



TRANSITIONAL PROVISIONS UNDER GST

Seminar on Direct & Indirect Tax at Gandhidham
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Para 1: Situations wherein Input Tax credit shall be available under transitional Provisions under central Laws:-

(a) Registered Person who was registered under existing law

- CENVAT shall be available on as per last return filed under existing Law [140(1)]
- Unavailed CENVAT shall be available on capital goods [140(2)]

(b) Registered Person who was not registered under existing central Law or

Providing Work contract service or

A first stage dealer or

Second stage dealer or

Registered importer or

Depot of manufacturer [Sec.140(3)]

Para 1: Situations wherein Input Tax credit shall be available under transitional Provisions under central Laws:-

(c) Registered Person who was engaged in taxable as well as exempt goods/services [140(4)]:-

Para 2: Availing of CENVAT credit by Registered Person based on last Return [Section 140(1)]:-

❖ Para 2.1: Applicable to

- (a) Registered person under GST
- (b) who has not opted for composition scheme under sec. 10 of CGST Act, and
- (c) Who was registered under existing law (i.e. Service tax Law or Excise Law)

❖ Para 2.2 : Available input Tax Credit

- Amount of CENVAT Credit carried forward in the return ending on 30th June 2017 shall be available

❖ Para 2.3: Conditions:-

In following circumstances, CENVAT shall not be allowed

Para 2: Availing of CENVAT credit by Registered Person based on last Return [Section 140(1)]:-

- (a) where the said amount of credit is not admissible as input tax credit under this Act; or
- (b) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or
- (c) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government.

❖ Para 2.4: Procedural Requirements:-

- File Form “GST TRAN-1” within 90 days from appointed day (i.e. by 28th September 2017)

❖ Para 2.5: Relevant Point no. 5(a), (b) & (c) of Form “GST TRAN-1”

Para 3: Availing of Unavailed CENVAT credit of Capital goods by Registered Person:-

❖ Para 3.1: Applicable to

- (a) Registered person under GST
- (b) who has not opted for composition scheme under sec. 10 of CGST Act, and
- (c) Who was registered under existing law (i.e. Service tax Law or Excise Law)

❖ Para 3.2: Available Input Tax Credit:-

- Unavailed CENVAT credit on capital goods, which was not availed in return filed under existing law, shall be allowed.

❖ Para 3.3: Conditions:-

Unavailed CENVAT Credit on capital goods shall not be allowed unless

Para 3: Availing of Unavailed CENVAT credit of Capital goods by Registered Person:-

- (a) Said credit was admissible under existing law, and
- (b) It is also admissible as input tax credit under CGST Act

❖ Para 3.4: Procedural Requirements:-

- File Form “GST TRAN-1” within 90 days from appointed day (i.e. by 28th September 2017)

❖ Para 3.5: Relevant Point no. 6(a) of Form “GST TRAN-1”

Para 4: Availing of Credit of “eligible duties” by other persons who cannot carry forward the CENVAT Credit [Section 140(3)]:-

❖ Para 4.1: Applicable to

- Para 4.1-1 Applicable to registered person for Central Laws (i.e. Service Tax & Excise Act):-
 - (a) Who was not liable to be registered under existing Law, or
 - (b) Who was engaged in the manufacturing of exempted goods or provision of exempted services, or
 - (c) Who was providing work contact service and was availing of the benefit of notification No.26/2012-Service tax; Dated-20th June 2012
 - (d) First stage dealer or second stage dealer, or
 - (e) Registered Importer, or
 - (f) Depot of manufacturer

Para 4: Availing of Credit of “eligible duties” by other persons who cannot carry forward the CENVAT Credit [Section 140(3)]:-

- Para 4.1-2 Applicable to registered person for VAT Law (i.e. Gujarat Value Added Tax):-
 - (a) who was not liable to be registered under the existing law, or
 - (b) who was engaged in the sale of exempted goods or tax free goods, by whatever name called, or
 - (c) goods which have suffered tax at the first point of their sale in the State and the subsequent sales of which are not subject to tax in the State under the existing law but which are liable to tax under this Act, or
 - (d) where the person was entitled to the credit of input tax at the time of sale of goods, if any, shall be entitled to take, in his electronic credit ledger

Para 4: Availing of Credit of “eligible duties” by other persons who cannot carry forward the CENVAT Credit [Section 140(3)]:-

❖ Para 4.2: Available Input Tax Credit :-

(a) If Invoice or any other document is available evidencing payment of duty on inputs then, Credit of “eligible duties” in respect of following Inputs held on appointed day (i.e. 1st July 2017) shall be allowed

i) Inputs held in stock,

ii) Inputs contained semi-finished goods or finished goods

(b) If Invoice or any other document is not available evidencing payment of duty on inputs and registered person is manufacturer or supplier of service then no Input Tax credit shall be allowed.

(c) If Invoice or any other document is not available evidencing payment of duty on inputs and registered person is other than manufacturer or supplier of service then credit of “eligible duties” shall be allowed as per Para 5 [Rule 117(4)] :-

Para 4: Availing of Credit of “eligible duties” by other persons who cannot carry forward the CENVAT Credit [Section 140(3)]:-

❖ Para 4.3: Conditions:-

- (a) such inputs or goods are used or intended to be used for making “*taxable supplies*” under this Act;
- (b) the said registered person is eligible for input tax credit on such inputs under this Act;
- (c) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;
- (d) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and
- (e) the supplier of services is not eligible for any abatement under this Act

Para 4: Availing of Credit of “eligible duties” by other persons who cannot carry forward the CENVAT Credit [Section 140(3)]:-

❖ Para 4.4: Procedural Requirements:-

- File Form “GST TRAN-1” within 90 days from appointed day (i.e. by 28th September 2017)

❖ Para 4.5: Relevant Point no. 7(a) of Form “GST TRAN-1”

❖ Para 4.6: Definitions:-

(a) Meaning “eligible duties” [Explanation 1 to Sec.140]:-

Explanation 1.—For the purposes of sub-sections (3), (4) and (6), the expression “eligible duties” means—

- the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957(58 of 1957);

Para 4: Availing of Credit of “eligible duties” by other persons who cannot carry forward the CENVAT Credit [Section 140(3)]:-

- the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);
- the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);
- the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978);
- the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);
- the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986); and
- the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001 (14 of 2001),
in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

Para 4: Availing of Credit of “eligible duties” by other persons who cannot carry forward the CENVAT Credit [Section 140(3)]:-

(b) Meaning of “Taxable supply” [Section 2(108) of CGST Act]

- “taxable supply” means a supply of goods or services or both which is leviable to tax under this Act;.

❖ Para 4.7: Observations:-

(a) Credit on capital goods available in this case?- NO, As provisions are clear that Credit shall be available only on Inputs held in stock, or Inputs contained semi-finished goods or finished goods

(b) How to identify the qty of inputs contained semi-finished goods or finished goods?- Take standard input output ratio based on some certificate.

(c) In Work Contract, abatement is available?

Para 5: Availing of Credit of “eligible duties” by unregistered person under existing law and others [Section 140(3)r.w.r 117(4)]:-

❖ Para 5.1: Applicable to:-

- Para 5.1-1 Applicable to registered person for Central Laws (i.e. Service Tax & Excise Act):-
 - Who was not liable to be registered under existing Law,

- Para 5.1-2 Applicable to registered person for VAT Law (i.e. Gujarat Value Added Tax):-
 - Goods which have suffered tax at the first point of their sale in the State and the subsequent sales of which are not subject to tax in the State under the existing law but which are liable to tax under this Act,

Para 5: Availing of Credit of “eligible duties” by unregistered person under existing law and others [Section 140(3)r.w.r 117(4)]:-

❖ **Para 5.2: Available Credit of “eligible duties” when “Invoice containing Tax details” is not available:-**

- If Invoice or any other document is not available evidencing payment of duty on inputs and registered person is other than manufacturer or supplier of service then Credit of “eligible Duties” shall be allowed as under [Rule 117(4)] :-

Type of Supply	Applicable Tax	Rate of Total Tax for intra state	Input Tax allowed under Central Law @	Input Tax allowed under SGST Law @
Intra-State Supply	CGST/SGST	$\geq 18\%$	60% of CGST	60% of SGST
Intra-State Supply	CGST/SGST	< 18	40% of CGST	40% of SGST
Inter-State Supply	IGST	$\geq 18\%$	30% of IGST	30% of IGST
Inter-State Supply	IGST	< 18	20% of IGST	20% of IGST

Para 5: Availing of Credit of “eligible duties” by unregistered person under existing law and others [Section 140(3)r.w.r 117(4)]:-

➤ Note- Benefit of above provision is available from July 2017 to Dec 2017 only (i.e. for six tax periods) and Input Tax shall be available on sale of such goods only.

❖ Para 5.3: Conditions:-

- (a) Such goods were leviable to Central Excise or additional duty of custom u/s. 3(1) (only for central law)
- (b) Such goods were not unconditionally exempt or not charged to NIL rate
- (c) Document for procurement of such goods is available.
- (d) Such goods are stored that it can be easily identified
- (e) Credit shall be granted only after filling of Form “GST TRAN-2”
- (f) Conditions as mentioned at Para 4

Para 5: Availing of Credit of “eligible duties” by unregistered person under existing law and others [Section 140(3)r.w.r 117(4)]:-

❖ Para 5.4: Procedural Requirements:-

(a) File Form “GST TRAN-2” for each of the six period from appointed day.

i.e. File Form “GST TRAN-2” for each six months from 1st July 2017 (i.e. From July 2017 to Dec 2017)

(b) No time limit is mentioned for filling Form “GST TRAN-2”

❖ Para 5.5: Relevant Point no. 7(a) of Form “GST TRAN-1”

Para 6 Availing credit of Input & Input services received after Appointed Day [Sec. 140(5)]:-

❖ Para 6.1: Applicable to registered person

- (a) who receives duty paid inputs or tax paid Input services under existing law
- (b) But received after appointed day

❖ Para 6.2: “Eligible duties & Taxes” can be availed.

➤ Note- No such provision for Capital goods.

❖ Para 6.3: Observation:-

- (a) If Capital goods are received after appointed day on which tax is paid under existing law then person registered under existing law can avail Unavailed credit

Para 6 Availing credit of Input & Input services received after Appointed Day [Sec. 140(5)]:-

on capital goods as per section 140(2) of the CGST act.

(b) But, in same case, If Capital goods are received after appointed day on which tax is paid under existing law by an unregistered person under existing law then such person cannot availed Unavailed credit on capital goods as there is no such empowering provision under chapter “Transitional Provision”

Para 7: Availing credit by registered person who was under composition scheme under existing laws [Sec. 140(6)]:-

❖ Para 7.1: Applicable to registered person,

- who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law

❖ Para 7.2: Available credit:-

- Entitled to credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day

❖ Para 7.3: Conditions:-

- (a) such inputs or goods are used or intended to be used for making taxable supplies under this Act;

Para 7: Availing credit by registered person who was under composition scheme under existing laws [Sec. 140(6)]:-

- (b) the said registered person is not paying tax under section 10;
- (c) the said registered person is eligible for input tax credit on such inputs under this Act;
- (d) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of inputs; and
- (e) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

THANK YOU

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