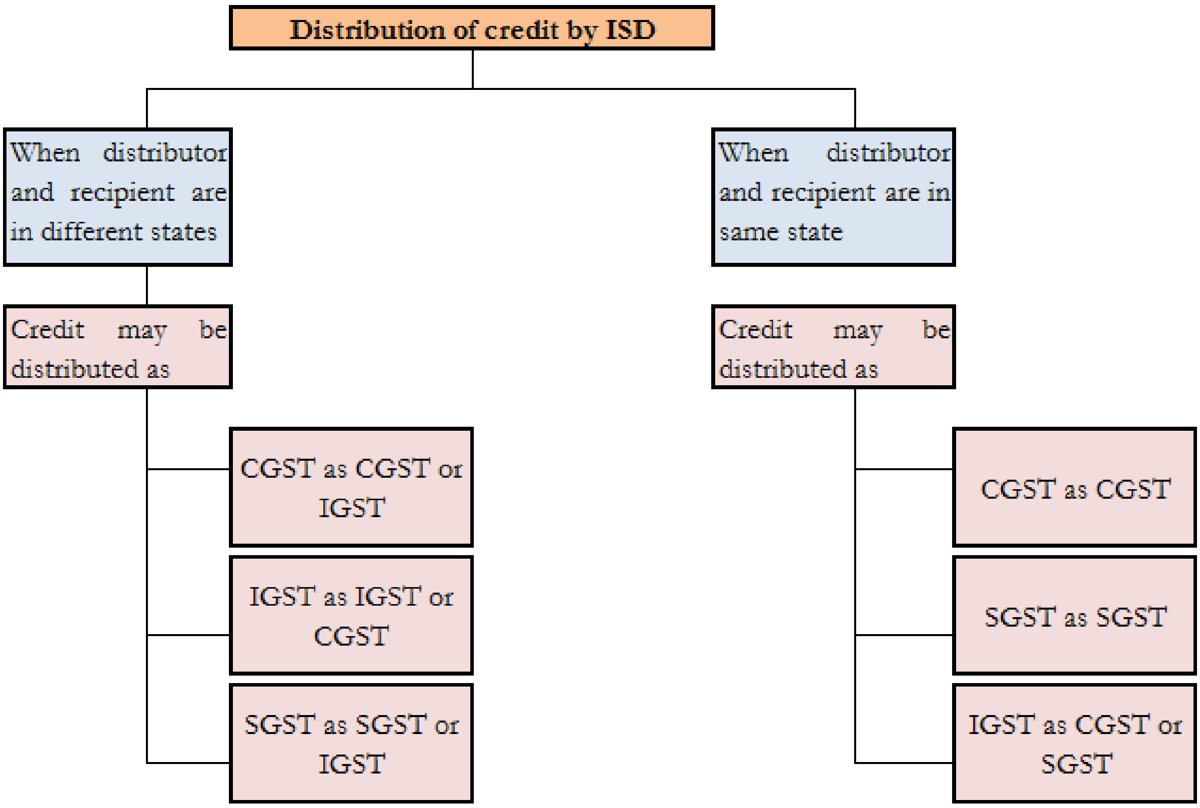
Section 20 deals with availment of credit on inputs sent for job work by the principal or such inputs being supplied to the job-worker directly without these goods being brought into the premises of the principal.

Where inputs, sent to job-worker for job-work are not received back by the principal after the completion of job-work, within a period of one year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to job-worker on the day when such inputs were sent.

However, in case of capital goods sent to job worker, the period of one year as above, shall be substituted with three years. Further, the above time limit shall not apply in respect of moulds and dies, jigs and fixtures or tools sent out to job-worker for job-work.

Distribution of input credit by an Input Service Distributor ('ISD')

The credit of Input received by an Input Service Distributor is allowed to be distributed in the following manner:



Credit distributed, in contravention of the provisions of the law shall be recoverable from the recipient along with applicable interest and penalty.

Issues to be addressed in Model GST law

1. ITC shall be allowed to a taxable person only if goods and/ or services are used for making outward supplies in the course or furtherance of business. Establishing nexus of usage of goods and/ or services had always been a subject matter of litigation.
2. Input credit in respect of input held in stock, inputs contained in semi-finished goods or finished goods shall be allowed. However, there is no mention about the credit of capital goods in certain situations.
3. ITC is not permissible in certain situations. This will defeat the basic purpose of GST i.e. eliminating cascading effect of tax.
4. Limited time period is being provided to avail the credit in respect of a particular invoice which will lapse if not availed within the time allowed.
5. Credit available to the recipient is dependent upon the payment of due taxes and filing of required returns by the supplier, which would call for undue hardship on the recipient.
6. Good lost, stolen, destroyed, written off or disposed of by way of free samples, will not be eligible for credit, though any of these can happen in due course of business.

Conclusion

The very purpose of introducing GST is to eliminate cascading effect of taxes which have a bearing on the common man, in terms of increased cost of consumption. In contrast to the present indirect tax regime, inputs and input services have been given a vast coverage, to ensure seamless credit except in certain situations wherein the input credit shall not be admissible, which does not gel with the very idea of GST and hence, cascading of taxes may still remain as far as those situations are concerned.

Hence, efforts should be made to allow seamless credit of ITC at every stage in the process of consumption. .

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