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Comparison of Various Definitions for Input Tax Credit under GST and Earlier Law



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Introduction:

This article briefs about the comparison of certain definitions of capital goods, input, input service and input service distributor in Pre-GST regime vis-a-vis Post-GST regime. In Pre-GST regime these keywords are defined in Cenvat Credit Rules, 2004 ('the CCR') whereas in Post-GST regime same are provided within the Central Goods and Services Tax, 2017 ('the CGST Act') itself. These definitions are quite important to determine the taxability (such as applicable rate on transaction) and eligibility of credit. However, due to vastness of interpretation, the authors limit the scope of this article only up to comparison.

Definitions under the CGST Act:

Section 2(19):

"*capital goods*" means 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;

Section 2(59):

"*input*" means any goods ***other than capital goods used or intended to be used*** by a supplier in the course or furtherance of business;

Section 2(60):

"*input service*" means ***any service used or intended to be used*** by a supplier in the course or furtherance of business;

Section 2 (61):

"Input Service Distributor" means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 **towards the receipt of input services** and issues a prescribed document for the purposes of *distributing the credit of central tax, State tax, integrated tax or Union territory tax paid* on the said services to a supplier of taxable goods or services or both *having the same Permanent Account Number as that of the said office*;

Definitions under the CCR:

Rule 2 (a):

"capital goods" means:-

(A) the following goods, namely:-

- (i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 and wagons of sub-heading 860692 of the First Schedule to the Excise Tariff Act;
- (ii) pollution control equipment;
- (iii) components, spares and accessories of the goods specified at (i) and (ii);
- (iv) moulds and dies, jigs and fixtures;
- (v) refractories and refractory materials;
- (vi) tubes and pipes and fittings thereof;
- (vii) storage tank;
- (viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis, but including dumpers and tippers

used-

- (1) in the **factory** of the manufacturer of the final products; or
- (1A) **outside the factory** of the manufacturer of the final products for generation of electricity or for pumping of water **for captive use within the factory**;
- (2) **for providing output service** ;
 - (B) motor vehicle designed **for transportation of goods** including their chassis registered in the name of the service provider, **when used for-**
 - (i) **providing an output service** of renting of such motor vehicle; or
 - (ii) **transportation** of inputs and capital goods used for providing an output service;
 - or
 - (iii) providing an output service of **courier agency**
 - (C) motor vehicle designed **to carry passengers** including their chassis, registered in the name of the provider of service, when **used for providing output service of-**
 - (i) transportation of passengers; or
 - (ii) renting of such motor vehicle; or
 - (iii) imparting motor driving skills
 - (D) components, spares and accessories of motor vehicles **which are capital goods** for the assessee.

Rule 2(k):

"input" means—

- (i) all goods **used in the factory** by the manufacturer of the final product; or
- (ii) any goods including accessories, **cleared along** with the final product, the value of which is *included* in the value of the final product and goods used for *providing free warranty* for final products; or
- (iii) all goods used for **generation of electricity** or steam or pumping of water for captive use; or
- (iv) all **goods used for** providing any output service; or;
- (v) all capital goods which have a *value up to ten thousand rupees per piece*

but excludes-

- (A) light diesel oil, high speed diesel oil or motor spirit, commonly known **as petrol**;
- (B) any goods **used for** –
 - (a) construction or execution of works contract of **a building or a civil structure** or a part thereof; or
 - (b) laying of foundation or making of structures for support of capital goods,
 Except for the provision of service portion in the execution of a works contract or construction service as listed under clause (b) of section 66E of the Act;
- (C) capital goods, **except when**,-
 - (i) **used as parts or components** in the manufacture of a final product; or
 - (ii) the value of such capital goods is up to ten thousand rupees per piece;
- (D) motor vehicles;
- (E) any goods, such as food items, goods used in a guesthouse, residential colony, club or a recreation facility and clinical establishment, when such goods are used primarily for **personal use or consumption** of any employee; and
- (F) any goods which have **no relationship** whatsoever with the manufacture of a final product.

Explanation: – For the purpose of this clause, "free warranty" means a warranty provided by the manufacturer, the value of which is included in the price of the final product and is not charged separately from the customer;

Rule 2(l):

"input service" means,-

- (i) services provided or agreed to be *provided by* a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India where service tax is paid by the manufacturer or the provider of output service being importer of goods as the person liable for paying service tax for the said taxable services and the said imported goods are his inputs or capital goods; or
- (ii) any **service used** by a provider of output service **for providing an output service**; or
- (iii) any service used by a manufacturer, whether **directly or indirectly, in or in relation** to the manufacture of final products and clearance of final products up to the place of removal,

and includes

services used in relation to

- modernisation, renovation or repairs of a factory,
- premises of provider of output service or an office relating to such factory or premises,
- advertisement or sales promotion, market research,
- storage up to the place of removal, procurement of inputs,
- accounting, auditing, financing, recruitment and quality control,
- coaching and training, computer networking,
- credit rating, share registry, security, business exhibition, legal services,
- inward transportation of inputs or capital goods and outward transportation up to the place of removal;

but excludes,-

- (A) **service portion in the execution** of a works contract and construction services including service listed under clause (b) of section 66E of the Finance Act (hereinafter referred as specified services) in so far as they are used for -
- (a) **construction or execution** of works contract of a building or a civil structure or a part thereof; or
 - (b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or
- (B) services provided by way of **renting of a motor vehicle**, in so far as they relate to a motor vehicle which is not a capital goods; or
- (BA) service of **general insurance business, servicing, repair and maintenance**, in so far as they relate to a motor vehicle which is not a capital goods, except when used by -
- (a) a manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person ; or
 - (b) an insurance company in respect of a motor vehicle insured or reinsured by such person; or
- (C) such as those provided in relation to
- outdoor catering, beauty treatment,
 - health services, cosmetic and plastic surgery, membership of a club, health and fitness centre,
 - life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession,
 - when such services are used primarily for personal use or consumption of any employee;"

Explanation:- For the purpose of this clause, sales promotion includes services by way of sale of dutiable goods on commission basis.

Rule 2 (m):

"input service distributor" means an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under rule 4A of the Service Tax Rules, 1994 **towards purchases of input services** and issues invoice, bill or, as the case may be, challan *for the purposes of*

distributing the credit of service tax paid on the said services to such **manufacturer or producer or provider or an outsourced manufacturing unit**, as the case may be;

A brief comparison of above definitions:

Capital goods under the CGST Act means goods, the value of which is capitalised in the books of account and used in the course or furtherance of business but capital goods under the CCR, 2004 means four categories of goods which are used in the factory or outside the factory or for providing specific services. Here under GST, meaning attached to capital goods is much wider than erstwhile regime. Further, input under CGST Act means any goods other than capital goods whereas input under CCR is defined in detailed manner by providing the specific exclusions which goods are not considered as input. Moving forward input service under CGST Act means any service used or intended to be used in the course or furtherance of business whereas input service under CCR means any service used by manufacturer in or in relation to the manufacture of final products or for providing any output service. Input service in CCR itself has excluded those services on which credit was not available on the other hand under GST that is designated under Sec. 17(5) of CGST Act. The definition of Input service distributor ('ISD') is almost similar to the one provided in the CCR. The difference being that in CCR, distribution of input service credit has been allowed to an outsourced manufacturing unit also, while the ISD in CGST Act is to distribute credit only to the supplier having same PAN, that means the credit can be distributed only to the units of the same entity. Under GST, these definitions are wider and inclusive and whatever was required to be kept outside the credit chain was mentioned in Section 17 of the CGST Act.

Other important definitions need to be analysed under CGST Act, 2017 along with definitions stated above:

- ♦ Section 2 (62) provides **"input tax"** in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—
 - (a) the integrated goods and services tax charged on import of goods;
 - (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
 - (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
 - (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
 - (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,

But does not include the tax paid under the composition levy;

It means the CGST, SGST, IGST charged on any supply of goods or services or both made to a registered person in the course or furtherance of his business and includes such tax payable on reverse charge basis, but excludes tax paid under composition levy.

- ♦ Section 2 (63) provides definition of **"input tax credit"** means the credit of *input tax*;

Conclusion:

There is a drastic change in the definitions provided under the CGST Act vis-a-vis under the CCR. Definitions under CGST Act are providing more clarity and can be interpreted in very simple manner. This is one of the most laudable effort made by the law makers while drafting the CGST Act and to make it simple for taxpayers.

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