

## Transitional Provisions

Q 1. Will CENVAT credit (or VAT credit) carried forward in the last return prior to GST under existing law be available as ITC under GST?

Ans. A registered person, other than a person opting to pay tax under composition scheme, shall be entitled to take credit in his electronic credit ledger the amount of CENVAT (or VAT credit) credit carried forward in the return of the last period before the appointed day, subject to the conditions stated therein. (Section 140(1) of the CGST/SGST Act)

Q 2. What are those conditions?

Ans. The conditions are that: -

(i) the said amount of credit is admissible as input tax credit under this Act;

(ii) the registered person has furnished all the returns required under the existing law (i.e. Central Excise and VAT) for the period of six months immediately preceding the appointed date;

(iii) the said amount of credit does not relate to goods sold under notifications no. ....and claiming refund of VAT paid thereon

Under SGST law there will be one more condition as given below: -

So much of the said credit as is attributable to any claim related to section 3, sub-section (3) of section 5, section 6, section 6A or sub-section (8) of section 8 of

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the Central Sales Tax Act, 1956 that is not substantiated in the manner, and within the period, prescribed in rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 shall not be eligible to be credited to the electronic credit ledger:

However, an amount equivalent to the credit specified above shall be refunded under the existing law when the said claims are substantiated in the manner prescribed in rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957.

Q 3. A registered person, say, purchases capital goods under the existing law (Central Excise) in the June quarter of 2017-18. Though the invoice has been received within 30th June but the capital goods are received on 5th July, 2017 (i.e. in GST regime). Will such a person get full credit of CENVAT in GST regime?

Ans. Yes, he will be entitled to credit in 2017-18 provided such a credit was admissible as CENVAT credit in the existing law and is also admissible as credit in CGST - section 140(2) of the CGST Act.

Q 4. VAT credit was not available on items 'X' & 'Y' as capital goods in the existing law (Central Excise). Since they are covered in GST, can the registered taxable person claim it now?

Ans. He will be entitled to credit only when ITC on such goods are admissible under the existing law and is also admissible in GST. Since credit is not available under the existing law on such goods, the said person cannot claim it in GST – proviso to section 140(2) of the SGST Act.

Q 5. Assuming the registered person has wrongly enjoyed the credit (Refer to Q4) under the existing law, will the recovery be done under the GST Law or the existing law?

Ans. The recovery relating to ITC wrongfully enjoyed, unless recovered under the existing law, will be recovered as arrears of tax under GST.

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Q 6. Give two examples of registered taxable persons who are not liable to be registered under the existing law (Central Excise / VAT) but are required to be registered under GST?

Ans. A manufacturer having a turnover of say Rs 60 lakh who is enjoying SSI exemption under the existing law will have to be registered under GST as the said turnover exceeds the basic threshold of Rs 20 lakh - section 22.

A trader having turnover below the threshold under VAT but, making sales through e-commerce operator will be required to be registered in GST. There will be no threshold for such person(s) – section 24.

Q 7. Will ITC be allowed to a service provider on VAT paid inputs held as stock on the appointed day?

Ans. Yes, he will be entitled to input tax credit on inputs held in stock in accordance with the provisions of section 140(3).

Q 8. A registered person has excess ITC of Rs 10, 000/- in his last VAT return for the period immediately preceding the appointed day. Under GST he opts for composition scheme. Can he carry forward the aforesaid excess ITC to GST?

Ans. The registered person will not be able to carry forward the excess ITC of VAT to GST if he opts for composition scheme – Section 140(1).

Q 9. Sales return under CST (i.e. Central Sales Tax Act) is allowable as deduction from the turnover within six months? If, say, goods are returned in GST regime by a buyer within six months from appointed day, will it become taxable in GST?

Ans. Where tax has been paid under the existing law [CST, in this case] on any goods at the time of sale, not being earlier than six months prior to the appointed day, and such goods are returned by the buyer after the appointed day, the sales return will be

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considered as a supply of the said buyer in GST and tax has to be paid on such supply, if, –

(i) the goods are taxable under the GST Law; and

(ii) the buyer is registered under the GST Law. However, the seller is entitled to refund of such tax

[CST, in this case] paid under the existing law if the aforesaid buyer is an unregistered person under GST and

the goods are returned within 06(six) months (or within the extended period of maximum two months) from the appointed day and the goods are identifiable - Section 142(1).

Q 10. Shall a manufacturer or a job worker become liable to pay tax if the inputs or semi-finished goods sent for job work under the existing law are returned after completion of job work after the appointed day?

Ans. No tax will be payable by the manufacturer or the job worker under the following circumstances: –

(i) Inputs/ semi-finished goods are sent to the job worker in accordance with the provisions of the existing law before the appointed day.

(ii) The job worker returns the same within six months from the appointed day (or within the extended period of maximum two months).

(iii) Both the manufacturer and the job worker declare the details of inputs held in stock by the job worker on the appointed day in the prescribed form.

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The relevant sections are 141(1), 141(2) & 141 (4).

However, if the said inputs/semi- finished goods are not returned within six months (or within the extended period of maximum two months), the input tax credit availed is liable to be recovered.

Q 11. What happens if the job worker does not return the goods within the specified time?

Ans. Tax will be payable by the job worker on the said goods if they are not returned to the place of business of the manufacturer within six months (or within the extended period of maximum two months) from the appointed day – Section 141(1), 141(2)

Q 12. Can a manufacturer transfer have finished goods sent for testing purpose to the premises of any other taxable person?

Ans. Yes, a manufacturer can transfer finished goods sent for testing purpose to the premise of any other registered person on payment of tax in India or without payment of tax for exports within six months (or within the extended period of maximum two months)– section 141(3)

Q 13. If finished goods removed from a factory for carrying out certain processes under existing law are returned on or after the appointed day, whether GST would be payable?

Ans. No tax under GST will be payable if finished goods removed from factory prior to the appointed day to any other premise for carrying out certain processes are returned to the said factory after undergoing tests or any other process within six months (or within the extended period of maximum two months) from the appointed day - section 141(3).

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Q 14. When tax shall become payable in GST on manufactured goods sent to a Job worker for carrying out tests or any other process not amounting to manufacture under the existing law?

Ans. Tax will be payable in GST on manufactured goods sent to a job worker prior to the appointed day for carrying out tests or any process not amounting to manufacture under the existing law if such goods are not returned to the manufacturer within six months (or within the extended period of maximum two months) from the appointed day. Further, the input tax credit enjoyed by the manufacturer will liable to be recovered if the aforesaid goods are not returned within six months from the appointed day. – Section 141(3)

Q 15. Is extension of two months as discussed in section 141 automatic?

Ans. No, it is not automatic. It may be extended by the Commissioner on sufficient cause being shown.

Q 16. What is the time limit for issue of debit/credit note(s) for revision of prices?

Ans. The taxable person may issue the debit/credit note(s) or a supplementary invoice within 30 days of the price revision.

In case where the price is revised downwards the taxable person will be allowed to reduce his tax liability only if the recipient of the invoice or credit note has reduced his ITC corresponding to such reduction of tax liability–section 142(2).

Q 17. What will be the fate of pending refund of tax/interest under the existing law?

Ans. The pending refund claims will be disposed of in accordance with the provisions of the existing law – section 142(3).

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Q 18. What will be fate of any appeal or revision relating to a claim of CENVAT/ITC on VAT which is pending under the existing law? If say, it relates to output liability then?

Ans. Every proceeding of appeal, revision, review or reference relating to a claim for CENVAT/input tax credit or any output tax liability initiated whether before, on or after the appointed day, will be disposed of in accordance with the existing law and any amount of credit of CENVAT/ input tax credit or output tax found admissible for refund will have to be refunded in accordance with the existing law. However, any amount which becomes recoverable will have to be recovered as arrears of tax under the GST Law---Section 142(6)/142(7).

Q 19. If the appellate or revisional order goes in

favour of the assessee, whether refund will be made in GST? What will happen if the decision goes against the assessee?

Ans. The refund will be made in accordance with the provisions of the existing law only. In case any recovery is to be made then, unless recovered under existing law, it will be recovered as an arrear of tax under GST – sections 142(6) & 142(7)

Q 20. How shall the refund arising from revision of return(s) furnished under the existing law be dealt in GST?

Ans. Any amount found to be refundable as a consequence of revision of any return under the existing law after the appointed day will be refunded in cash in accordance with the provisions of the existing law – section 142(9)(b).

Q 21. If any goods or services are supplied in GST, in pursuance of contract entered under existing law, which tax will be payable?

Ans. GST will be payable on such supplies– section 142(10) of the CGST Act.

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Q 22. Tax on a particular supply of goods/services is leviable under the existing law. Will GST be also payable if the actual supply is made in GST regime?

Ans. No tax will be payable on such supply of goods/services under GST to the extent the tax is leviable under the existing law – section 142(11).

Q 23. In pursuance of any assessment or adjudication proceedings instituted, after the appointed day, under the existing law, an amount of tax, interest, fine or penalty becomes refundable. Shall such amount be refundable under the GST law?

Ans. No refund of such amount will be made in cash under the existing law – section 142(8)(b) of the CGST Act.

Q 24. If services are received by ISD under the earlier law, can the ITC relating to it be distributed in GST regime?

Ans. Yes, irrespective of whether the invoice(s) relating to such services is received on or after the appointed day – section 140(7) of the CGST Act.

Q 25. Where any goods are sold on which tax was required to be deducted at source under State VAT law and an invoice was also issued before the appointed day, shall deduction of tax at source shall be made under this Act if the payment is made after the appointed day?

Ans. No, in such case no deduction of tax at source shall be made under GST.

Q 26. Goods were sent on approval not earlier than six months before the appointed day but are returned to the seller after 6 months from the appointed day, will tax be payable under GST?

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Ans. Yes, if such goods are liable to tax under GST and the person who has rejected or has not approved the goods, returns it after 6 months (or within the extended period of maximum two months) from the appointed day. In that case tax shall also be payable by the person who has sent the goods on approval basis- section 142(12).

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