



Office of the Commissioner of State Tax  
State Goods and Services Tax Department, Kerala,  
Tax Towers, Karamana, Thiruvananthapuram  
Dated:30/01/2021

### **Trade Circular 1/2021**

Sub:- SGSTDK- Input Tax Credit claimed on ITC Blocked transactions - reg.

Ref:- 1. Section 17(5) of SGST Act 2017 .

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#### **1.Background:**

As you are aware, though the general rule in GST is free flow of input tax credit (ITC), it is not available in respect of certain inward supplies of goods or services as per section 17(5) of the GST Acts. These are commonly known as blocked credits. The statutory provisions are explained below for reference:

As per Section 17 (5) of GST Act, Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of certain transactions. "The major scenarios include the following:

- I. Irregular Claim of ITC on Motor Vehicle (Passenger Vehicle)
- II. Construction Services.
- III. Goods or Services used for Construction of Immovable Property.
- IV. Other scenarios.

#### **I. Irregular Claim of ITC on Passenger Motor Vehicle:**

From 01.07.2017 to 31.01.2019:

- As per Section 17 (5) of SGST Act, "Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(a) *motor vehicles and other conveyances except when they are used—*

- (i) *for making the following taxable supplies, namely:—*

- (A) further supply of such vehicles or conveyances ; or
- (B) transportation of passengers; or
- (C) imparting training on driving, flying, navigating such vehicles or conveyances;
- (ii) for transportation of goods;"
- Thus in simple terms, a Tax Payer who is not engaged in any of the businesses activities mentioned in (a) (i) above and had claimed ITC on Passenger Motor Vehicle is liable to reverse the ITC claimed.

From 01.02.2019:

As per Section 17 (5) of SGST Act, Notwithstanding anything contained in sub-section (1) of section 16 and sub- section (1) of section 18, input tax credit shall not be available in respect of the following, namely:—

(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;

By GST Amendment Act, 2018 , 17(5)(a) sub section was amended allowing Input Tax Credit for Passenger Motor Vehicles having approved seating capacity of more than thirteen persons (including the driver). Thus, blocked ITC on Motor Vehicle is limited to the Passenger Motor Vehicles as discussed above only.

## II. Irregular Claim of ITC on Construction Services:

- As per Section 17 (5) of SGST Act, "Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—
  - (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;
- Thus in simple terms, a Tax Payer who is not engaged in businesses of Construction Service and had claimed ITC on Construction Service (*other than plant and machinery*) is liable to reverse the ITC claimed.

## III. Irregular claim of ITC on Goods or Services used for Construction of Immovable Property

- As per Section 17 (5) of SGST Act, "Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following, namely:—
  - (d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including

*when such goods or services or both are used in the course or furtherance of business.*

Explanation.—For the purposes of clauses (c) and (d), the expression —construction includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;

- Also, as per Section 17(5), credit of goods and services used in construction of immovable property (buildings, houses etc.) are available only if there is a further supply of works contract services. That is, if these goods and services are used for construction of buildings in your own name and not for works contract services, then the credit shall not be availed.

#### IV. Other Scenarios:

(b) (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft, life insurance and health insurance.

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession: (except where it is obligatory for an employer)

(e) goods or services or both on which tax has been paid under section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

(g) goods or services or both used for personal consumption;

(h) goods lost ,stolen, destroyed, written off or disposed of by way of gift or free samples; and

(i) any tax paid in accordance with the provisions of sections 74,129 and 130.

(Please refer the SGST Act/CGST Act for detailed provisions)

### **3. Correct Declaration of ITC in Monthly GSTR 3B:**

The detailed procedure to be followed for declaration of ineligible ITC had already been described in Trade Circular No. 6/2020 dated 16.06.2020. The relevant portion is extracted below:

Ineligible credit excluded while reporting ITC in 4(A) must be shown in table 4(D). More specifically, ineligible or blocked credit as per provisions of section 17 (5) shall be reported in

the Table 4 (D) (1) only. Whereas, Table 4 (D) (2) shall include the ineligible / blocked credit as per section 17 (4) of CGST / SGST Act(s) read with rule 38 thereto. Other ineligible ITC, like ITC wrongly availed in previous period, etc. should also be reported in Table 4 (D) (2).

4.If any assessee has availed blocked credits related to motor vehicles or that related to construction, they are hereby advised to reverse the credit suo motu through DRC-03 in order to avoid further proceedings such as Show Cause Notices demanding tax, imposition of penalty etc.

5. All the trade associations are requested to bring the contents of this notice to the attention of their members in particular and to the trade in general.

**COMMISSIONER**