

## Chapter 20

# Transitional Provisions

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### Statutory provisions

#### **139. Migration of existing Tax Payers**

- (1) *On and from the appointed day, every person registered under any of the existing laws and having a valid Permanent Account Number shall be issued a certificate of registration on provisional basis, subject to such conditions and in such form and manner as may be prescribed, which unless replaced by a final certificate of registration under sub-section (2), shall be liable to be cancelled if the conditions so prescribed are not complied with.*
- (2) *The final certificate of registration shall be granted in such form and manner and subject to such conditions as may be prescribed.*
- (3) *The certificate of registration issued to a person under sub-section (1) shall be deemed to have not been issued, if the said registration is cancelled in pursuance of an application filed by such person that he was not liable to registration under section 22 or section 24.*

### Extract of the CGST Rules, 2017

#### **24. Migration of persons registered under the existing law:**

- (1) (a) *Every person, other than a person deducting tax at source or an Input Service Distributor, registered under an existing law and having a Permanent Account*

*Number issued under the provisions of the Income-tax Act, 1961 (Act 43 of 1961) shall enrol on the common portal by validating his e-mail address and mobile number, either directly or through a Facilitation Centre notified by the Commissioner.*

- (b) *Upon enrolment under clause (a), the said person shall be granted registration on a provisional basis and a certificate of registration in FORM GST REG-25, incorporating the Goods and Services Tax Identification Number therein, shall be made available to him on the common portal:*

*Provided that a taxable person who has been granted multiple registrations under the existing law on the basis of a single Permanent Account Number shall be granted only one provisional registration under the Act:*

- (2) (a) *Every person who has been granted a provisional registration under sub-rule (1) shall submit an application electronically in FORM GST REG-26, duly signed or verified through electronic verification code, along with the information and documents specified in the said application, on the common portal either directly or through a Facilitation Centre notified by the Commissioner.*
- (b) *The information asked for in clause (a) shall be furnished within a period of three months or within such further period as may be extended by the Commissioner in this behalf.*
- (c) *If the information and the particulars furnished in the application are found, by the proper officer, to be correct and complete, a certificate of registration in FORM GST REG-06 shall be made available to the registered person electronically on the common portal.*
- (3) *Where the particulars or information specified in sub-rule (2) have either not been furnished or not found to be correct or complete, the proper officer shall, after serving a notice to show cause in FORM GST REG-27 and after affording the person concerned a reasonable opportunity of being heard, cancel the provisional registration granted under sub-rule (1) and issue an order in FORM GST REG-28:*
- (3A) *Where a certificate of registration has not been made available to the applicant on the common portal within a period of fifteen days from the date of the furnishing of information and particulars referred to in clause (c) of sub-rule (2) and no notice has been issued under sub-rule (3) within the said period, the registration shall be deemed to have been granted and the said certificate of registration, duly signed or verified through electronic verification code, shall be made available to the registered person on the common portal.*

*Provided that the show cause notice issued in FORM GST REG- 27 can be withdrawn by issuing an order in FORM GST REG- 20, if it is found, after affording the person an opportunity of being heard, that no such cause exists for which the notice was issued.*

- (4) Every person registered under any of the existing laws, who is not liable to be registered under the Act may, on or before 31st March, 2018, at his option, submit an application electronically in FORM GST REG-29 at the common portal for the cancellation of registration granted to him and the proper officer shall, after conducting such enquiry as deemed fit, cancel the said registration.

**Related provisions of the Statute**

Section	Description	Remarks
Section 22	Registration	Persons liable for registration
Section 23	Registration	Persons not liable for registration
Section 24	Registration	Compulsory registration in certain cases; irrespective of the threshold limit specified under section 22.
Section 25	Registration	Procedure for registration
Section 28	Amendment of registration	<p>Every registered person shall inform the proper officer of any changes in the information furnished at the time of registration, or furnished subsequently, in the manner and within such period as may be prescribed.</p> <p>The proper officer may, on the basis of information furnished under sub-section (1) or as ascertained by him, approve or reject amendments in the registration particulars in the manner and within such period as may be prescribed:</p> <p>Provided that approval of the proper officer shall not be required in respect of amendment of such particulars as may be prescribed.</p>
Section 29	Cancellation of Registration	The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed.
Section 30	Revocation of cancellation of registration	The registered person whose registration is cancelled by the proper officer, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order.
Rule 3 of CGST Rules, 2017	Intimation for Composition levy	The migrated person may file Form GST CMP-01 or CMP-02 to opt for payment of tax under section 10.

Section	Description	Remarks
Rule 24 of CGST Rules, 2017	Migration of persons registered under the erstwhile law.	Every person registered under the erstwhile indirect tax laws shall be provided with a provisional certificate of registration after enrolling under GST.

### 139.1 Introduction

This transitional provision deals with migration of existing registrants into the GST regime. All existing registrants having a valid Permanent Account Number will be issued provisional registration certificate. After furnishing the required information, a final certificate of registration will be granted. If the information is not furnished, the registration is liable to be cancelled.

### 139.2 Analysis

As part of implementation of GST regime, the existing tax payers / registrants having a valid PAN would be granted provisional registration certificates under the GST law. The details are as follows:

- (i) The existing tax payer, other than a person deducting tax or an Input Service Distributor (ISD), who were registered under various earlier Indirect Tax Laws are liable to be registered under GST Laws with effect from the appointed day, when the relevant sections of CGST Act came in to force. Such taxpayer is required to declare his Permanent Account Number (PAN), mobile number, e-mail address, State or Union territory and shall enroll himself for getting the provisional registration certificate.
- (ii) On successful verification of the PAN, mobile number and e-mail address, an application reference number (ARN) shall be generated and communicated to the applicant on the said mobile number and e-mail address.
- (iii) Upon enrolment, the said person will be granted a provisional registration certificate in Form GST REG-25, incorporating the Provisional ID (GSTIN) and Password, which will be available on the GST common portal. (<https://www.gst.gov.in/>).
- (iv) A person having a single PAN in a State or UT shall be granted only one provisional registration certificate although he may hold multiple registrations under the erstwhile central and State laws.
- (v) A person who holds a provisional certificate of registration is required to furnish certain information in Form GST REG-26, within a period of 3 months or as extended by the commissioner. The date was extended till 31.12.2017 vide order No. 6/2017 - GST dated 28.10.2017.
- (vi) If the information furnished is correct and complete, Final Registration Certificate in Form GST REG 06 will be issued, within 6 months of the appointed day.

- (vii) If the and/or information has not been furnished or not found to be correct or complete, the proper officer shall cancel the provisional registration and issue an order in Form GST REG-28 cancelling the registration after serving a show cause notice in Form GST REG-27 and affording the person concerned a reasonable opportunity of being heard.
- (viii) Once the information specified in sub rule 2(c) has been furnished and no notice has been issued under sub rule 3 within a period of 15 days from the period of furnishing of the information, the registration shall be deemed to have been granted and the registration certificate will be made available on the common portal. The SCN issued in Form 27 can be withdrawn by an order in Form GST REG 20, if it is found subsequently, after affording the person an opportunity of being heard, that no cause as specified in the notice exists.
- (ix) Every existing taxpayer / registrant, who is not liable to be registered under the Act, may at his option, on or before 31<sup>st</sup> March 2018, <sup>1</sup> file electronically an application in Form GST REG-29 at the Common Portal for cancellation of the registration granted provisionally to him and the proper officer shall, after conducting such enquiry as deemed fit, cancel the said provisional registration.
- (x) A person to whom provisional certificate is issued and who is eligible to pay tax under composition, may opt to do so by filing electronically an intimation, in Form GST CMP-01 within 30 days after the appointed day, or such further period as may be extended by the Commissioner in this behalf. This period was extended to 16th August, vide *Notification no. 1/2017- GST dated 21.07.2017*. In case the said person does not file Form GST CMP-01 within the said time lines and if he wants to opt for payment of taxes under the composition scheme under section 10, subsequently during the year 2017-18, he shall electronically file an intimation in Form GST CMP-02 before 31<sup>st</sup> March, 2018. He can opt to pay tax under section 10 w.e.f. the 1<sup>st</sup> day of the next month on wards. Such persons shall furnish statement of stock in Form GST ITC-03 within a period of 90 days from the day on which he commences to pay tax under section 10. The above persons who have filed the intimation and statement as above shall not be allowed to file Form GST TRAN-01, after furnishing Form GST ITC-03.
- (xi) It is pertinent to note here that as per Rule 5(1)(b), the person who prefers to file CMP-01 shall not hold any goods in stock on the appointed day;
  - i. that have been purchased in the course of interstate trade or;
  - ii. imported from outside India, or
  - iii. received from his branch, agent or principal situated outside the state;However, this restriction regarding the holding the stock received from outside the state

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<sup>1</sup> Notification No. 03/2018 CT dt. 23.01.2018

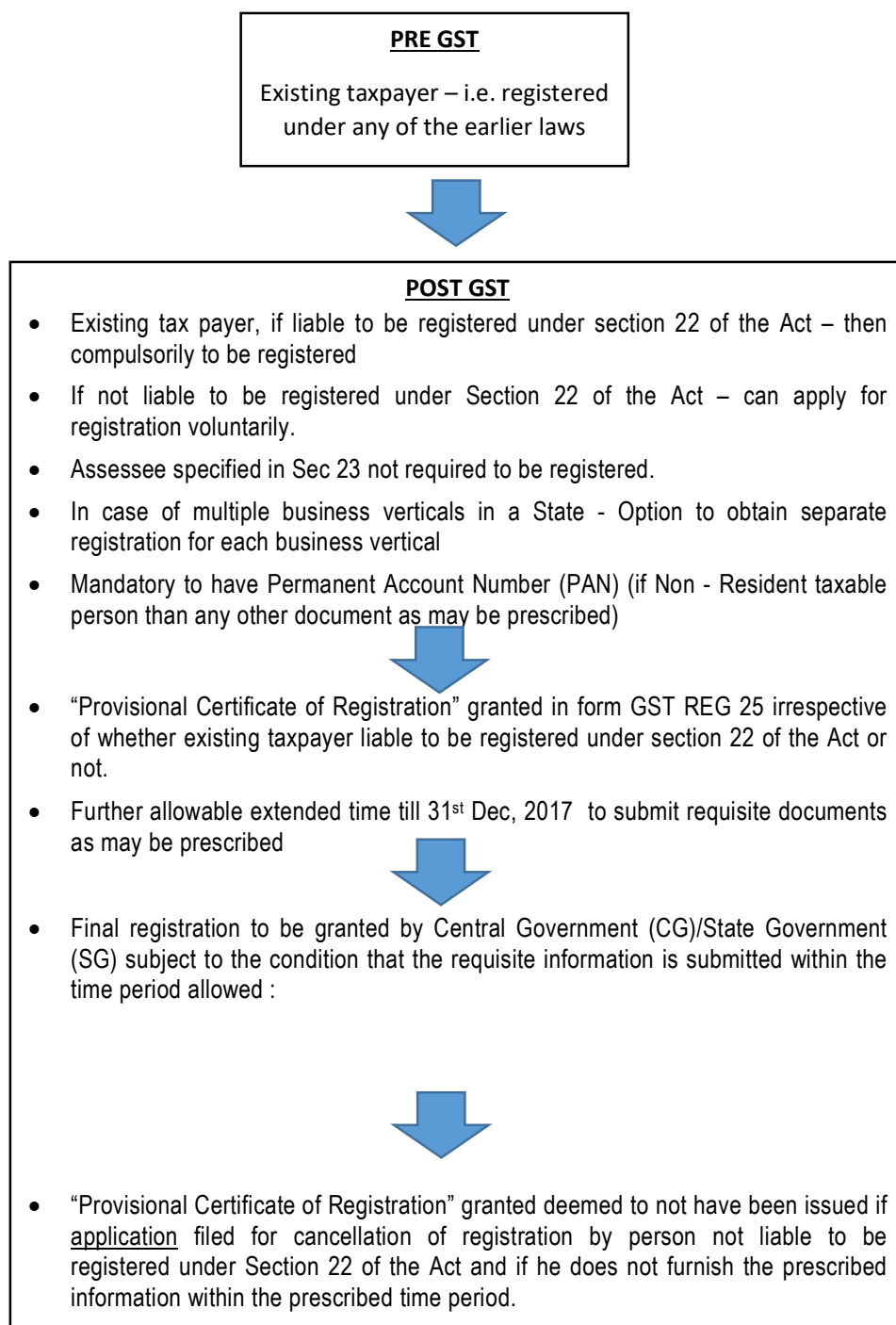
is not applicable in the case of persons opting to pay tax under Section 10 by filing Form GST CMP-03

- (xii) A Special Economic Zone Unit or a Special Economic Zone Developer shall make a separate application for registration as a business vertical distinct from its other units located outside the SEZ.
- (xiii) Person desiring multiple business vertical registration must also follow the above steps of migrating to GST and then apply for separate registration of the other business vertical. In case one line of business is exempt and another taxable, it is not possible to obtain business vertical registration for the taxable business only and to leave the exempt business from registration and thereby from compliances requirements (including reverse charge). Business vertical registration refers to the 'subsequent' registration of a taxable person who is registered in the first place.

### **139.3 Comparative review**

This provision is broadly comparable to the provisions relating to migration of registrations from the erstwhile Sales Tax to the Value Added Tax at the time of introduction of VAT law, in 2004/2005.

**Pictorially, an analysis of this transitional provision can be presented as follows:**



**139.4 Issues / Concerns:**

- a. Correction of incomplete/ incorrect migration process: A sizeable number of taxpayers were unable to complete the migration process due to GST portal glitches / IT related issues and some taxpayers have migrated with incorrect data (i.e. instead of Company PAN the Director PAN has been considered for migration) etc. In these cases, assesses have opted for a new registration and the same has been issued towards the end of July 2017 or in the subsequent months. On account of this, input tax credits are unable to be claimed by the assesses till the date of registration. Further, since the returns would be filed only subsequent to the date of registration, the returns would not be filed by such suppliers and the corresponding credits will not be eligible in the hands of the recipients.

**139.5 FAQs**

- Q1. What is the criteria for issuing provisional registration?  
Ans: Every person registered under any of the earlier laws and having a valid PAN will be issued a certificate of registration, provisionally.
- Q2. When is the final registration certificate issued replacing the provisional one?  
Ans: The holder of the provisional certificate is required to furnish application in form GST REG 26 within a period of three months, along with all documents as mentioned in form REG 26.
- Q3. What happens if the prescribed documents are not furnished within the prescribed time?  
Ans: If the person fails to furnish the prescribed information/documents within the specified time, the certificate of registration provisionally issued may be cancelled.
- Q4. Whether the GST Registration for existing registered dealer shall be taken by submission of required documents or will it be done automatically?  
Ans: Requisite data has to be submitted on GSTN portal and only then registration will be granted. A provisional registration will be granted which will be made final upon submission of additional information/documents after the appointed date. Refer Rule 24 of CGST Rules 2017
- Q5. Can a person who is registered under the earlier law opt out of GST voluntarily?  
Ans: Yes, by making an application in Form GST REG 29 on or before 31<sup>st</sup> March 2018, a person can opt out of GST. Refer Rule 24(4) of CGST Rules, 2017.
- Q6. What will happen to the provisional registration if the person claims to be not liable for registration under GST?  
Ans: The provisional certificate shall be deemed to have not been issued if the said registration is cancelled in pursuance of an application filed by such person stating that he was not liable to registration.
- Q7. What will be the position of the provisional registration of a composite dealer? Will he remain as composite dealer even after the appointed day?



Ans: No. Even existing composite taxpayer has to specifically apply for composition tax within 30 days from the appointed date and the receipt of provisional certificate will not be considered as automatic transition to composite scheme.

Q8. Can a VAT dealer opt for composition scheme after the time prescribed?

Ans: If a registered taxable person does not opt to pay tax under composition scheme within the specified time, he shall be liable to pay tax under regular scheme.

Q9. What happens if the tax payer has distinct VAT registrations in the same State?

Ans: The transitional provisions will allot only one registration certificate in each state based on single PAN even though such person had multiple registrations in the state. He can have distinct registrations in the same State by way of an option only if the business units qualify as business verticals under the GST law.

Q10. What happens to the distinct registrations obtained under the Central Excise and Service Tax laws for the different business premises and units in the same state?

Ans: All business units/ premises registered either under the Central Excise or Service Tax law will be consolidated into a single CGST registration for that State, unless these units qualify as distinct business verticals under the GST law.

Q11. If a person is operating in different states, with the same PAN number, whether he can operate with single registration?

Ans: No. Every person who is liable to take a Registration will have to get registered separately for each of the States where he has a business operation and is liable to pay GST in terms of sub-section (1) of section 22 of the CGST/SGST Act.

### 139.6 MCQs

Q1. Should an existing tax payer surrender his registration certificate for obtaining the GST registration?

- (a) Yes, all registration certificates shall be surrendered;
- (b) No. Provisional registration is automatic;
- (c) Migrated to provisional registration only on verification of documents;
- (d) No. Final registration is automatic.

Ans: (b) No. Provisional registration is automatic

Q2. Is PAN mandatory for migration to provisional GST registration?

- (a) Yes
- (b) No
- (c) PAN application is sufficient
- (d) Exempted may be given by the proper officer

Ans: (a) Yes

Q3. Should the composition dealer under the old law require to obtain final GST registration?

- (a) Yes, mandatory for all composition dealers
- (b) Yes, subject to his turnover crossing the threshold under GST
- (c) No, the old number will continue
- (d) No, will be governed by old law.

Ans: (b) Yes, subject to his turnover crossing the threshold under GST

### Statutory Provisions

Section	Particulars
140 (1)	<i>Carry forward of tax credit claimed in the tax returns</i>
140 (2)	<i>Carry forward of unavailed tax credit in relation to capital goods</i>
140 (3)	<i>Carry forward of tax credit by a registered person, who was not liable to be registered under the erstwhile law like dealing in exempted goods under erstwhile law but the same has become liable under GST.</i>
140 (4)	<i>Carry forward of tax credit by a registered person, who was engaged in the manufacture of taxable as well as exempted goods or provision of taxable as well as exempted service but which are liable to tax under GST.</i>
140 (5)	<i>Tax credit in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the erstwhile law.</i>
140 (6)	<i>Carry forward of tax credit by a registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the erstwhile law.</i>
140 (7)	<i>Tax credit on account of any services received prior to the appointed day by an ISD.</i>
140 (8)	<i>Carry forward of tax credit in case of service provider registered on centralised basis</i>
140 (9)	<i>Tax credit reversed due to non-payment of the consideration within a period of three months under Finance Act, 1994</i>
140 (10)	<i>The amount of credit under sub-sections (3), (4) and (6) shall be calculated in such manner as may be prescribed.</i>

**140(1)-Amount of CENVAT credit carried forward in the return allowed as input tax credit.**

A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit <sup>2</sup> [of eligible duties] carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the erstwhile law <sup>3</sup> [within such time and] in such manner as may be prescribed.

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:—

- (i) where the said amount of credit is not admissible as input tax credit under this Act; or
- (ii) 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
- (iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government

<sup>4</sup> [Explanation. —The expression “eligible duties” means—

- (i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;
- (ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;
- (iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975
- (iv) <sup>5</sup> ~~the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978;~~
- (v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;
- (vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985;
- (vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001; and

in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day]

<sup>2</sup> Inserted vide The Central Goods and Services Tax Amendment Act, 2018 w.e.f. 01.02.2019.

<sup>3</sup> Inserted vide The Central Goods and Services Tax Amendment Act, 2020 w.e.f. 18.05.2020.

<sup>4</sup> Inserted vide The Central Goods and Services Tax Amendment Act, 2018 w.e.f. 01.02.2019

<sup>5</sup> Omitted vide The Central Goods and Services Tax Amendment Act, 2018 w.e.f. 01.02.2019.

<sup>6</sup> [Explanation 2. —The expression “eligible duties and taxes” means—

- (i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;
  - (ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;
  - (iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975;
  - (iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978;
  - (v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;
  - (vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985;
  - (vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001; and
  - (viii) the service tax leviable under section 66B of the Finance Act, 1994,
- in respect of inputs and input services received on or after the appointed day].

#### Extract of the CGST Rules, 2017

##### **117. Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day.-**

- (1) Every registered person entitled to take credit of input tax under section 140 shall, within ninety days of the appointed day, submit a declaration electronically in FORM GST TRAN-1, duly signed, on the common portal specifying therein, separately, the amount of input tax credit <sup>1</sup>[of eligible duties and taxes, as defined in Explanation 2 to section 140] to which he is entitled under the provisions of the said section:

*Provided that the Commissioner may, on the recommendations of the Council, extend the period of ninety days by a further period not exceeding ninety days.*

*Provided further that where the inputs have been received from an Export Oriented Unit or a unit located in Electronic Hardware Technology Park, the credit shall be allowed to the extent as provided in sub-rule (7) of rule 3 of the CENVAT Credit Rules, 2004.*

<sup>7</sup>[(1A) Notwithstanding anything contained in sub-rule (1), the Commissioner may, on the

<sup>6</sup> Inserted vide The Central Goods and Services Tax Amendment Act, 2018 w.e.f. 01.02.2019

<sup>7</sup> Inserted vide Notf no. 48/2018-CT dt. 10.09.2018

*recommendations of the Council, extend the date for submitting the declaration electronically in FORM GST TRAN-1 by a further period not beyond <sup>8</sup> [31st March, 2020]], in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension.]*

- (2) *Every declaration under sub-rule (1) shall-*
- (a) *in the case of a claim under sub-section (2) of section 140, specify separately the following particulars in respect of every item of capital goods as on the appointed day-*
    - (i) *the amount of tax or duty availed or utilized by way of input tax credit under each of the existing laws till the appointed day; and*
    - (ii) *the amount of tax or duty yet to be availed or utilized by way of input tax credit under each of the existing laws till the appointed day;*
  - (b) *in the case of a claim under sub-section (3) or clause (b) of sub-section (4) or sub-section (6) or sub-section (8) of section 140, specify separately the details of stock held on the appointed day;*
  - (c) *in the case of a claim under sub-section (5) of section 140, furnish the following details, namely:-*
    - (i) *the name of the supplier, serial number and date of issue of the invoice by the supplier or any document on the basis of which credit of input tax was admissible under the existing law;*
    - (ii) *the description and value of the goods or services;*
    - (iii) *the quantity in case of goods and the unit or unit quantity code thereof;*
    - (iv) *the amount of eligible taxes and duties or, as the case may be, the value added tax [or entry tax] charged by the supplier in respect of the goods or services; and*
    - (v) *the date on which the receipt of goods or services is entered in the books of account of the recipient.*
- (3) *The amount of credit specified in the application in FORM GST TRAN-1 shall be credited to the electronic credit ledger of the applicant maintained in FORM GST PMT-2 on the common portal.*
- (4) (a)(i) *A registered person who was not registered under the existing law shall, in accordance with the proviso to sub-section (3) of section 140, be allowed to*

<sup>8</sup> Substituted for the figures, letters and word [31st December, 2019] with effect from 31.12.2019 vide Notf no. 02/2020-CT dt. 01.01.2020

<sup>9</sup> Substituted vide Notf no. 49/2019-CT dt. 09.10.2019 for —31st March, 2019

*avail of input tax credit on goods (on which the duty of central excise or, as the case may be, additional duties of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975, is leviable) held in stock on the appointed day in respect of which he is not in possession of any document evidencing payment of central excise duty.*

- (ii) *The input tax credit referred to in sub-clause (i) shall be allowed at the rate of sixty per cent. on such goods which attract central tax at the rate of nine per cent. or more and forty per cent. for other goods of the central tax applicable on supply of such goods after the appointed date and shall be credited after the central tax payable on such supply has been paid:*

*Provided that where integrated tax is paid on such goods, the amount of credit shall be allowed at the rate of thirty per cent. and twenty per cent. respectively of the said tax;*

- (iii) *The scheme shall be available for six tax periods from the appointed date.*  
 (b) *The credit of central tax shall be availed subject to satisfying the following conditions, namely:-*

- (i) *such goods were not unconditionally exempt from the whole of the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 or were not nil rated in the said Schedule;*  
 (ii) *the document for procurement of such goods is available with the registered person;*

- <sup>10</sup>[(iii) *The registered person availing of this scheme and having furnished the details of stock held by him in accordance with the provisions of clause (b) of sub-rule (2), submits a statement in FORM GST TRAN 2 by 31<sup>st</sup> March 2018, or within such period as extended by the Commissioner, on the recommendations of the Council, for each of the six tax periods during which the scheme is in operation indicating therein, the details of supplies of such goods effected during the tax period;*]

<sup>11</sup>*[Provided that the registered persons filing the declaration in FORM GST TRAN-1 in accordance with sub-rule (1A), may submit the statement in FORM GST TRAN-2 by <sup>12</sup>[30<sup>th</sup> April, 2020]]*

- (iv) *the amount of credit allowed shall be credited to the electronic credit ledger of the applicant maintained in FORM GST PMT-2 on the common portal; and*  
 (v) *the stock of goods on which the credit is availed is so stored that it can be easily identified by the registered person.*

<sup>10</sup> Substituted vide Notf No. 12/2018-CT dt. 07.03.2018

<sup>11</sup> Substituted for the figures, letters and word [31st January, 2020] vide Notf no. 02/2020-CT dt. 01.01.2020

<sup>12</sup> Substituted vide Notf no. 49/2019-CT dt. 09.10.2019 for —30th April, 2019

**<sup>13</sup> [120A. <sup>14</sup> [Revision of declaration in FORM GST TRAN-1]**

*Every registered person who has submitted a declaration electronically in FORM GST TRAN-1 within the time period specified in rule 117, rule 118, rule 119 and rule 120 may revise such declaration once and submit the revised declaration in FORM GST TRAN-1 electronically on the common portal within the time period specified in the said rules or such further period as may be extended by the Commissioner in this behalf.]*

**Related provisions of the Statute**

Section	Description
Section 2(107)	Meaning of taxable person
Section 2(46)	Definition of Electronic Credit Ledger
Section 16 to 21	Input tax credit
Section 2(48)	Meaning of Existing law

**140.1.1 Introduction**

This transition provision enables a registered person to carry forward unutilized input credit under the CENVAT Credit Rules, 2004 / State Tax laws, as applicable.

**140.1.2 Analysis**

The amount of any input credit carried forward in a return, which is unutilized under the erstwhile tax regime may be carried forward into the GST regime except in the case of a person who opts to pay tax under composition scheme in a GST regime.

The said credit will be allowed to be carried forward to the GST regime, if the following conditions are satisfied:

- (1) The said credit is admissible as input tax credit under the provisions of the CGST Act;
- (2) The registered person has furnished all the returns required under the erstwhile law for the period of six months immediately preceding the appointed date.
- (3) Input tax credit does not relate to goods manufactured and cleared under exemption notifications as are notified by the Government.
- (4) Input tax credit carried forward will not be allowed if such credit relates to goods manufactured and cleared under exemption notifications as notified by the government.  
No such list of notification are identified by the Government.

<sup>13</sup> Inserted vide Notf no. 34/2017 – CT dt. 15.09.2017

<sup>14</sup> Inserted vide Notf no. 36/2017-CT dt. 29.09.2017

**Note:**

The CENVAT credit of central excise duty or service tax wrongly carried forward as transitional credit shall be recovered as central tax liability to be paid using electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01). (Circular No. 42/16/2018-GST dated 13/04/2018). Pre-deposit of tax/duty under earlier laws has been permitted out of CGST balance by Hon'ble Tribunal, although experts doubt the merits of such fungibility.

Rule 117(1) prescribes the manner of claiming transition credit by filing the prescribed information on the Common Portal which is provided below:

Particulars	CGST
Credit to be carried forward	CENVAT credit
Relevant law	CENVAT Credit Rules, 2004
Laws to be subsumed and the relevant credit	Central Excise Service tax
Input Tax Credit to be carried forward	<ul style="list-style-type: none"> <li>— Central Excise paid on 'inputs' /capital goods</li> <li>— Countervailing duty paid on 'inputs'/capital goods</li> <li>— Special Additional Duty paid on 'inputs' /capital goods in case of manufacturers</li> <li>— Service tax paid on 'input services' – both direct or reverse charge</li> </ul>
Conditions	<ul style="list-style-type: none"> <li>— The said credit is admissible as input tax credit under the provisions of the CGST Act ;</li> <li>— The registered person has furnished all the returns required under the erstwhile law for the period of six months immediately preceding the appointed date;</li> <li>— The said credit does not relate to goods manufactured and cleared under such exemption notifications as are notified by the Government;</li> <li>— Must have been reflected as input credit carried forward in the return filed for the last month / period under the erstwhile law, viz., last monthly return or quarterly return or the half yearly return, as the case may be.</li> </ul>
Form in which the credit would be availed under the GST Law	Would be available as a credit in the CGST Electronic Credit Ledger of the tax payer.



Particulars	CGST
Procedure for claiming the credit [Rule 117(1)]	<p>i) Submit declaration in Form GST TRAN1 electronically;</p> <p>ii) Due date for filing TRAN-1 is within 90 days of the appointed day; (The Commissioner may extend the period of 90 days by a further period of not exceeding 90 days).</p> <p>iii) Accordingly, the Commissioner has extended date of filing Form GST TRAN-1 to 27.12.2017 vide order No. 9/2017-GST dated 15.11.2017.</p> <p>iv) In respect of registered persons who could not file Form GST TRAN-1 within the specified date due to technical glitches on the common portal and for whom the Council has made a recommendation for extension, the Commissioner may extend the date for submission of Form GST TRAN-1 by a further period not beyond 31.03.2019 vide Notification No.48/2018-CT dated 10.09.2018.</p> <p>v) Form GST TRAN-1 may be revised once within the prescribed time limit [Rule No. 120A].</p> <p>vi) By order No.10/2017-GST dated 15.11.2017, the Commissioner has extended the time limit for revision to 27.12.2017.</p>

**Note:**

- Similarly, State VAT credits can also be claimed as transitional credit under this sub-section. Attention is invited to the fact that the definition of input tax credit under the various State VAT laws may vary and the reader should be cautious about the eligibility of the various State taxes paid as transitional credits. For e.g. In the State of Gujarat, entry tax paid on causing entry of goods into a local area for trading is eligible as input tax credit at the point of sale, whereas, such entry tax paid in the State of Karnataka is not eligible as input tax credit.
- The Gujarat High Court in the case of Wilowood Chemicals Pvt. Ltd v. UOI [2018-TIOL-133-HC-AHM-GST] held that the time limit provisions contained in sub-rule (1) of rule 117 of the CGST Rules is not *ultra vires* the Act and refused to strike down the time limit prescribed therein. While dismissing the petition, the Hon'ble HC observed when the entire tax structure of the country is being shifted from earlier framework to a new one, there has to be a degree of finality on claims, credits, transfers of such credits and all issues related thereto and such prescription of time limit cannot be stated to be

either unreasonable or arbitrary and removing such time limit would have a potential to lead to utter economic chaos. Similarly, Hon'ble Mumbai HC upheld the validity of section 140(3) in Evergreen Seamless Pipes and Tubes (P) Ltd & Ors v. Uol & Ors. However, Hon'ble Gujarat HC struck down these provisions in Filco Trade Centre which has been stayed by Hon'ble SC. Care must be taken that relief, if any, allowed by Hon'ble SC will be available only to those parties who have agitated the matter before Courts and not to those who are standing by for others to pursue the matter. Fruits of litigation will flow to those who litigate only. However, if relief allowed, if any, is implemented by the Government in a liberal manner, then all parties may become eligible. Experts have expressed anguish at the rigid stand of the Government, especially in such a brand new law filled with uncertainty and in respect of taxes validly paid under earlier laws, in going ahead with the timelines through rules even though no such limits are found in the statute.

- Some taxpayers could not complete the filing of Form GST TRAN-1 as they could not digitally authenticate the Form GST TRAN-1 on account of IT related glitches. As a result, a large number of such Form GST TRAN-1s were stuck in the system. Consequentially, the taxpayers are unable to file their Form GSTR 3B monthly returns too. The GSTN has identified such taxpayers who could not file TRAN-1 on the basis of electronic audit trail and enabled them file it by 30th April 2018 and GSTR 3B returns, stuck on this account, by 31.05.2018 (*Circular No. 39/13/2018-GST dated 03.04.2018*). *Late fee for filling such GSTR-3B has also been waived by notification no. 22/2018 – Central Tax dated 14<sup>th</sup> May 2018*. The Bombay HC has further extended the date of filing Form GST TRAN-1 by 10 days to 10.05.2018.
- The Government has further clarified that CENVAT credit that has been credited to the Electronic Credit Ledger is not available for utilization towards GST liabilities where, the CENVAT credit is held as inadmissible vide an adjudication order or Order-in-Appeal as on 01.07.2017 until such order is in existence. If utilized, the same liable to recovery with interest and penalty. (*Circular No. 33/07/2018-GST dated 23.02.2018*)
- Government's determination NOT TO EXTENDED time limit for transition of credit, in spite of interpretation of the law by various Courts can be seen in the amendment made, yet again with effect from 1 Jul 2017 where the earlier law contained the 'in such manner as may be prescribed' by the Rules, it now reads as 'in such manner and within such time as may be prescribed'. It seems quite clear that transition of credits under earlier laws may not be extended again. However, decisions of HCs have not been exactly on the lack of power in rule 117 to lay down time limit but on equitable consideration for 'moulding relief' to the taxpayer. Reference may be had to decision of HC of P&H in Adfert Technologies (CWP No.30949/2018 dated 4 Nov 2019) and SLP against this decision came to be dismissed by Hon'ble SC (SLP No. 4408/2020 dated 28 Feb 2020).
- Interestingly, only select cases that came in for resubmission of TRAN1 and approved by GST Council after review by Nodal Officers, extension was granted by Order 1/2020-

GST dated 7 Feb 2020 to file TRAN1 by 31 Mar 2020. This extension was NOT in respect of all other *bona fide* cases backed by Orders of HCs including Adfert Technologies decision.

**Illustration 1:** GST is applicable from 1<sup>st</sup> July, 2017 and the amount of credit as per the return for the period ending 30th June, 2017 is as follows:

Particulars of Input tax Credit	Credit amount as per return
Central Excise	200,000
Service Tax	100,000
Education Cess	10,000
Secondary and Higher Education Cess	5,000
Krishi Kalyan Cess	5,000
Swachh Bharat Cess	5,000
Additional Duty u/s 3(1) of CTA – CVD	40,000
Additional Duty u/s 3(5) of CTA – SAD	30,000
Input Tax Credit under VAT	50,000
Total	445,000

What will be the amount of CGST to be brought forward as per the GST Law as on 1<sup>st</sup> July, 2017?

**Ans.** The amount of CGST to be brought forward on 1<sup>st</sup> July, 2017 will be calculated as follows:

**A. If the tax payer is a Manufacturer**

CGST Components	CGST Value
Central Excise	200,000
Service Tax	100,000
Education Cess	-
Secondary and Higher Education Cess	-
Additional Duty u/s 3(1) of CTA	40,000
Additional Duty u/s 3(5) of CTA	30,000
Krishi Kalyan Cess	-
<b>Total CGST</b>	<b>370,000</b>

**Note:**

1. Swachh Bharat Cess and Krishi Kalyan Cess will not be allowed to be carried forward.
2. Input credit under VAT will not be allowed to be carried forward as CGST, but allowed as SGST.
3. Credit of EC and SHEC shall not be allowed to be carried forward.

**Explanation:**

For the purposes of this Chapter, the expressions “capital goods”, “Central Value Added Tax (CENVAT) Credit”, “first stage dealer”, “second stage dealer” or “manufacture” shall have the same meaning as respectively assigned to them in the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder.

Considering the above explanation, the term CENVAT Credit shall have the same meaning as has been assigned under the provisions of Central Excise Act, 1944 or rules made thereunder. In view of Rule 3 of CENVAT Credit Rules, 2004, the term ‘CENVAT Credit’ also includes Krishi Kalyan Cess. Accordingly, on a combined reading of aforesaid Explanation and Rule 3 of CENVAT Credit Rules, 2004, it appears that Credit of KKC may be carried forward. However, at the same time it will be pertinent to highlight that there is a restriction that credit of KKC can be utilized for payment of KKC only and since such KKC is not being separately levied under GST, thus the availment of same can be doubtful.

The Government, it appears is inclined to take a view that since KKC, Edu. Cess and SHE Cess do not form part of “eligible duties and taxes”, such credits would not be eligible as transitional credits in terms of Explanation 1 to Section 140 of the CGST Act, 2017. It is relevant to note that the phrase ‘eligible duties and taxes’ is not applicable to credits carried forward in the last return (Explanation 1 to Section 140 of the CGST Act, 2017).

Even Authority for Advance ruling of Maharashtra in case of Kansai Narolac Paints Ltd have held that KKC credit as on 30.06.2017 as shown in service tax return will not be considered as admissible input tax credit. (Reference: Advance ruling No. GST-ARA-18/2017-18/B-25 Mumbai dated 05/04/2018.)

HIGH COURT OF GUJARAT in Grasim Industries Ltd. v. Union of India Read More... \*In favour of assessee.\*[[2019] 108 taxmann.com 285 (Gujarat)] has issued notice to the GST authorities on the issue of allowability of Education Cess Secondary and Higher Education Cess. It remains to be seen how this matter attains finality. Nevertheless, the twitter comments and the transitional credit verification checklists shared with the taxpayers by the Government state that KKC, Edu. Cess and SHE Cess are not eligible as transitional credit. The CENVAT response on the twitter handle of Government w.r.t. eligibility of KKC is provided below:



**GST@Gol** ✓  
@askGST\_Gol

Follow

## KKc credit not available after 30th June

Source: [https://twitter.com/askGST\\_Gol/status/885325386715774976](https://twitter.com/askGST_Gol/status/885325386715774976)

Thus, in view of the aforesaid interpretations being considered by various experts, registered persons who were registered under erstwhile laws who were required to file their last returns under those laws may take note that the closing balance of credit in the said last returns will only be available to be brought forward into GST regime. It appears there is a good argument against bifurcating this brought forward balance of credit into the various sources – ED, ST, KKC, SBC, EC, SHEC – as all of them as ‘CENVAT Credit’ according to the last returns under the earlier laws. Caution is advisable in view of the implications of the alternate view being taken by the tax administration.

### B. If the tax payer is a Service Provider

CGST Components	CGST Value
Central Excise	200,000
Service Tax	100,000
Education Cess	-
Secondary and Higher Education Cess	-
Krishi Kalyan Cess	-
Additional Duty u/s 3(1) of CTA-CVD	40,000
<b>Total CGST</b>	<b>3,40,000</b>

#### Note:

1. Service Provider not entitled to avail credit of SAD, Swachh Bharat Cess.
2. Additional Duty u/s 3(1) of CTA – CVD will be available if it is paid on import purchase of specified goods.
3. Credit of EC and SHEC shall not be allowed to be carried forward.

**Issues / Concerns:**

- a. Availability of credit on KKC, Edu. Cess and SHE Cess: There is certain amount of ambiguity in the law as to whether transitional credit of KKC, Edu. Cess and SHE Cess would be eligible as transition credits in the hands of the taxpayers. The twitter comments and the transitional credit verification checklists shared with the taxpayers by the Government state that KKC, Edu. Cess and SHE Cess are not eligible as transitional credit as the same are not covered under the meaning of 'Eligible duties and taxes'. This is despite the fact that the applicability of Explanation 2 to Section 140 of the CGST Act, 2017 has not been extended to transitional credits claimed under Section 140(1) of the CGST Act, 2017. Due to this ambiguity that KKC is 'in the nature of service tax', there is some agitation going on before various Courts although Government's resolve is not ambiguous in this matter.
- b. Availment of credit of taxes paid after due date under earlier laws: In many cases, taxpayers have filed belated service tax returns / paid taxes belatedly along with the applicable interest and late fee. Even in such cases, the credit of taxes paid under reverse charge mechanism after 6th July, 2017 is not available to the assesseees. This is highly unfair to the taxpayers, especially since the compensation to the Government by way of interest and late fee has been remitted.
- c. Availment of credit of excess taxes paid under earlier laws: There is no provision under the GST law to claim credit of excess service tax paid under Rule 6(3) & Rule 6(4A) of the Service Tax Rules, 1994. Rule 6(3) deals with claim of credit of excess service tax paid where services have subsequently not provided wholly / partly or in case of deficiency of services. Rule 6 (4A) deals with adjustment of excess service tax paid against the liability for the succeeding month / quarter.
- d. Unutilized cash balance in PLA under Central Excise Law: Many of the taxpayers registered under the Central Excise Law carry a huge amount of unutilized balance of credit in the PLA Account as on 30th June, 2017. However, currently no provision exists for utilization / carry forward of the same in the GST Law.
- e. Omission to claim such Cenvat credit through TRAN-1 will left taxpayer with no option but to forgo such credit.

**140.1.3 FAQ**

- Q1. A person who is registered under service tax as well as under Central Excise and having unavailed CENVAT credit in central excise return, has not filed his service tax returns. Whether he can carry forward the unavailed CENVAT credit as per the last central excise return to GST regime?

Ans: No. Credit cannot be taken unless he has furnished all the returns required under the erstwhile law for the period of six months immediately preceding the appointed date.

**Statutory Provisions**

**140(2). Credit of unavailed CENVAT credit in respect of capital goods, not carried forward in a return, shall be allowed.**

*A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day <sup>15</sup>[within such time and] in such manner as may be prescribed:*

*Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act.*

*Explanation - For the purposes of this sub-section, the expression "unavailed CENVAT credit" means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.*

**Extract of the CGST Rules, 2017 – The extract of the relevant rules have been provided below the Statutory Provisions of Section 140(1) of the CGST Act, 2017 supra.**

**Related provisions of the Statute**

Section of CGST	Description
Section 2(46)	Definition of 'Electronic Credit Ledger'
Section 16 – 21	Manner of taking input tax credit
Section 79	Recovery of tax
Section 2(48)	Definition of Existing law
Central Tax Rules 117(1) & (2)	Tax or duty credit carried forward
Central Tax Rule 120A	Revision of declaration in TRAN-1

**140.2.1 Introduction**

This transition provision enables a person to avail CENVAT credit of the balance amount (unavailed portion) in respect of capital goods, that has not been availed under the erstwhile laws. The unavailed portion of credit relating to capital goods under the erstwhile laws not carried forward through a return can be availed, provided such credits are admissible under the GST laws.

<sup>15</sup> Inserted vide The Central Goods and Services Tax Amendment Act, 2020 w.e.f. 18.05.2020.

### 140.2.2 Analysis

A registered person (except person opting for payment of taxes under the composition scheme) shall be allowed to take the amount of CENVAT Credit on capital goods not carried forward in the return. However, the said credit should be admissible under the erstwhile law as well as under the provisions of the CGST Act. Rule 117(2) of CGST Rules, 2017 requires the information to be submitted in FORM GST TRAN-1 regarding the amount tax or duty availed and yet to be availed till the appointed day.

“Unavailed CENVAT credit” means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the erstwhile law from the aggregate amount of CENVAT credit to which the said person was entitled to, in respect of the said capital goods under the erstwhile law.

- Under the CENVAT Credit Rules, 2004, in respect of eligible capital goods, credit is required to be claimed in 2 parts of 50% each. Credit to the extent of 50% maximum of the central excise duty paid ought to be claimed in the same financial year in which the capital goods are received and the balance 50% can be claimed in any subsequent years.
- Further, it needs to be noted that the capital goods referred above, means the goods as defined under Clause (a) of Rule 2 of CENVAT Credit Rules, 2004 and under GST Laws.

**Eg 1:** A manufacturer purchased a capital asset worth Rs.11,25,000 (including excise duty of ₹ Rs.1,25,000) on 5<sup>th</sup> May, 2017. In the month of June, 2017, he could avail CENVAT Credit to the extent of 50% only i.e. Rs.62,500. The unavailed CENVAT Credit on capital goods as on 1<sup>st</sup> July, 2017 (appointed day) will be Rs.125,000 – Rs.62,500 = Rs.62,500, which he will be eligible to claim under section 140(2).

**Eg 2:** CENVAT Credit on Capital Goods used outside the factory of manufacturer is not allowable<sup>16</sup>. So, it will not be admissible as input tax credit in the GST Law either.

In terms of Rule 117 of CGST Rules, 2017 particulars relating to every item of capital goods in respect of tax/duty availed or utilised by way of credit under the erstwhile law shall be indicated. Similar details in respect of unavailed portion under the erstwhile laws shall also be stated. The details, conditions and documentation are as follows:

Particulars	CGST
Credit to be carried forward	CENVAT credit
Relevant law	CENVAT Credit Rules, 2004
Details of credit to be carried forward	<ul style="list-style-type: none"> <li>— Central Excise paid on ‘capital goods’</li> <li>— Countervailing duty paid on ‘capital goods’</li> </ul>

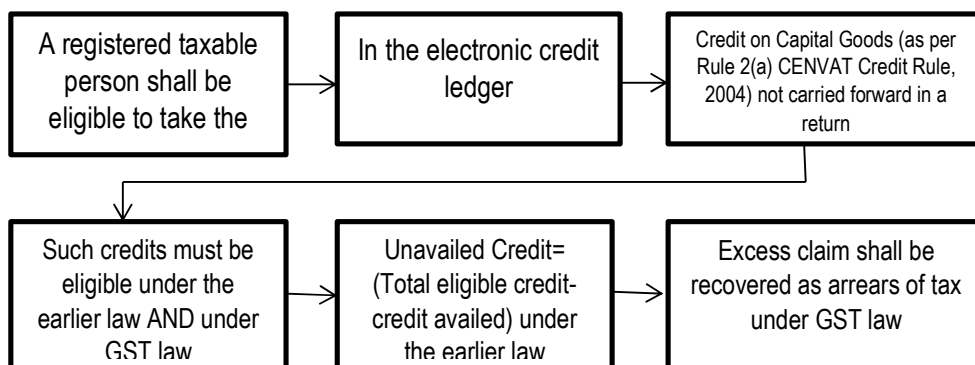
<sup>16</sup> Madras Cement v. CCE (2003) 158 ELT 293 = 56 RLT 978 (CESTAT 3 member bench)



Particulars	CGST
	— Special Additional Duty paid on 'capital goods'
Conditions	<ul style="list-style-type: none"> <li>— Should qualify for eligible input credit under both, the erstwhile law and the GST law</li> <li>— Would be in respect of input credit which is not carried forward in the return filed for the last period under the erstwhile law</li> </ul>
Form in which the credit would be availed under the GST law	— Would be available as a balance in the CGST electronic credit ledger of the tax payer.
Procedure for claiming the credit [Rule 117(1) & (2)]	<ul style="list-style-type: none"> <li>(i) Submit declaration in Form GST TRAN-1 electronically;</li> <li>(ii) Due date for filing TRAN-1 is within 90 days of the appointed day; (The Commissioner may extend the period of 90 days by a further period of not exceeding 90 days).</li> <li>(iii) Accordingly, the Commissioner has extended date of filing Form GST TRAN-1 to 27.12.2017 vide order No. 9/2017-GST dated 15.11.2017.</li> <li>(iv) In respect of registered persons who could not file Form GST TRAN-1 within the specified date due to technical glitches on the common portal and for whom the Council has made a recommendation for extension, the Commissioner may extend the date for submission of Form GST TRAN-1 by a further period not beyond 31.03.2019 vide Notification No.48/2018-CT dated 10.09.2018.</li> <li>(v) Form GST TRAN-1 may be revised once within the prescribed time limit [Rule No. 120A].</li> <li>(vi) By order No.10/2017-GST dated 15.11.2017, the Commissioner has extended the time limit for revision to 27.12.2017.</li> </ul>

It must be clearly understood that CENVAT Credit can only be availed as CGST Credit in the respective Electronic Credit Ledger.

Pictorially this provision can be depicted as follows:



#### 140.2.3 Issues / Concerns:

- a. Traders and manufacturers availing SSI exemption under the earlier laws: Traders and manufacturers availing SSI exemption under the erstwhile laws were not eligible for the CENVAT credit as they were not discharging excise duty on the final products. Such persons, who are now registered persons under the GST regime would not be eligible for availment of the credit on capital goods purchased before 01st July, 2017 which will lead to credit loss for such assesseees. The situation is further worsened as Section 140(3) of the CGST Act, 2017 which provides for claim of credit on goods held as on 30th June, 2017 does not provide for carry forward of credit of taxes paid on capital goods.
- b. New Company incorporations: There may arise a situation wherein a Company was incorporated in May 2017 but was not granted registration by the VAT department or was unable to register with VAT department till 30.06.2017. Upon purchase of capital goods by the said Company, the credit of VAT paid on such goods would not be available as the Company is unregistered. As such, the Company would not be able to avail the credit of VAT paid on purchase of such capital goods, as the amount of VAT paid would not be reflected in the returns furnished under the earlier law and hence, cannot be carried forward as transitional credit under the GST law.
- c. Omission to claim CENVAT Credit: In certain cases, taxpayers may have omitted to claim CENVAT Credit on capital goods in the year of purchase. The CENVAT Credit rules has a remedy to claim the CENVAT credit within 1 year from the date of invoice. In the absence of such a provision for transitional credit, such taxpayers would not be able to claim credits on such capital goods.

**Statutory Provisions****140(3). Credit of eligible duties in respect of inputs held in stock allowed in certain situations**

A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of Notification No. 26/2012-Service Tax, dated 20.06.2012 or a first stage dealer or a second stage dealer or a registered importer, or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, 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 subject to <sup>17</sup> [goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to] the following conditions, namely:-

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

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

Explanation. —The expression “eligible duties” means—

- (i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;
- (ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;
- (iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975
- (iv) <sup>18</sup> ~~[the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978;]~~

<sup>17</sup> Inserted vide The Central Goods and Services Tax Amendment Act, 2020 w.e.f. 18.05.2020

<sup>18</sup> Omitted vide The Central Goods and Services Tax Amendment Act, 2018 w.e.f. 01.02.2019

- (v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;
- (vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985; and
- (vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001,
- in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day

**Extract of the CGST Rules, 2017 – The extract of the relevant rules have been provided below the Statutory Provisions of Section 140(1) of the CGST Act, 2017 supra.**

**Related provisions of the Statute**

Section	Description	Remarks
Section 2(46) CGST Law	Definition of 'Electronic Credit Ledger'	Input tax credit will be taken in this document.
Section 2(108) CGST Law	Definition of Taxable supply	Only inputs intended to be used for taxable supplies are allowed as credit.
Section 16 to 21 CGST Law	Input tax credit	This is for determining the admissibility of Input tax credit under the GST law
Section 79 CGST Law	Recovery of tax	For recovery of arrears of tax under GST for demand arising from proceedings under earlier law
Rule 9(1) CENVAT Credit Rules 2004	Documents and Accounts	Contains the list of documents on the basis of which CENVAT Credit can be availed
Rule 2(d) CENVAT Credit Rules 2004	Definition of exempted goods	One of the possible pre-conditions in respect of category of person is engaged in manufacture/sale of exempted goods
Proviso to Rule 4(7) CENVAT Credit Rules 2004	Time limit for admissibility of CENVAT Credit	Similar time limit prescribed as one of the conditions for availment of credit under GST law
Rule 9 Central Excise Rules 2002	Registration under Central Excise	One of the possible preconditions in respect of category of persons is non-registration in earlier law.
Section 69(1) and Rule 4 Finance Act 1994 & Service Tax Rules	Registration under Service Tax	One of the possible preconditions in respect of category of persons is non-registration in earlier law.

**140.3.1 Introduction**

This transition provision sets out the conditions and procedure for availing input credit in respect of stock held on appointed day by certain registered persons under the GST Law. Inputs which are held in stock and inputs contained in semi-finished / finished goods held in stock which were for manufacture of exempted goods under the earlier law have also been dealt with. Registration under the GST law is mandatory to claim such credits.

**140.3.2 Analysis**

The following persons shall be entitled to take credit of eligible duties and taxes on inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the date on which this provision is made effective:

- not liable to be registered under the earlier law, or
- was engaged in the manufacture of exempted goods, or
- was engaged in the provision of exempted services, or
- was providing works contract service and was availing the benefit of notification No. 26/2012-Service Tax, dated 20.06.2012, or
- a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer

The credit shall be allowed to the aforesaid taxable persons subject to the following conditions:

- Such inputs and/or goods are used or intended to be used for making taxable supplies under CGST Act.
- He is eligible for input tax credit on such inputs under CGST Act.
- He is in possession of invoice and/or other prescribed documents evidencing payment of duty under the earlier law in respect of such inputs,
- Which were issued not earlier than twelve months immediately preceding the date on which these provisions come into effect.
- That the supplier of services is not eligible for any abatement under the CGST Act.
- In terms of Rule 117(2)(b) of the CGST Rules, 2017 the application in Form GST TRAN-01 shall specify separately the details of stock held on the appointed day..

Availability of Credit to Trader who is not in possession of invoice evidencing payment of Central Excise Duty

- As per proviso to sub section (1), credit may be allowed to a trader even if he is not in a possession of such invoice/document disclosing payment of duty/tax.
- However, in such cases the person will have to follow the conditions specified below:-

- Credit shall be allowed at the rate of 40% (when GST Rate is less than 18%)/ 60% (when GST Rate is 18% or more), of the central tax applicable on supply of such goods after the appointed date and shall be credited after the central tax payable on such supply has been paid. This situation arises when invoice is raised under the erstwhile tax regime and supply happens in a GST regime.

Type of Supply from such Stock	Rate of Tax applicable	Quantum of credit* allowed
Intra-State Outward Supply	CGST @ 9% or more CGST @ below 9%	60% of the CGST paid 40% of the CGST paid
Inter-State Outward Supply	IGST @ 18% or more IGST @ below 18%	30% of the IGST paid 20% of the IGST paid

*Amount shall be credited after the CGST payable on such supply has been paid (Rule 117(4)(a) of CGST)*

The SGST Law of respective States also contain similar provisions, providing that a registered person, holding stock of 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, can avail credit on goods held in stock on the appointed day in respect of which he is not in possession of any document evidencing payment of VAT in accordance with the proviso to sub-section (3) of section 140.

Type of Supply from such Stock	Rate of Tax applicable	Quantum of credit* allowed
Intra-State Outward Supply	SGST @ 9% or more SGST @ below 9%	60% of the SGST paid 40% of the SGST paid
Inter-State Outward Supply	IGST @ 18% or more IGST @ below 18%	30% of the IGST paid 20% of the IGST paid

*\* Amount shall be credited after the SGST payable on such supply has been paid (Rule 117(4)(a) of SGST)*

**Example:**

Let us take an example of a trader 'D', who is the final dealer in the chain of supply.

A  $\Rightarrow$  B  $\Rightarrow$  C  $\Rightarrow$  D

(Paid VAT)

(Has VAT Paid Stock)

'D' holds the duty paid stock but does not have the duty paying documents for the same

In this case, 'D' can claim credit of such duty paid goods under Rule 117(4)(a) of SGST

- Such goods were not wholly exempt from duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 or were not nil rated.
- The registered person is in possession of documents relating to procurement of goods.
- The stock of goods on which the credit is availed must be stored in a way that it can be easily identified.
- The scheme shall be available for six tax periods from the appointed date
- Registered person availing this scheme must furnish the details of stock held by him and submit a statement in FORM GST TRAN 2 at the end of each of the six tax periods during which the scheme is in operation indicating the details of supplies of such goods effected during the tax period. By Order No. 1/2018-CT dated 28.03.2018, the due date for filing Form GST TRAN-2 for all months (July 2017 to December 2017) is extended to 30.06.2018. In respect of registered persons who could not file Form GST TRAN-1 within the specified date due to technical glitches on the common portal and for whom the Council has made a recommendation for extension, the due date for filing GST TRAN-2 is 30.04.2020 vide Notification No. 02/2020-CT dated 01.01.2020 [earlier 30.04.2019 vide Notification No.48/2018-CT dated 10.09.2018.]
- The amount of credit allowed shall be credited to the electronic credit ledger.
- Eligible Duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day on which the CGST Act comes into force shall include the laws cited in the Section supra

#### Explanation

The expressions “Central Value Added Tax (CENVAT) credit” “first stage dealer”, “second stage dealer”, or “manufacture” shall have the same meaning assigned to them in the Central Excise Act, 1944 or the rules made there under.

Particulars	CGST
Credit to be carried forward	CENVAT credit
Relevant law	CENVAT Credit Rules, 2004
Specified duties which would be allowed as transitional credit	<ul style="list-style-type: none"> <li>— Central Excise paid on ‘inputs’ specified in schedules I and II of CETA, 1985</li> <li>— Countervailing duty paid on ‘inputs’ under Customs Tariff Act</li> <li>— Special Additional Duty paid on ‘inputs’</li> <li>— National Calamity Contingent Duty paid on ‘inputs’</li> <li>— AED paid under AED (Textile &amp; Textile Articles) Act, 1978 on ‘inputs’</li> <li>— AED paid under AED (Goods of Special Importance) Act, 1957 on ‘inputs’</li> </ul>

Particulars	CGST
Procedure for claiming the credit [Rule 117(1) (2) & (4) ]	<ul style="list-style-type: none"> <li>(i) Submit declaration in Form GST TRAN-1 electronically;</li> <li>(ii) Due date for filing TRAN-1 is within 90 days of the appointed day; (The Commissioner may extend the period of 90 days by a further period of not exceeding 90 days).</li> <li>(iii) Accordingly, the Commissioner has extended date of filing Form GST TRAN-1 to 27.12.2017 vide order No. 9/2017-GST dated 15.11.2017.</li> <li>(iv) In respect of registered persons who could not file Form GST TRAN-1 within the specified date due to technical glitches on the common portal and for whom the Council has made a recommendation for extension, the Commissioner may extend the date for submission of Form GST TRAN-1 by a further period not beyond 31.03.2019 vide Notification No.48/2018-CT dated 10.09.2018.</li> <li>(v) Form GST TRAN-1 may be revised once within the prescribed time limit [Rule No. 120A].</li> <li>(vi) By order No.10/2017-GST dated 15.11.2017, the Commissioner has extended the time limit for revision to 27.12.2017.</li> <li>(vii) Submit statement in FORM GST TRAN-2 at the end of each of the tax periods during which the scheme is in operation.</li> <li>(viii) By Order No. 1/2018-CT dated 28.03.2018, the due date for filing Form GST TRAN-2 for all months (July 2017 to December 2017) is extended to 30.06.2018.</li> <li>(ix) Vide Notification No.48/2018-CT dated 10.09.2018, the due date for filing GST TRAN-2 in respect of registered persons who could not file Form GST TRAN-1 within the specified date due to technical glitches on the common portal and for whom the Council has made a recommendation for extension is 30.04.2019.</li> <li>(x) Amount of credit shall be credited to Electronic Credit Ledger maintained in the common portal in FORM GST PMT-2.</li> </ul>



It must be clearly understood that CENVAT Credit can only be availed as CGST Credit in the Electronic Credit Ledger. Details of stock held on the appointed date are required to be reported on the Common Portal.

It is important to note that use of the word 'goods' while referring to semi-finished and finished 'goods' in stock appears to restrict credit under section 140(3) only to 'movable' items of inventory. As a result, works contractors carrying WIP in the form of incomplete building or road or other immovable structure may not be allowed transition credit. There are two alternatives that may be considered (a) to pursue transition credit even in respect of such WIP citing the reference to 'goods' as being unintended error that undermines the substantive benefit sought to be allowed by the main provision or (b) accelerate the billing in respect of all WIP so as to discharge taxes under the earlier laws and pass on credit, where possible, to the customer (refer discussion under section 142(11) in respect of levy of taxes under earlier laws).

Similar provisions in the respective SGST Act may be followed in respect of credit of SGST.

**Credit of eligible duties and taxes on input held in stock**

## 140.3.3

Person eligible for input tax credit	Credit available on	Conditions
<ul style="list-style-type: none"> <li>Person not liable to be registered under the earlier law</li> <li>Person engaged in manufacture/ sale of exempted goods, provision of exempted services</li> <li>Person providing works contract service and availing abatement under notification no. 26/2012</li> <li>First/ Second stage dealer,</li> <li>importer or</li> <li>a depot of a manufacturer</li> </ul>	<ul style="list-style-type: none"> <li>Inputs held in stock and inputs contained in semi-finished goods or finished goods held in stock as on appointed day</li> <li>Above benefit not available for input services</li> <li>Such credit can be taken in the electronic credit ledger</li> </ul>	<ul style="list-style-type: none"> <li>Goods must be used for taxable supply</li> <li>Eligible to take the credit under GST law</li> <li>Such person should be in possession of invoice or other prescribed document</li> <li>Invoice or other document should be within 12 months from the appointed day</li> <li>Excess claims will be recovered as arrears of tax under GST law</li> </ul>

**Issues / Concerns:**

- a. Availability of transitional credit to manufacturers / service provider: It appears that the provision is discriminatory when it seeks to deny the benefit of the above transitional credit to manufacturers/ service providers as even such taxpayers may have purchased goods from a non-excise dealer and hence, would not be in a possession of duty paying document in respect of the stock held. This would adversely impact the margins of the assessee, depending on the quantum of such stock.

For e.g.: Printing services are taxable under the GST laws as a 'supply of service'; however, no transitional credit would be available to such service provider under proviso to Section 140(3) of CGST Act, 2017 in case he has procured the goods i.e. paper for printing from the trader on which VAT /CST was charged under the erstwhile laws.

- b. Credit of eligible duties and taxes in respect of inputs held in stock for a works contractor: The above provision does not contemplate a situation where a service provider engaged in providing works contract services does not avail the benefit of Notification No. 26/2012 dated. 20th June, 2012 and is discharging service tax in terms of Rule 2A of the Service Tax (Determination of Value) Rules, 2006 on the service portion derived under the deduction method or percentage method prescribed therein.
- c. Availment of credit in relation to transitional stocks held with the branch: Suppose, ABC Ltd is a registered importer having its head office at Haryana and a branch at Odisha. The head office had sent goods to the branch office prior to the appointed day under a declaration of Form F. While filing the GST TRAN 1, for the stocks lying with the branch, whether the branch will be eligible to get the credit of all the taxes paid at the time of import on the basis of documents possessed / addressed to the Head office and the Form F. Alternatively, whether the branch will be eligible for availment of deemed credit on such transaction on the account of non-possession of duty paying documents.
- d. Availment of credit on invoices not older than 12 months from the appointed day: There may arise a situation where stocks held on the appointed day (either as goods or work-in-progress) contain goods which has been purchased prior to twelve months preceding the appointed day (especially in case of long term contracts/ works contracts wherein the contracts are in progress for more than a year). Disallowance of credit paid on inputs in such cases will result in financial hardship to the assessee. The provision of deemed credit does not have any such 12 months' period but is applicable only to assessee other than manufacturers and service providers.

It is pertinent to note that Hon. Gujarat High Court in the case of Filco Trade Centre Pvt. Ltd v. Union of India strikes down clause (iv) of sub-section (3) of Section 140 which imposes a condition on availment of transitional input tax credit in case of dealers by stipulating that invoices/other prescribed documents should not be issued earlier than 12 months immediately preceding the appointed day, as unconstitutional. Since, the due date for revision of Form GST TRAN-1 has expired and in the absence of facility being made available in GSTN portal to give effect to this judgement, it is advisable for dealers to make a written representation to concerned jurisdictional GST Authority and the GST Council for seeking ITC relief in this matter.

- e. In fact, this provision would apply to the leasing industry, as well, which necessarily implies that no such credit can be availed on capital goods.
- f. Input tax credit cannot be availed through TRAN-2 in case of failure to show such stocks in TRAN-1 as stock held in stock without duty paying document.

**Statutory Provisions****140(4) Credit of eligible duties and taxes in respect of inputs held in stock allowed in certain situations**

*A registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 or provision of taxable as well as exempted services under Chapter V of Finance Act, 1994, but which are liable to tax under this Act shall be entitled to take, in his electronic credit ledger,-*

- (a) *the amount of CENVAT credit carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-section (1); and*
- (b) *the amount of CENVAT 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, relating to such exempted goods or services, in accordance with the provisions of sub-section (3).*

*Explanation. —The expression “eligible duties” means—*

- (i) *the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;*
- (ii) *the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;*
- (iii) *the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975*
- (iv) <sup>19</sup> ~~*the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978;*~~
- (iv) *the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;*
- (v) *the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985; and*
- (vi) *the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001,*

*in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day*

**Extract of the CGST Rules, 2017 – The extract of the relevant rules have been provided below the Statutory Provisions of Section 140(1) of the CGST Act, 2017 *supra*.**

<sup>19</sup> Omitted vide The Central Goods and Services Tax Amendment Act, 2018 w.e.f. 01.02.2019

**Relevant provisions of the Statute**

Section of CGST	Description
Section 2(46)	Definition of 'Electronic Credit Ledger'
Section 16 to 21	Manner of taking input tax credit
Section 79	Recovery of tax
Central Tax Rules 117(1) & (2)	Tax or duty credit carried forward
Central Tax Rule 120A	Revision of declaration in TRAN-1

**140.4.1 Introduction**

This transition provision permits for availment of input credit by a registered person who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 or engaged in provision of taxable as well as exempted services under Chapter V of Finance Act, 1994.

**140.4.2 Analysis**

This provision is applicable only for inputs (not capital goods) held in stock or in respect of inputs contained in semi-finished goods or finished goods held in stock on the appointed day on 'ELIGIBLE DUTIES and the amount of CENVAT credit carried forward in a return furnished under the erstwhile law by him.

This section mirrors the provisions of section 140(1) and 140(3) in respect of goods that were not taxable under the earlier law and become taxable in GST.

The definition of 'Eligible Duties' as stated in explanation 1 to Section 140 (10) cited supra is applicable here.

The claim of transitional credit under this Section is subject to the following conditions:

- (i) The person must be a registered person under the GST Laws.
- (ii) The taxable person must have been engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 or provision of taxable as well as exempted services under Chapter V of Finance Act, 1994.
- (iii) In terms of Sub Rule 2(b) of the Transition Provision Rules the application in Form GST TRAN -01 shall specify separately the details of stock held on the appointed day up to 6 tax periods indicating the details of supplies effected during each tax period.

The details of credit availment are as follows:

Particulars	CGST
Credit to be carried forward	<p>Amount of CENVAT credit carried forward in a return furnished under earlier law in terms of section 140(1)</p> <p>Amount of CENVAT 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, relating to exempted goods or services, in terms of section 140(3). Reference may be made in Section 140(3) for better understanding.</p>
Relevant law	CENVAT Credit Rules, 2004
Form in which the credit would be available under the GST law	Would be available as a balance in the electronic credit ledger of the tax payer.
Procedure for claiming the credit [Rule 117(1) & (2)]	<ul style="list-style-type: none"> <li>(i) Submit declaration in Form GST TRAN1 electronically;</li> <li>(ii) Due date for filing TRAN-1 is within 90 days of the appointed day; (The Commissioner may extend the period of 90 days by a further period of not exceeding 90 days).</li> <li>(iii) Accordingly, the Commissioner has extended date of filing Form GST TRAN-1 to 27.12.2017 vide order No. 9/2017-GST dated 15.11.2017.</li> <li>(iv) In respect of registered persons who could not file Form GST TRAN-1 within the specified date due to technical glitches on the common portal and for whom the Council has made a recommendation for extension, the Commissioner may extend the date for submission of Form GST TRAN-1 by a further period not beyond 31.03.2019 vide Notification No.48/2018-CT dated 10.09.2018.</li> <li>(v) Form GST TRAN-1 may be revised once within the prescribed time limit [Rule No. 120A].</li> <li>(vi) By order No.10/2017-GST dated 15.11.2017, the Commissioner has extended the time limit for revision to 27.12.2017.</li> </ul>

**Statutory Provisions****140(5). Credit of eligible duties and taxes in respect of inputs or input services during transit**

*A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the <sup>20</sup>~~existing law~~ existing law, within such time and in such manner as may be prescribed], subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of accounts of such person within a period of thirty days from the appointed day:*

*Provided that the period of thirty days may, on sufficient cause being shown, be extended by the commissioner for a further period not exceeding thirty days.*

*Provided Further that said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section.*

*Explanation 2. —The expression “eligible duties and taxes” means—*

- (i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;*
- (ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;*
- (iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975;*
- (iv) ~~the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978;~~*
- (v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;*
- (vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985;*
- (vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001; and*
- (viii) the service tax leviable under section 66B of the Finance Act, 1994,*

*in respect of inputs and input services received on or after the appointed day.*

<sup>21</sup> *[Explanation 3. — For removal of doubts, it is hereby clarified that the expression “eligible duties and taxes” excludes any cess which has not been specified in Explanation 1 or Explanation 2 and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975]*

<sup>20</sup> Inserted vide The Central Goods and Services Tax Amendment Act, 2020 w.e.f. 18.05.2020

<sup>21</sup> Inserted vide The Central Goods and Services Tax Amendment Act, 2018 w.e.f. 01.02.2019

**Extract of the CGST Rules, 2017 – The extract of the relevant rules have been provided below the Statutory Provisions of Section 140(1) of the CGST Act, 2017 *supra*.**

**Relevant provisions of the Statute**

Section of CGST	Description
Section 2 (46)	Definition of 'Electronic Credit Ledger'
Section 16 to 21	Manner of taking input tax credit
Section 79	Recovery of tax
Central Tax Rules 117(1), (2c),	Tax or duty credit carried forward
Central Tax Rules 120A	Revision of declaration in TRAN-1
Central Tax Rules 121	Recovery of credit wrongly availed.

**140.5.1 Introduction**

This transition provision sets out the conditions and procedure for availing input credit in case of transactions that are spread over the transition period.

**140.5.2 Analysis**

(i) In any given business scenario, it is possible that invoices are raised in the erstwhile tax regime and applicable taxes are also remitted under the erstwhile laws. However, inputs or input services in respect of such transactions are received in a GST regime. This provision alleviates the difficulty in availing credits in such instances. In order to avail such credits in the Electronic Credit Ledger the following conditions need to be satisfied:

(a) Invoices/duty paid documents must be recorded in the books within 30 days from the appointed date which may be extended by the commissioner for another 30 days on showing sufficient cause.

(b) The recipient of inputs or input services must furnish a statement as follows:

In terms of Rule 117(2)(c) the said taxable person shall furnish the following details, vide FORM GST TRAN-1.

- (i) A statement indicating the name and address of the supplier together with invoice details.
- (ii) Description, quantity and value of goods or services.
- (iii) The amount of taxes, duties, VAT, Entry tax charged by the supplier.
- (iv) The date at which receipt of goods or services are entered in the books of the recipient.



The provision is a saving clause in respect of 'goods in transit'.

**Issues / Concerns:**

- a. Transitional provision for service tax payable on receipt basis: Assume a situation where services were provided under the earlier law and an option to pay service tax on receipt basis was exercised. Owing to the aforesaid provisions, the receipts of money on / after 01st July, 2017 would be liable to service tax in the hands of the assessee as he is required to pay tax on receipt basis. If service tax is leviable on such transactions, GST will not be leviable in terms of Section 142(11)(b) of CGST Act, 2017. Further, if service tax is leviable on the same, how is the assessee expected to declare the same in the ST-3 returns, as the ST-3 returns for the period of July 2017 and onwards were not operational.
- b. Taxes paid under earlier laws but bill has been received after appointed day: The aforesaid provision does not cover cases where the service is provided / goods are received on / before 30th June, 2017 and the invoice is dated on / before 30th June, 2017 but the invoice is received after 01st July, 2017.
- c. Capital goods in transit as on the appointed date: The aforesaid provision does not allow availment of credit of duties and taxes in respect of capital goods received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the erstwhile law i.e. capital goods-in-transit. In such a scenario, Excise Duty and VAT paid on the procurement of the capital goods will form a part of cost for the taxpayer.

**Statutory Provisions**

**140(6). Credit of eligible duties and taxes on inputs held in stock to be allowed to a registered person switching over from composition scheme**

*A 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, shall be entitled to take, in his electronic credit ledger, 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 subject to~~<sup>22</sup> [goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to] the following conditions, namely:-*

- (i) *such inputs or goods are used or intended to be used for making taxable supplies under this Act;*
- (ii) *the said registered person is not paying tax under section 10;*
- (iii) *the said registered person is eligible for input tax credit on such inputs under this Act;*

<sup>22</sup> Inserted vide The Central Goods and Services Tax Amendment Act, 2020 w.e.f. 18.05.2020

- (iv) 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
- (v) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

*Explanation.* —The expression “eligible duties” means—

- (i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;
- (ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;
- (iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975
- (iv) <sup>23</sup> ~~the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978;~~
- (v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;
- (vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985; and
- (vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001,

*in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day*

**Extract of the CGST Rules, 2017 – The extract of the relevant rules have been provided below the Statutory Provisions of Section 140(1) of the CGST Act, 2017 *supra*.**

**Relevant provisions of the Statute**

Section of CGST	Description
Section 2( 46)	Definition of ‘Electronic Credit Ledger’
Section 10	Composition Dealer
Section 16 to 21	Manner of taking input tax credits
Rule 117( 2) (b)	Transition Provision Rules under GST Laws
Central Tax Rules 117(1)	Tax or duty credit carried forward
Central Tax Rules 120A	Revision of declaration in TRAN-1
Central Tax Rules 121	Recovery of credit wrongly availed.

<sup>23</sup> Omitted vide The Central Goods and Services Tax Amendment Act, 2018 w.e.f. 01.02.2019

**140.6.1 Introduction**

This transition provision sets out the conditions and procedure for availing input credit by a registered person who is switching over from composition scheme (paying tax at fixed rate or fixed amount) under the erstwhile laws to a regular scheme under the GST law.

**140.6.2 Analysis**

This provision is applicable only for inputs (not capital goods) held in stock or in respect of inputs contained in semi-finished goods or finished goods held in stock on the appointed day on 'ELIGIBLE DUTIES' The claim of transitional credit under this section is subject to the following conditions:

- (i) The person must be a registered person under the erstwhile law as well as GST Laws.
- (ii) He should have opted for payment of tax at a fixed rate or fixed amount in lieu of tax payable under the erstwhile law. Eg. Compounded Levy Scheme under central excise in case of aluminium/steel patts/pattis, special service tax rates in case of insurers carrying on life insurance business, persons providing services in relation to purchase/sale of foreign currency including money changers
- (iii) Specified duties paid on 'inputs' would be allowed as input tax credit, in his Electronic Credit Ledger.
- (iv) The person should opt for payment of tax under the regular scheme under the GST law (cannot be a composition taxpayer u/s 10 of CGST Law).
- (v) The relevant inputs should be held in stock on the date of introduction of GST.
- (vi) Inputs may take any of the following forms –
  - (i) inputs as such (in the same form as it was procured / received – may be raw materials, consumables, packing materials, traded goods etc.),
  - (ii) may be contained in WIP or semi- finished goods or
  - (iii) may be contained in the finished goods.
- (vii) Such inputs must be used or intended to be used for making taxable supplies under the GST Laws.
- (viii) Such goods should qualify as eligible inputs under the GST law.
- (ix) The registered person should be in possession of the invoice and such other documents (as may be prescribed) that shall satisfy the following conditions:
  - (a) The invoice / other document should evidence the payment of duty / tax on such goods.
  - (b) The invoice should not be more than 12 months prior to the date of introduction of GST.

- (x) In terms of Rule 117(2) of CGST Rules, 2017 the application in FORM GST TRAN-1 shall specify separately the details of stock held on the appointed day.

### Statutory provisions

#### **140(7). Credit distribution of service tax by Input Service Distributor.**

*Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as credit under this Act even if <sup>24</sup> [credit under this Act, within such time and in such manner as may be prescribed, even if] the invoices relating to such services are received on or after the appointed day.*

**Extract of the CGST Rules, 2017 – The extract of the relevant rules have been provided below the Statutory Provisions of Section 140(1) of the CGST Act, 2017 supra.**

### Relevant provisions of the Statute

Section	Description	Remarks
Section 2(61)	Definition of Input Service Distributor	To be aware of the meaning of Input Service Distributor under the GST law
Section 2(102)	Definition of Service	It is imperative to know the meaning of service to determine as to what will be distributed under the GST law
Section 20	Manner of distribution of Input Tax Credit by ISD	Section 20 acts as an extension of section 140(7). The eligibility of the credit is discussed as per Section 140(7) whereas the manner of distribution is under section 20.

#### **140.7.1 Introduction**

- (i) This provision has an overriding effect over all other provisions under the GST law.
- (ii) This provision is applicable when:
  - (a) The services are received by the Input Service Distributor before the date of applicability of GST and
  - (b) Tax on such services have not yet been distributed by the Input Service Distributor on the date of applicability of GST.
  - (c) Invoices relating to such services are received on or after the appointed date.
- (iii) Such services will be eligible for distribution as credit under the GST law.

<sup>24</sup> Inserted vide The Central Goods and Services Tax Amendment Act, 2020 w.e.f. 18.05.2020

- (iv) This provision will be applicable irrespective of the date of receipt of invoice by the Input Service Distributor.

#### 140.7.2 Analysis

**Input Service Distributor:** This term has been defined under Section 2(61) of the CGST Law to mean “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.”

Explanation. - For distributing the credit of CGST (SGST in State Acts) and / or IGST or UTGST, Input Service Distributor shall be deemed to be a supplier of services.

**Services:** This term has been defined under Section 2(102) of the CGST law to mean “anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.”

**Date of receipt of invoice is immaterial:** In respect of the services received by the Input Service Distributor before the date of applicability of GST, the invoice can be received by the Input service distributor:

- (a) either before the date of applicability of GST; or
- (b) on the date of applicability of GST
- (c) after the date of applicability of GST

This section seeks to cover all the cases.

**Date of receipt of services is crucial:** For the purposes of this section, it is important that the underlying services must have been received prior to the appointed date.

**Distribution of credit under GST Law:** If any input service distributor:

- receives services before the date of applicability of GST; and
- such services are yet to be distributed on the date of applicability of GST, for want of invoice
- then irrespective of the date of the receipt of invoices by the Input Service Distributor
- the distribution of credit will be as per the GST law.

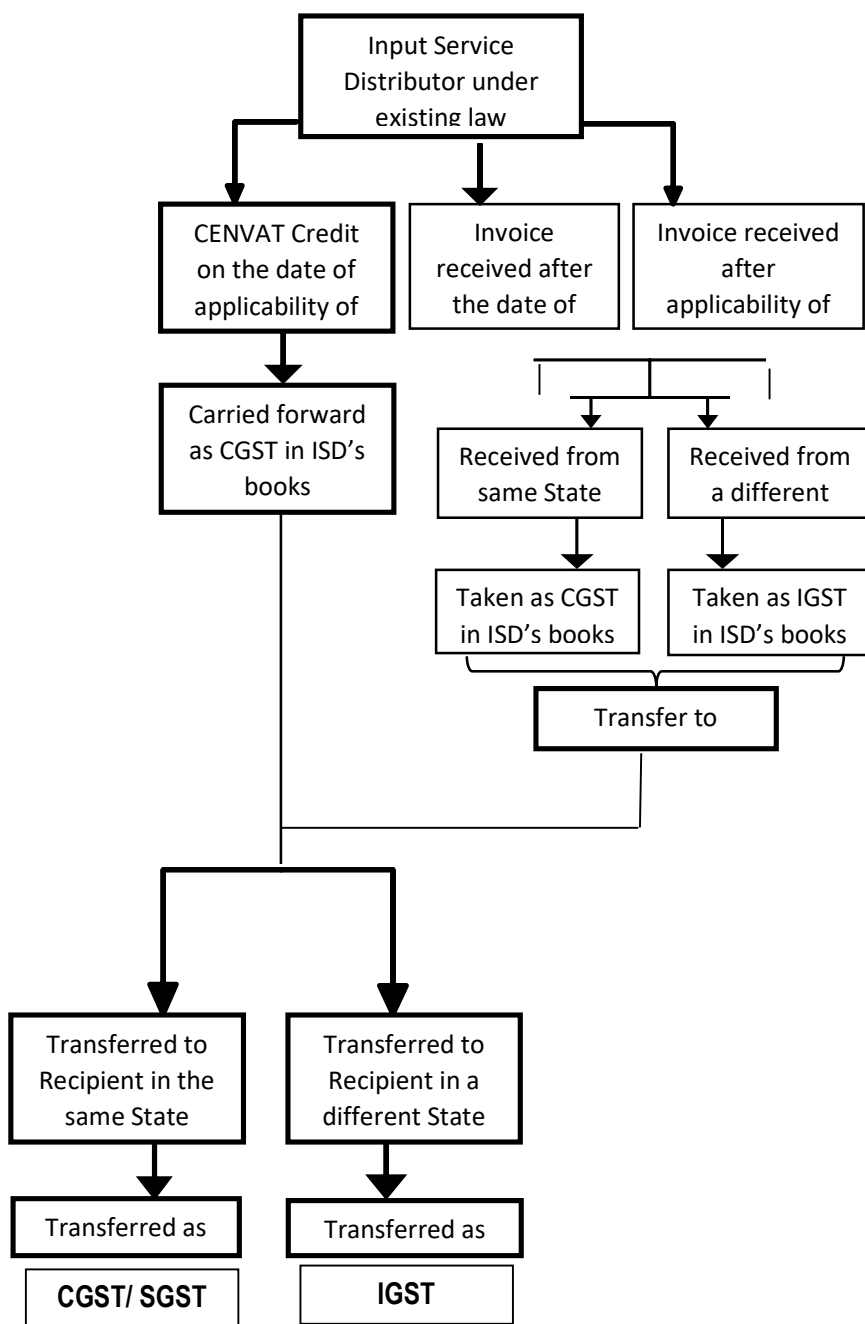
**Manner of distribution of credit by Input Service Distributor:** Section 20 of the CGST law provides the manner in which the credit will be distributed. Following are the key points for consideration:

- If the invoice is received by the Input Service Distributor before the date of applicability of GST, he can distribute the CENVAT Credit under the old law and carry forward this credit as CGST on the date of applicability of GST under section 140(1) of the CGST law. If he distributes the credit on or after the applicability of GST, he can take it as CGST or IGST depending on the nature of supply being intra State or inter-state respectively.
- If the invoice is received by the Input Service Distributor on or after the date of applicability of GST, he can distribute the credit in the form of CGST or IGST depending on the nature of supply being intra State or inter-state.
- If the Input Service Distributor and the recipient of credit are located in two different States, then the input tax credit of both CGST and IGST will be distributed as IGST.
- If the Input Service Distributor and the recipient of credit are located in the same State, then the input tax credit of CGST and IGST will be distributed as such.

#### **140.7.3 Comparative Review**

This is a transitional provision for converging the provisions of the earlier law with the GST law. As this provision is temporary and only for the transition period, there are no comparative provisions in the earlier law which can be relatable to this section.

**Analysis of this transitional provision can be presented in the following flowchart:**



**Statutory provisions****140(8). Provision for transfer of unutilized CENVAT Credit by a registered person having centralized registration under the earlier law**

Where a registered person having centralized registration under the existing law has obtained a registration under this Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of CENVAT credit carried forward in a return, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day ~~in such manner~~<sup>25</sup> [within such time and in such manner] as may be prescribed:

Provided that if the registered person furnishes his return for the period ending with the day immediately preceding the appointed day within three months of the appointed day, such credit shall be allowed subject to the condition that the said return is either an original return or a revised return where the credit has been reduced from that claimed earlier:

Provided further that the registered person shall not be allowed to take credit unless the said amount is admissible as input tax credit under this Act:

Provided also that such credit may be transferred to any of the registered persons having the same Permanent Account Number for which the centralized registration was obtained under the existing law.

**Relevant provisions of the Statute**

Section of CGST	Description
Section 2( 46)	Definition of 'Electronic Credit Ledger'
Section 16 to 21	Manner of taking input tax credit
Rule 117( 2)	Transition Provision Rules under GST Laws
Central Tax Rules 117(1)	Tax or duty credit carried forward
Central Tax Rules 120A	Revision of declaration in FORM GST TRAN-1
Central Tax Rules 121	Recovery of credit wrongly availed.

<sup>25</sup> Inserted vide The Central Goods and Services Tax Amendment Act, 2020 w.e.f. 18.05.2020



**140.8.1 Analysis**

Under the erstwhile law where centralized registration is obtained and credit is lying in balance, it is provided that:

- Credit balance may be taken and carried forward into the GST regime
- Such credit transfer will require filing of a return within 3 months under the old law
- Credit is required to be eligible under the GST law
- Credit is permitted to be transferred to other locations of the person which qualify as taxable persons in GST having the same PAN.

It is interesting that the provision does not lay down any criteria for such transfer of credit between various locations of the person and this is a welcome measure as part of the transition steps.

**Transfer of unutilised CENVAT credit by a person having centralised registration****Note:**

1. Only those credits which are admissible under GST laws will be allowed
2. Credit may be transferred to any registered person having the same PAN for which centralised registration was obtained under erstwhile law

In terms of Rule 117(2) of the CGST Rules 2017 the application in FORM GST TRAN-1 shall specify the said transactions.

**Statutory Provisions****140(9) Reclaiming CENVAT credit reversed due to non-payment of consideration**

*Where any CENVAT credit availed for the input services provided under the existing law has been reversed due to non-payment of the consideration within a period of three months, such credit can be reclaimed subject to credit can be reclaimed within such time and in such manner as may be prescribed, subject to the condition that the registered person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.*

**Extract of the CGST Rules, 2017 – The extract of the relevant rules have been provided below the Statutory Provisions of Section 140(1) of the CGST Act, 2017 supra.**

#### 140.9.1 Introduction

This transition provision has been introduced with a view to enable the availment of credit in cases where CENVAT credit has been reversed in terms of second proviso to rule 4(7) of the CENVAT Credit Rules, 2004. In terms of the said proviso, CENVAT credit is reversed in case of input services, the payment of consideration for which is not made within a period of 3 months from the date of invoice/challan etc. Subsequently, such credit is allowed as and when the payment is made.

#### 140.9.2 Analysis

This Section would apply in the following circumstances:

- (i) The CENVAT credit had been reversed by the manufacturer or the service provider in terms of second proviso to Rule 4(7) of the CENVAT Credit Rules, 2004.
- (ii) Such payment is then made after the appointed day.
- (iii) The payment is made within 3 months from the appointed day.

It provides that where the above conditions are fulfilled, the credit shall be allowed as CGST credit.

For the period ending with the day immediately preceding the appointed day, if the registered person files an original/revised return within 3 months of the appointed day.

#### Statutory Provisions

Section	Particulars
141(1)	No tax payable if input removed to a job worker for further processing, testing etc. prior to the appointed day returned within a period of 6 months or extended period for further 2 months.
141(2)	No tax payable if semi-finished goods that had been removed to any other premises for carrying out certain manufacturing processes prior to the appointed day returned within a period of 6 months or extended period for further 2 months.
141(3)	No tax payable on manufactured excisable goods removed without payment of duty for carrying out tests etc. not amounting to manufacture as per erstwhile law prior to the appointed day returned within a period of 6 months or extended period for further 2 months.
141(4)	No tax payable under sub-section (1)/ (2) or (3) if the manufacturer and the job-worker declare the details of the inputs or goods held in stock.

**141. Transitional provisions relating to job work**

- (1) *Where any inputs received at a place of business had been removed as such or removed after being partially processed to a job worker for further processing, testing, repair, reconditioning or any other purpose in accordance with the provisions of existing law prior to the appointed day and such inputs are returned to the said place on or after the appointed day, no tax shall be payable if such inputs, after completion of the job work or otherwise, are returned to the said place within six months from the appointed day:*

*Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:*

*Provided further that if such inputs are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142.*

- (2) *Where any semi-finished goods had been removed from the place of business to any other premises for carrying out certain manufacturing processes in accordance with the provisions of existing law prior to the appointed day and such goods (hereafter in this section referred to as "the said goods") are returned to the said place on or after the appointed day, no tax shall be payable, if the said goods, after undergoing manufacturing processes or otherwise, are returned to the said place within six months from the appointed day:*

*Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:*

*Provided further that if the said goods are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142:*

*Provided also that the manufacturer may, in accordance with the provisions of the existing law, transfer the said goods to the premises of any registered person for the purpose of supplying therefrom on payment of tax in India or without payment of tax for exports within the period specified in this sub-section.*

- (3) *Where any excisable goods manufactured at a place of business had been removed without payment of duty for carrying out tests or any other process not amounting to manufacture, to any other premises, whether registered or not, in accordance with the provisions of existing law prior to the appointed day and such goods, are returned to the said place on or after the appointed day, no tax shall be payable if the said goods, after undergoing tests or any other process, are returned to the said place within six months from the appointed day:*

*Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:*

*Provided further that if the said goods are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142:*

*Provided also that the manufacturer may, in accordance with the provisions of the existing law, transfer the said goods from the said other premises on payment of tax in India or without payment of tax for exports within the period specified in this sub-section.*

- (4) *The tax under sub-sections (1), (2) and (3) shall not be payable, only if the manufacturer and the job-worker declare the details of the inputs or goods held in stock by the job-worker on behalf of the manufacturer on the appointed day in such form and manner and within such time as may be prescribed.*

#### Extract of the CGST Rules, 2017

##### **119. Declaration of stock held by a principal and job-worker.-**

*Every person to whom the provisions of section 141 apply shall, within <sup>26</sup> [the period specified in rule 117 or such further period as extended by the Commissioner], submit a declaration electronically in **FORM GST TRAN-1**, specifying therein, the stock of the inputs, semi-finished goods or finished goods, as applicable, held by him on the appointed day.*

#### Relevant provisions of the Statute

Section	Description
Section 2(68)	Definition of 'Job work'
Explanation to Chapter XX	Definition of 'Manufacturer' to be understood in terms of the Central Excise Law
Section 2(85)	Definition of 'Place of Business'
Section 142(8)(a)	Recovery of any amount in pursuance of assessment or adjudication proceedings under the existing laws
Section 79	Recovery of amount payable to Government
Rule 117	Time limit for filing FORM GST TRAN-1
Rule 119	Declaration of stock held by
Rule 120A	Revision of declaration in FORM GST TRAN-1
Section 143	Jobwork

<sup>26</sup> Substituted vide Notf no. 36/2017-CT dt. 29.09.2017

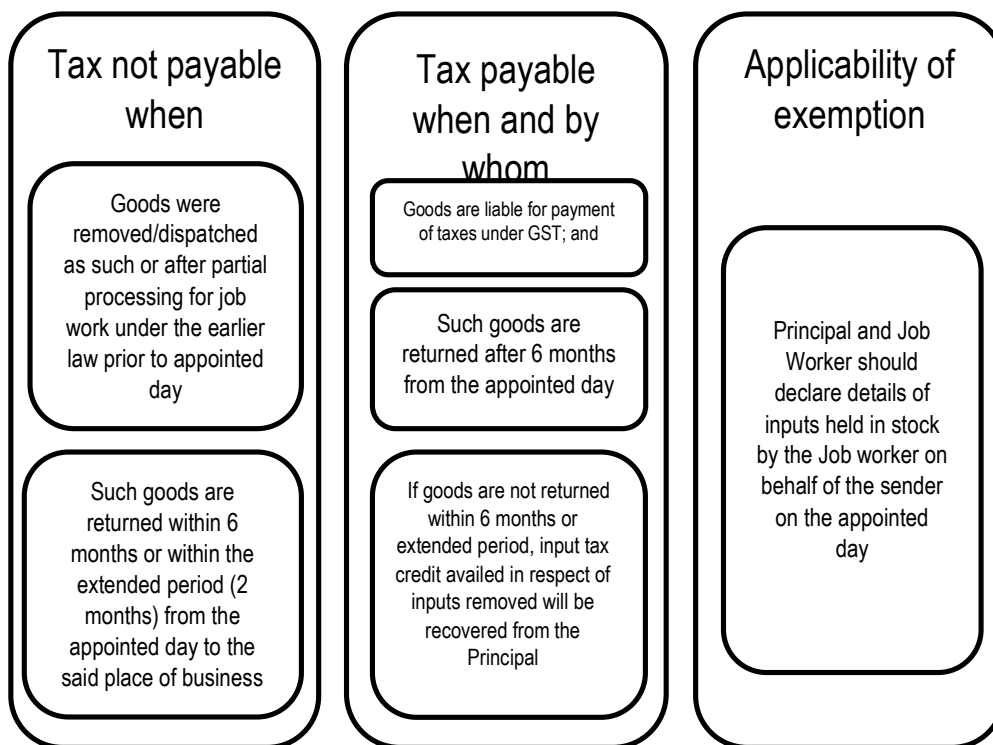
**141(1) Inputs removed for job work and returned on or after the appointed day****141.1.1 Introduction**

This transition provision is with respect to inputs removed as such or after partial processing from a place of business for the purposes of carrying out any processing, repair, reconditioning or for any other purposes under the erstwhile laws but are returned / returnable after the date of implementation of GST.

**141.1.2 Analysis**

- In case inputs removed by a Principal to a Job Worker's premises that are returned to the Principal within 6 months (or within an extended period of further 2 months), no tax shall be payable. However, if the inputs are not returned within 6 months or such extended period of 2 months, then the input tax credit availed by the Principal shall be recovered as arrears of tax under CGST Law and no input tax credit of such tax paid shall be allowed under the CGST Law.
- Rule 119 prescribes that every Principal and the Job Worker shall file a declaration in FORM GST TRAN-1 specifying the stock held at job worker's premises. The time limit for furnishing the above declaration in TRAN-1 has been prescribed in Rule 117.
- **Eg 1:** A manufacturer had removed inputs worth Rs.5,00,000 on 1st January, 2017 for job work. On 10th December, 2017, the inputs are returned by the job worker. Since, the inputs are returned within 6 months from the date of applicability of GST, no tax will be payable.
- **Eg 2:** In Eg 1 above, if the goods are not returned by the job worker within the period of 6 months from the applicability of GST i.e. by 31st December, 2017, then the input tax credit shall be liable to be recovered in terms of section 142 (8)(a); i.e., the input tax credit shall be liable to be recovered as an arrear of tax under the CGST Act and the amount so recovered shall not be admissible as input tax credit.

**Inputs removed for Job work and returned on or after the appointed day**

**Issues / Concerns:**

- a. Cases where CENVAT credit already reversed under earlier law: These transitional provisions do not cover those situations where goods are received back after the appointed date in respect of which CENVAT credit is already reversed prior to appointed date.

**141(2) Semi-finished goods removed for job work and returned on or after the appointed day**

**Extract of the CGST Rules, 2017 – *The extract of the relevant rules have been provided below the Statutory Provisions of Section 141(1) of the CGST Act, 2017 supra.***

**141.2.1 Introduction**

This transitional provision is with respect to semi-finished goods which were dispatched from a place of business for job work (for the purpose of carrying out any manufacturing processes) under the erstwhile laws but are returned / returnable after the date of implementation of GST.

**141.2.2 Analysis**

- In case Semi-finished goods removed by a Principal to a Job Worker's premises that are returned to the Principal within 6 months (or within an extended period of further 2

months), no tax shall be payable. However, if the semi-finished goods are not returned within 6 months or such extended period of an additional 2 months then the input tax credit availed by the Principal shall stand reversed under the erstwhile law or recovered as arrears under the CGST Law.

- Rule 119 prescribes that every principal and the job worker shall file a declaration in FORM GST TRAN-1 specifying the stock held at job worker's premises. The time limit for furnishing the above declaration in TRAN-1 has been prescribed in Rule 117.
- The manufacturer may, instead of bringing the said goods back to his place of business, transfer the said goods to the premises of any registered person for the purpose of supplying there from to places within India or for exports. The premises of any registered person may include premises like bonded warehouses where to goods manufactured can be removed from the place of manufacture without payment of excise duty by complying with the relevant provisions of the Central Excise Law. If the supplies from those premises are made within India, tax shall be paid on such supplies. If the said goods are exported no tax need to be paid on such supplies.

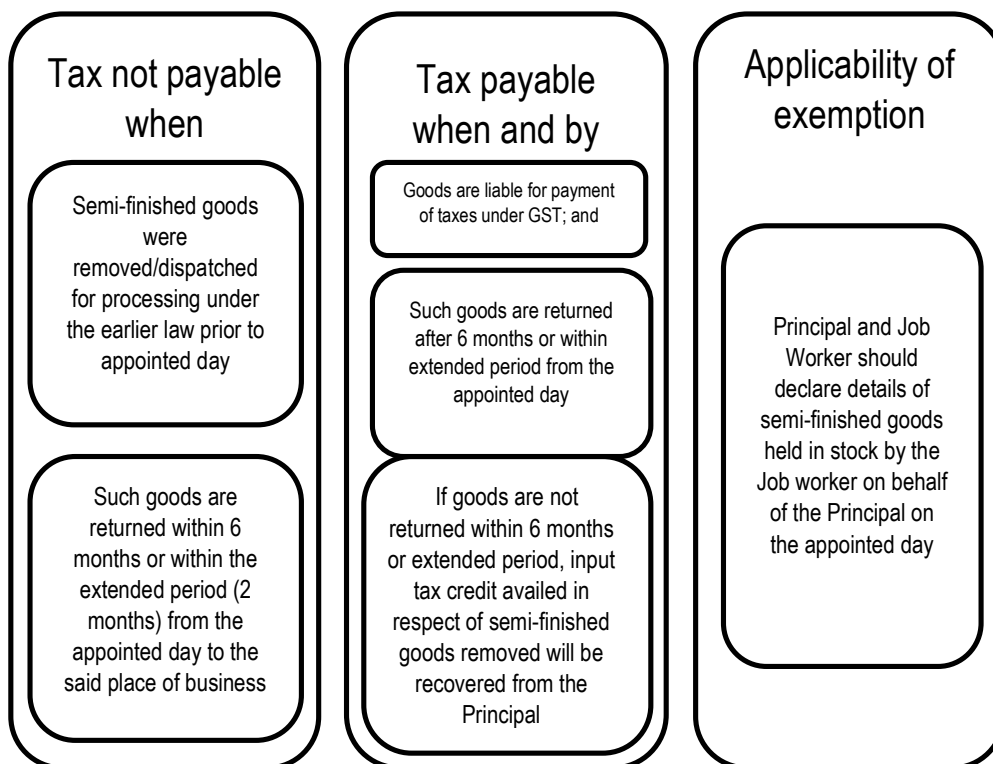
**Eg 1:** A manufacturer had removed semi-finished goods worth Rs.5,00,000 on 1<sup>st</sup> January, 2017 for further processing. GST. On 10<sup>th</sup> October, 2017, these goods are returned by the job worker. Since the goods are returned within 6 months from the date of applicability of GST, no tax will be payable.

**Eg 2:** In Eg 1 above, if the goods are not returned by the job worker within the period of 6 months from the applicability of GST i.e. till 31<sup>st</sup> December, 2017, then the input tax credit shall be liable to be recovered in terms of section 142 (8)(a); i.e., the input tax credit shall be liable to be recovered as an arrear under the CGST Act.

**Eg 3:** In Eg 1 above, assume that the goods are directly transferred to a registered taxable person within 6 months from the applicability of GST i.e. till 31<sup>st</sup> December, 2017. In this case, tax will be payable under GST if the goods there from are supplied in India and tax will not be payable if the same is exported.

**The analysis of above provision in a pictorial form is summarised as follows:**

Semi-finished goods removed for Job work and returned on or after the appointed day



### 141.3 Finished goods removed for carrying out certain processes and returned on or after the appointed day

**Extract of the CGST Rules, 2017 – *The extract of the relevant rules have been provided below the Statutory Provisions of Section 141(1) of the CGST Act, 2017 supra.***

#### 141.3.1 Introduction

This transition provision is with respect to excisable goods manufactured and removed from a place of business without payment of duty for the purposes of carrying out any tests or any other process and which are returned / returnable after the date of implementation of GST.

#### 141.3.2 Analysis

- Excisable goods are manufactured and removed from the place of business without payment of duty for carrying out tests or any other process (not amounting to manufacture), to any other premises, whether registered or not, in terms of the earlier law prior to the appointed day. Subsequently such goods, are returned to the said place of business on or after the appointed day, then no tax shall be payable if the said goods, after undergoing the process, are returned to the said place within 6 months from the appointed day.



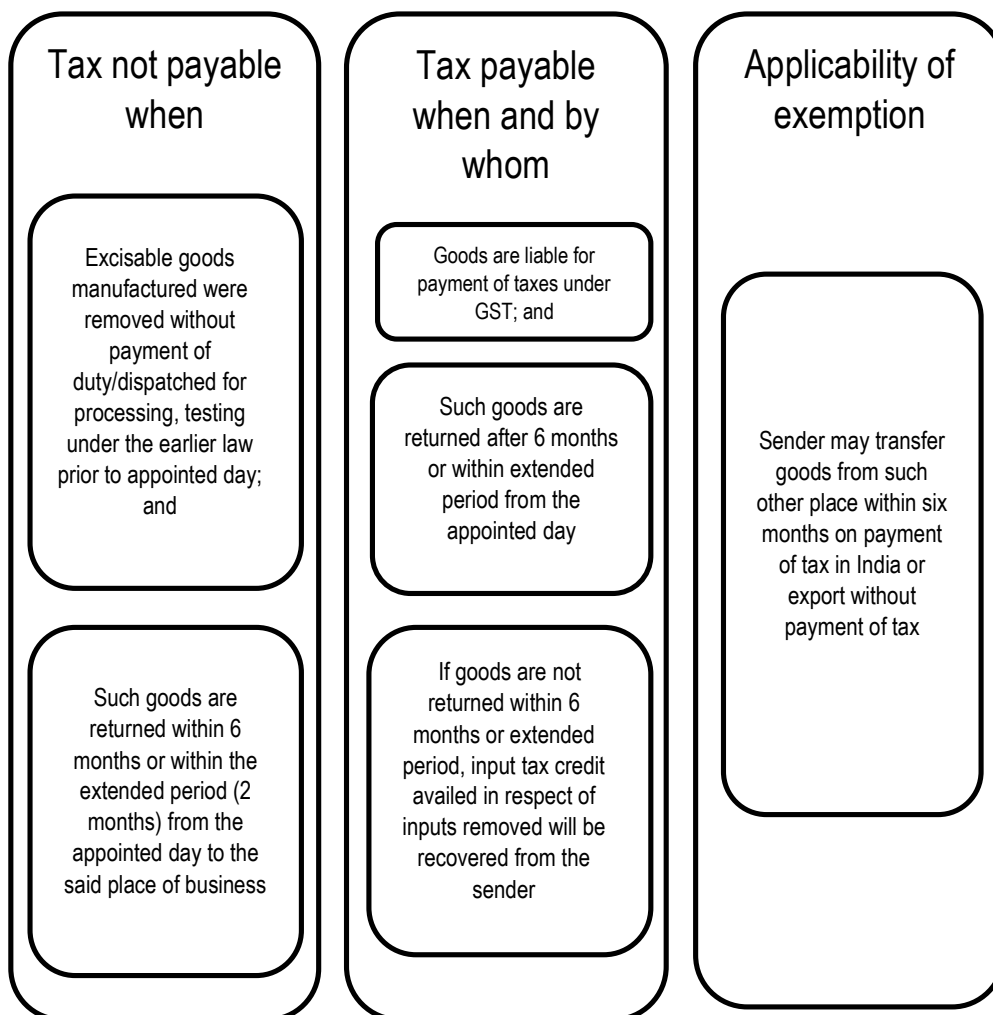
- The period of 6 months may be extended by the Commissioner for a further period not exceeding 2 months.
- If the said goods are not returned within 6 months or extended period, from the appointed day, the input tax credit shall be liable to be recovered under the erstwhile law. If the input tax credit is not recovered under the erstwhile law, it will be recovered as an arrear under the CGST Act.
- The manufacturer may, in terms of the provisions of the earlier law, transfer the said goods from the premises of the job worker on payment of tax if the supplies are made within India or without payment of tax for exports. The premises of the same registered person refers to premises like bonded warehouses to where goods manufactured can be removed from the place of manufacture without payment of excise duty by complying with the relevant provisions of the Central Excise Law. If the transfer from those premises are made within India, tax shall be paid on such transfers. If the said goods are exported no tax need to be paid on such transfers.

**Eg 1:** A manufacturer had removed finished goods worth Rs.5,00,000 on 1<sup>st</sup> January, 2017 for testing. On 20<sup>th</sup> November, 2017, these goods are returned by the person after testing. Since the goods are returned within 6 months from the date of applicability of GST, no tax will be payable.

**Eg 2:** In Eg 1 above, assume that the goods are not returned directly from the premises of the tester within 6 months from the applicability of GST i.e. till 31<sup>st</sup> December, 2017. In this case, input tax credit shall be liable to be recovered in terms of section 142(8)(a).

**The analysis of above provision in a pictorial form is summarised as follows:**

Finished goods removed for carrying out certain processes and returned on or after the appointed day



This provision stipulates that immunity from paying tax under section 141(1), 141(2) and 141(3) is available only if both the manufacturer and the job worker declare the details of inputs or goods held in stock by the job worker on behalf of the manufacturer.

#### 141.3.4 FAQs

- Q1. Can the benefit of sub sections 1, 2 & 3 be availed even if the date of removal of inputs, semi-finished goods or finished goods is falling beyond one year before the appointed date?
- Ans. Yes. There are no restrictions in Sec 141 regarding the time period before the appointed date within which the date of removal of goods removed should fall in order to avail the benefit of Sec 141. The restriction regarding the time limit is only in respect

of receiving back of the goods to the place of business from where those goods were originally removed.

### Statutory Provisions

Section	Particulars
142(1)	Refund of duty on any goods on which duty had been paid under the existing law at the time of removal thereof
142(2)(a)	The price of any goods or services or both is revised upwards on or after the appointed day, shall be deemed to be an outward supply made under this Act
142(2)(b)	The price of any goods or services or both is revised downwards on or after the appointed day, shall be deemed to be in respect of outward supply made under this Act
142(3)	Every claim for refund filed before, on or after the appointed day, under the existing law, shall be disposed of in accordance with the provisions of existing law
142(4)	Every claim for refund filed after the appointed day for refund of any duty or tax paid under existing law in respect of the goods or services exported before or after the appointed day shall be disposed of in accordance with the provisions of existing law
142(5)	Every claim of refund of tax filed after the appointed date paid under the existing law in respect of services not provided
142(6)(a)	Every proceeding of appeal, review or reference relating to a CLAIM for CENVAT credit initiated whether before, on or after the appointed day under the existing law
142(6)(b)	Every proceeding of appeal, review or reference relating to RECOVERY for CENVAT credit initiated whether before, on or after the appointed day under the existing law
142(7)(a)	Every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law and if any amount becomes recoverable from the claimant
142(7)(b)	Every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, and any amount found to be admissible to the claimant

142(8)(a)	In pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes RECOVERABLE from the person.
142(8)(b)	In pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes REFUNDABLE to the taxable person.
142(9)(a)	Where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of CENVAT credit is found to be inadmissible
142(9)(b)	Where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if, pursuant to such revision, any amount is found to be refundable or CENVAT credit is found to be admissible
142(10)	Goods or services or both supplied (in pursuance of a contract entered into prior to the appointed day) i.e., ongoing contracts on or after the appointed day shall be liable to tax
142(11)(a)	No tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State
142(11)(b)	No tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994
142(11)(c)	Where tax was paid on any supply both under the Value Added Tax and under Chapter V of the Finance Act, 1994, tax shall be leviable under this Act to the extent of supplies made after the appointed day i.e., supply of goods or services or both supplied after the appointed day
142(12)	Any goods sent on approval basis, not earlier than six months before the appointed day, are rejected and returned to the seller on or after the appointed day
142(13)	No deduction of tax at source under section 51 shall be made by the deductor on sale made under existing law which is subject to TDS and has also issued an invoice before the appointed day – Section 142(13)

**142(1) Duty paid Goods returned to the place of business on or after the appointed day**

*Where any goods on which duty, if any, had been paid under the existing law at the time of removal thereof, not being earlier than six months prior to the appointed day, are returned to any place of business on or after the appointed day, the registered person shall be eligible for refund of the duty paid under the existing law where such goods are returned by a person, other than a registered person, to the said place of business within a period of six months from the appointed day and such goods are identifiable to the satisfaction of the proper officer.*

*Provided that if the said goods are returned by a registered person, the return of such goods shall be deemed to be a supply.*

**142.1.1 Introduction**

This transitional provision provides for refund of duties paid on goods under erstwhile law when returned to the place of business.

**142.1.2. Analysis**

This section provides for refund in respect of sales returns, viz., where the sale was under the erstwhile law and the return is under the GST law. The section provides that the person receiving the said goods back under the GST regime would be eligible to refund of the duty paid under the erstwhile law at the time of removal of goods, if the person returning the goods is not a registered person, return of goods by a person registered would tantamount to be a deemed supply.

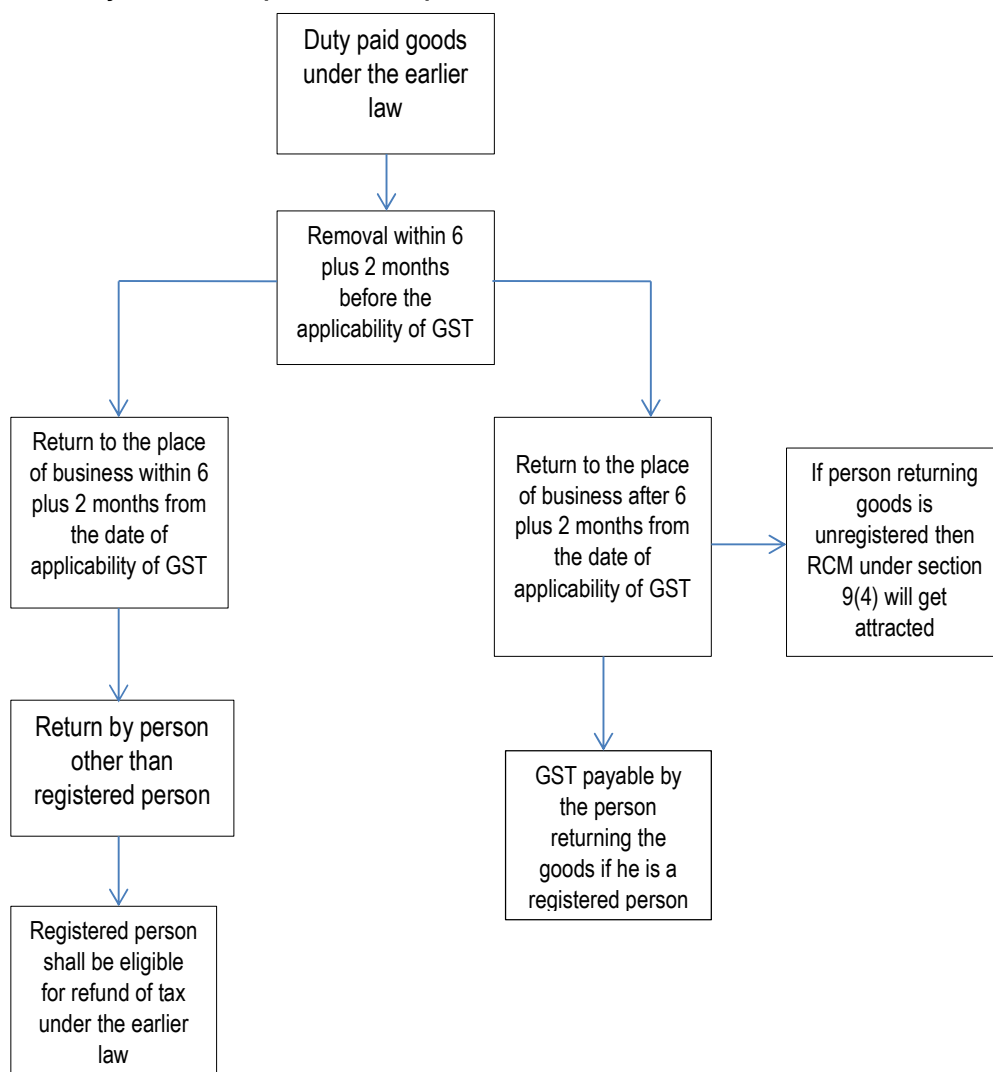
This provision would be applicable in the following circumstances:

- (i) **Duty was paid at the time of removal:** Central Excise duty, should have been paid when the goods were removed/sold under the erstwhile law.
- (ii) **Sales return should be to any place of business:** While the law provides that the return can be to any place of business (in the same state by a person other than a registered person) and not necessarily to the same place of business from where it was removed, it is essential that the return should be to the same taxable person.
- (iii) Return of goods by a registered person shall be deemed to be a supply of goods.
- (iv) **Time period:** The Section provides for time lines for both, the removal and the return.
  - (a) **Removal:** It should have taken place not earlier than 6 months from the date of introduction of GST.
  - (b) **Return:** It should be within 6 months from the date of introduction of GST.

If the goods are not returned within the time line, the supplier shall not be eligible for the said refund.
- (v) Also, please note that similar provision would find place in the SGST Act so that the full incidence of GST flows to these transaction.

**Eg 1:** A manufacturer had removed goods for sale worth Rs.5,00,000 on 1<sup>st</sup> March, 2017 after paying the necessary duty under Central Excise law. These goods are also taxable under GST. GST applicable from 1<sup>st</sup> July, 2017. On 10<sup>th</sup> July, 2017, goods worth Rs.1,00,000 are returned by the buyer. Since, the goods are returned within 6 months from the date of applicability of GST, the supplier shall be eligible for refund of Central Excise Duty paid by him.

The analysis of above provision in a pictorial form is summarised as follows:



**Statutory Provisions****142(2) Issue of supplementary invoices, debit or credit notes where price is revised in pursuance of a contract**

- (a) *where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised upwards on or after the appointed day, the registered person who had removed or provided such goods or services or both shall issue to the recipient a supplementary invoice or debit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under this Act.*
- (b) *where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised downwards on or after the appointed day, the registered person who had removed or provided such goods or services or both may issue to the recipient a credit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such credit note shall be deemed to have been issued in respect of an outward supply made under this Act:*

*Provided that the registered person shall be allowed to reduce his tax liability on account of issue of the credit note only if the recipient of the credit note has reduced his input tax credit corresponding to such reduction of tax liability.*

**142.2.1 Introduction**

This is a transition provision with respect to **goods or services or both** in respect of which there is either an upward or a downward revision of price under a contract which was entered into prior to the date of introduction of GST.

**142.2.2 Analysis**

In cases where there is a price revision, either upward or downward, the CGST Act provides that the amount to the extent of such revision is deemed to be an outward supply under the CGST Act. Consequently, all the CGST provisions including issue of invoices (debit or credit notes) and payment of taxes would apply to such revision. This would apply to the provisions of supply of goods and services, respectively.

This provision would apply as follows:

- (i) **For upward revisions:** The taxable person shall issue a supplementary invoice or a debit note within 30 days from the date of such revision.

The amount of tax involved therein would be deemed to be the tax payable on such supplies under the CGST Act.

It would be deemed to be a supply in the month in which the supplementary invoice /

debit note is issued and the provisions relating to disclosure in the return and payment of tax would apply accordingly.

The supplementary invoice / debit note would have to comply with the requirements as prescribed under the CGST Act.

**Eg 1:** A contract for supply of manpower was entered on 10<sup>th</sup> June, 2017 for Rs.5,00,000. Due to certain re-negotiations, this price was revised to Rs.5,50,000 on 15<sup>th</sup> July, 2017. The supplier should issue a supplementary invoice/debit note for ₹ 50,000 within 30 days of 15<sup>th</sup> July, 2017 i.e. 15<sup>th</sup> August, 2017. This supplementary invoice/debit note will be assumed to be for outward supply of Rs.50,000 with GST charged on the same

- (ii) **For downward revisions:** The taxable person shall issue a credit note within 30 days from the date of such revision.

In terms of the credit note, the supplier of goods would be allowed to reduce the tax liability as if the adjustment is under the CGST Act.

It would be deemed that the credit note is issued in respect of an outward supply made under the GST Law and the provisions relating to disclosure in the return and adjustment to tax would apply accordingly. The adjustment of reduction in the tax liability would be allowed only if the recipient of the credit note also reduces his input credit correspondingly.

The credit note would have to comply with the requirements as prescribed under the CGST Act.

**Eg 2:** A contract for supply of manpower was entered on 10<sup>th</sup> June, 2017 for Rs.5,00,000. Due to certain re-negotiations, this price was revised downwards to ₹ 4,00,000 on 15<sup>th</sup> July, 2017. The supplier should issue a credit note for Rs.1,00,000 within 30 days of 15<sup>th</sup> July, 2017 i.e. 15<sup>th</sup> August, 2017. This credit note will be assumed to be for outward supply of Rs.1,00,000 and accordingly the tax liability would be reduced. However, the said reduction shall be allowed only if the recipient of the credit note has reduced his corresponding input tax credit.

Please note that in the review of 'overlapping transactions', especially in the first year of 2017-18, will be very important. There could be a tendency to charge GST where invoices are issued after Jul 2017 although the delivery of goods or receipt of advance for services may have taken place prior to Jul 2017. And the reason being, availability of GST credit to customer but not VAT or ST credit under earlier laws. Reference may be had to mandate under section 142(11) in this regard. Compliance with this provision makes it clear whether transactions up to 30 Jun 2017 have been rightly taxed. For eg. Landowners in joint-development with Builders are made liable to pay GST on 'development rights' but service tax was not applicable on 'all forms' of immovable properties. Care in correctly taxing such transactions

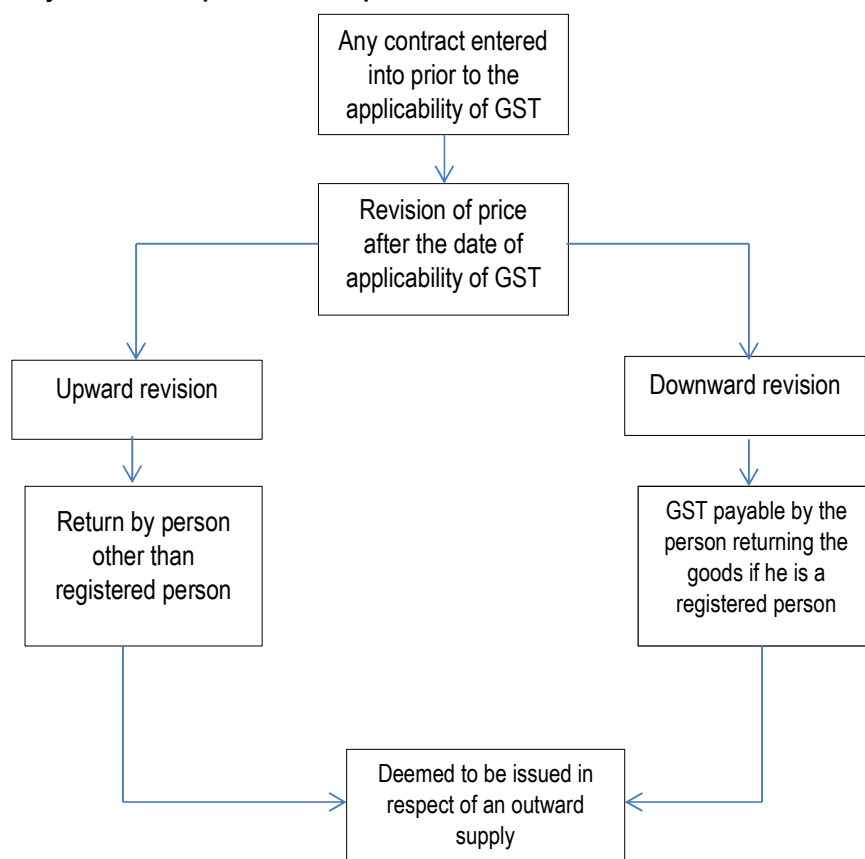


will ensure that there is no excessive impact of tax on such overlapping transactions. Experts advise that it not uncommon to find transactions liable to tax under earlier regime being pushed into GST regime (and vice versa) to save on some tax incidence. GST law allows earlier taxes to be demanded even now (until end of limitation prescribed under earlier laws) and use the machinery provisions of GST law to enforce and recovery such dues. Care must be taken to pay the right tax on overlapping transactions.

### 142.2.3 Comparative review

Rule 6(3) of Service Tax Rules, 1994: Where an assessee has issued an invoice or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason (or when the invoice amount is re-negotiated due to deficient provision of service, or any terms contained in a contract) **the assessee may take the credit of such excess service tax paid by him**, if the assessee has refunded the payment or part received for the service provided or has issued a credit note for the value of the service not so provided to the person to whom an invoice had been issued.

The analysis of above provision in a pictorial form is summarised as follows:



It is important to note that 'continuing obligations' under earlier laws attached to Cenvat Credit or VAT Credit will remain to be fulfilled even after transition of those credits into CGST and SGST, respectively and even if they have been utilized (before of after transition). In the event of any loss of such goods, subsequent to transition into GST, those obligations will fail and Cenvat Credit and / or VAT Credit will need to be repaid. Reference may be had to a circular 50.2018-Cus. dated 6 Dec 2018 issued by CBIC in relation to 'debonding' of duty-free goods by EOUs states that 'earlier duties' are required to be paid even when they are being debonded after transition into GST.

### Statutory Provisions

**142(3) Refund claims for amount paid under existing law to be disposed of under existing law**

*Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax or interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944:*

*Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:*

*Provided further that no refund claim shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.*

**142(4) Refund claims filed after the appointed day for goods cleared or services Provided and exported before or after the appointed day to be disposed of under existing law**

*Every claim for refund filed after the appointed day for refund of any duty or tax paid under existing law in respect of the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of existing law:*

*Provided that where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse:*

*Provided further that no refund claim shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.*

#### 142.3.1. Introduction

This transition provision is with respect to

- Refund claims/applications under the erstwhile law.

- Refund claims/applications under the erstwhile laws filed after the appointed day for the goods or services exported before or after the appointed day.

It provides that the claim for such refund should be processed as prescribed under the relevant erstwhile law.

#### 142.3.2. Analysis

The section provides that where any person has made an application for refund of CENVAT credit, duty, tax or interest paid, the same would have to be processed in terms of the provisions contained in the respective erstwhile laws. The provisions of GST law would have no bearing on the same.

Therefore, refund application under the erstwhile laws can continue to be filed under this section, even after the introduction of GST.

It also provides the following:

- (i) The refund, if allowed, would accrue in cash under the erstwhile law and would not be credited to the electronic credit ledger or electronic cash ledger.
- (ii) The refund if rejected, fully or partially would lapse.
- (iii) No refund claim shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

**Eg 1:** An export manufacturer files a claim for refund of Rs.5,00,000 on 15<sup>th</sup> June, 2017. The refund claim will be processed under the provision of the earlier law i.e. Central Excise law itself. If the refund is considered as admissible by the Department, then the same will be paid in cash subject to the Doctrine of Unjust Enrichment.

**Eg 2:** If the refund claim is rejected, then the amount so rejected will lapse and would not be available as credit.

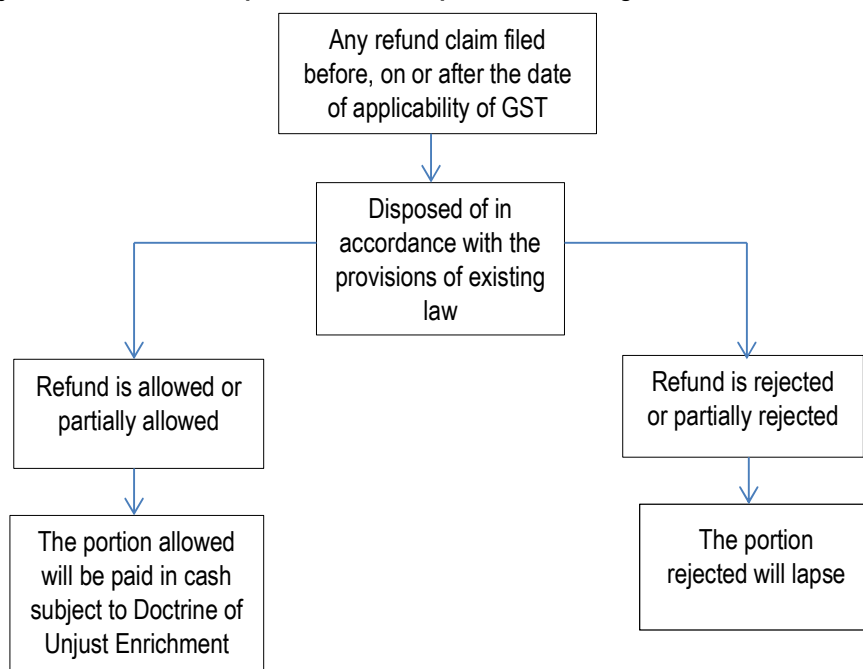
#### 142.4.1. Analysis

The section provides that every claim for refund of any duty or tax paid under erstwhile law, filed after the appointed day, for the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of the erstwhile law.

It also provides the following:

- (i) The refund, if rejected, fully or partially would lapse.
- (ii) No refund claim shall be allowed of any amount of CENVAT credit / input tax credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

Analysis of this transition provision can be presented through a flowchart as under:



#### Issues / Concerns:

Lapse of Refund claims filed and rejected under earlier law: Lapse of fully or partially rejected CENVAT Credit, will put the assessee in a financial hardship in many cases considering the quantum of refund claim on a case-to-case basis. Currently, the law does not provide for giving an opportunity of being heard and/or filing of appeal against such rejection to the assessee.

#### Statutory provisions

**142(5) Refund claims filed after the appointed day for payments received and tax deposited before the appointed day in respect of services not provided.**

*Every claim filed by a person after the appointed day for refund of tax paid under the existing law in respect of services not provided shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of subsection (2) of section 11B of the Central Excise Act, 1944*

#### Relevant provisions of the Statute

Statute	Section	Description
Central Excise Act, 1944	Section 11B (2)	Provision for unjust enrichment

**142.5.1 Introduction**

This transition provision is with respect to refund claims in respect of services not provided, filed after the appointed day.

**142.5.2 Analysis**

The section provides that every claim for refund of any tax deposited under the erstwhile law in respect of **services not provided**, filed after the appointed day, shall be disposed of in accordance with the provisions of the erstwhile law and any amount eventually accruing to him shall be paid in cash.

**Statutory provisions****142(6) Claim of CENVAT credit to be disposed of under the existing law**

- (a) every proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act:

*Provided that no refund shall be allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.*

- (b) every proceeding of appeal, review or reference relating to recovery of CENVAT credit initiated whether before, on or after the appointed day, under the existing law shall be disposed of in accordance with the provisions of existing law, and if any amount of credit becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

**142.6.1 Introduction**

This transition provision is with respect to claim of CENVAT Credit initiated under the erstwhile law and disposal of appeals, reviews or reference proceedings pertaining thereto.

**142.6.2 Analysis**

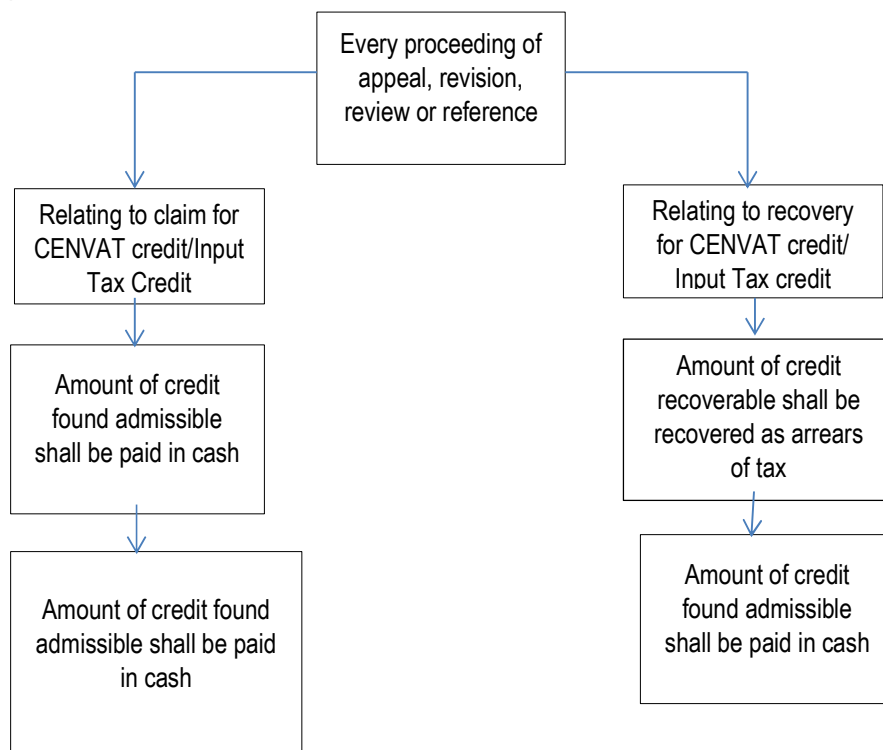
The Section applies where any matter in respect of CENVAT credit is pending in an appeal or review or reference under any of the erstwhile laws.

It provides that the provisions of CGST would have no bearing on the same and should be dealt with in accordance with the provisions of erstwhile laws as follows:

- **If the input credit are finally allowed:** A refund would accrue to the claimant in cash.

- **If the input credit is disallowed:** It would become recoverable as an arrear of tax under the CGST.
- The amount so recovered would not be allowed as input tax credit under the CGST law.

**Analysis of this transitional provision can be presented as a flowchart as under:**



### Statutory provision

#### **142(7) Finalization of proceedings relating to output duty or tax liability**

- (a) every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and if any amount becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of duty or tax under this Act and amount so recovered shall not be admissible as input tax credit under this Act.
- (b) every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and any amount found to be admissible to the claimant shall be refunded to him in cash,

*notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act.*

- 142(8)** (a) *where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act;*
- (b) *where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes refundable to the taxable person, the same shall be refunded to him in cash under the said law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act.*

#### 142.8.1 Introduction

This transition provision is with respect to output tax / duty liabilities pending in appeal, review, or reference proceedings under any of the erstwhile law.

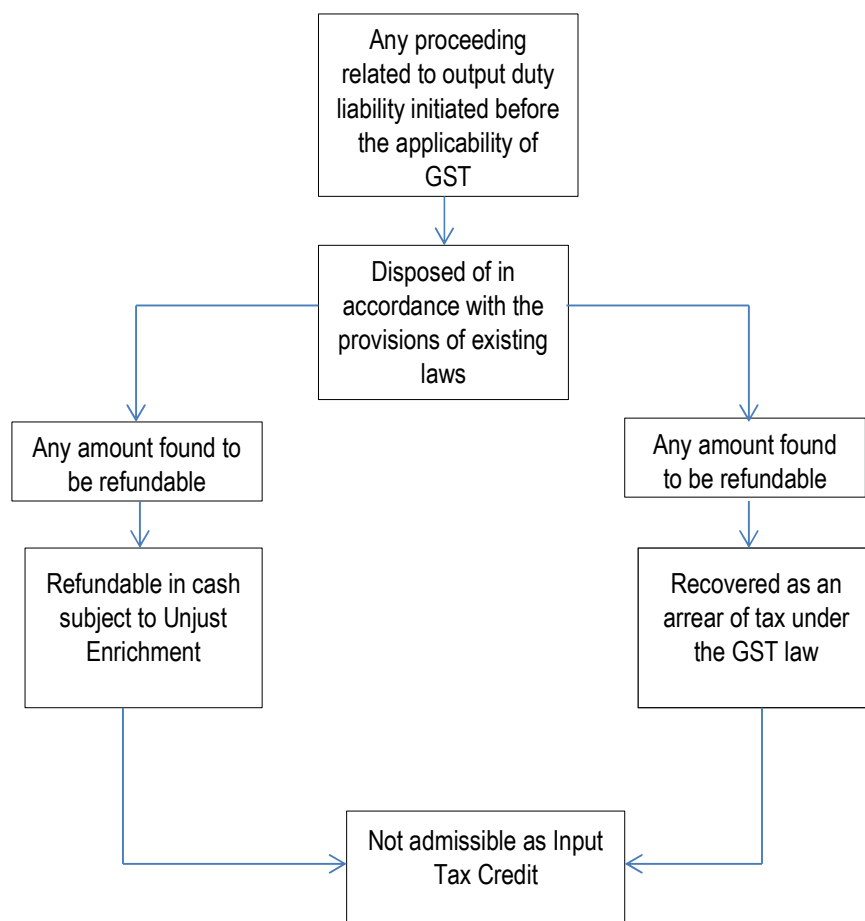
#### 142.8.2 Analysis

The section applies where any matter in respect of output tax / duty liabilities are pending in appeal, review or reference proceedings under any of the erstwhile law.

It provides as follows:

- **If the output liability is finally payable:** It should be recovered as an arrear of tax under CGST Act. In terms of Circular No. 42/16/2018-GST dated 13/04/2018, Such liability is to be paid through the utilization of amounts available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (FORM GST PMT-01).
- The amount so recovered would not be allowed as input tax credit under the CGST laws.
- **If the output liability is finally allowable to the claimant:** It would accrue to the claimant as refund in cash under the erstwhile law. If any amount is rejected, the same shall not be available as input tax credit under CGST.

**Analysis of this transition provision can be presented in the following flowchart:**



### Statutory Provisions

#### **142(9) Treatment of the amount recovered or refunded pursuant to revision of returns**

- (a) Where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of CENVAT credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.
- (b) Where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if, pursuant to such revision, any amount is found to be refundable or CENVAT credit is found to be admissible to any taxable person, the same shall be refunded to him in cash under the existing law, notwithstanding anything to the contrary contained in the



*said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and amount rejected, if any, shall not be admissible as input tax credit under this act.*

#### 142.9.1 Introduction

This transition provision deals with a situation where tax becomes payable or refundable by virtue of revision of returns under erstwhile law.

#### 142.9.2 Analysis

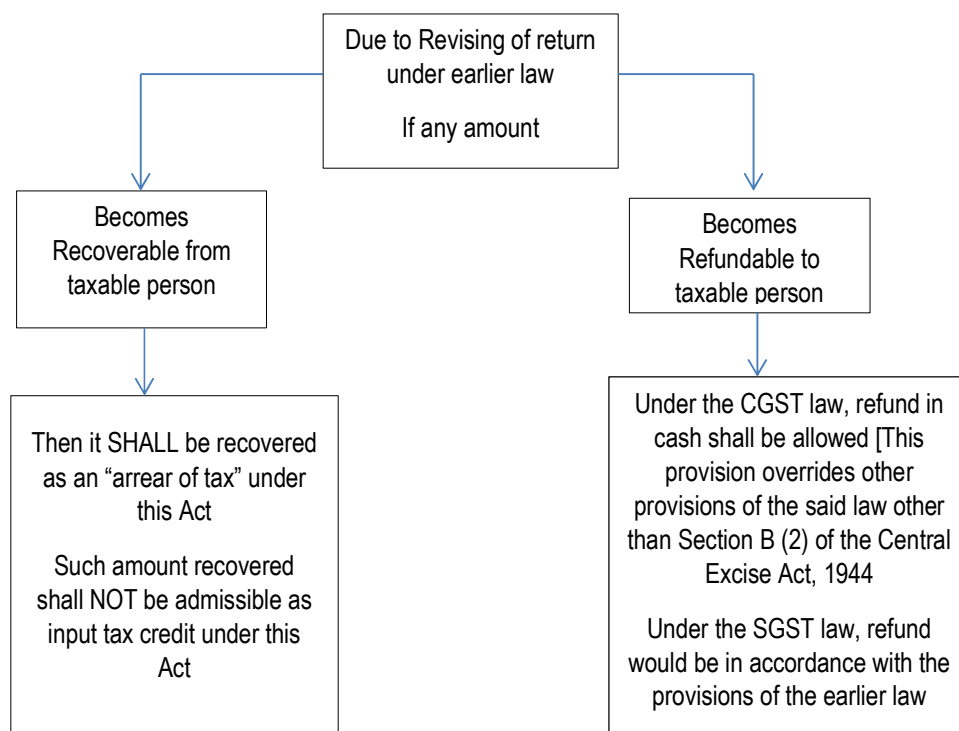
This Section applies where any return is revised under the erstwhile laws by virtue of which any amount becomes payable by or refundable to, the taxable person. This could arise due to any of the following reasons:

- (i) Short payment of output tax liability (payable);
- (ii) Excess payment of output tax liability (refundable);
- (iii) Short claim of CENVAT credit (refundable);
- (iv) Excess claim of CENVAT credit (payable);

The Section specifies that:

- **If any amount is recoverable:** It should be recovered as an arrear of tax under the CGST Act. The amount so recovered would not be allowed as input tax credit.
- **If the amount is allowable as refund:** It would accrue to the claimant as cash refund under the erstwhile law.

**Analysis of this transitional provision can be presented in the following flowchart:**



**Payment of central excise duty & service tax on account of returns filed for the past period (Circular No. 42/16/2018-GST dated 13/04/2018):**

The registered person may file Central Excise / Service Tax return for the period prior to 1<sup>st</sup> July, 2017 by logging onto [www.aces.gov.in](http://www.aces.gov.in) and make payment relating to the same through EASIEST portal ([cbec-easiest.gov.in](http://cbec-easiest.gov.in)), as per the practice prevalent for the period prior to the introduction of GST.

However, with effect from 1<sup>st</sup> of April, 2018, the return filing shall continue on [www.aces.gov.in](http://www.aces.gov.in) but the payment shall be made through the ICEGATE portal. As the registered person shall be automatically taken to the payment portal on filing of the return, the user interface remains the same for him.

**Statutory Provisions**

**142 (10) Treatment of long term contracts**

*Save as otherwise provided in this Chapter, the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act.*

**142.10.1 Introduction**

This transitional provision deals with long term contracts.

**142.10.2 Analysis**

It provides that in respect of a contract entered into prior to GST regime, the goods or services or both which are supplied on or after the introduction of GST would be liable to tax under the GST Act to the extent the supply takes place after introduction of GST.

Even if the construction contract or works contract is entered into prior to the date of introduction of GST, the contracts would be taxable under the GST Act.

Eg 1: A contract for a painting job was entered on 19<sup>th</sup> June, 2017. The job is performed from 10<sup>th</sup> July, 2017 to 30<sup>th</sup> July, 2017. The said supply will be taxable under GST law.

Continuing contract in normal course expects 'tax substitution' due to change in law and consequential increase or decrease in tax burden on contract sum to flow to the customer. It is seen that customers, though reluctant initially, have conceded and paid the GST in place of earlier taxes. Anti-profiteering adjustment on account of savings in cost due to availability of credit in respect of taxes that were earlier not creditable is also looked into before admitting adjustment of tax-effect on overlapping contracts. Reference may be had to detailed discussion under section 171.

**Statutory Provisions****142(11) Progressive or periodic supply of goods or services**

- (a) *notwithstanding anything contained in section 12, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State;*
- (b) *notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994;*
- (c) *where tax was paid on any supply both under the Value Added Tax Act and under Chapter V of the Finance Act, 1994, tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed.*

**Extract of the CGST Rules, 2017****118. Declaration to be made under clause (c) of sub-section (11) of section 142.**

*Every person to whom the provision of clause (c) of sub-section (11) of section 142 applies, shall within <sup>27</sup> [the period specified in rule 117 or such further period as extended by the Commissioner], submit a declaration electronically in **FORM GST TRAN-1** furnishing the proportion of supply on which Value Added Tax or service tax has been paid before the appointed day but the supply is made after the appointed day, and the Input Tax Credit admissible thereon.*

**Relevant provisions of the Statute:**

Section	Description
Section 2(28)	Definition of consideration
Section 12	Time of supply of goods
Section 13	Time of supply of services

**142.11.1 Introduction**

This transition provision deals with transactions which have suffered tax (Value Added Tax or Service Tax) because consideration was received under the earlier law, whereas the supply is made after the date of introduction of GST.

**142.11.2 Analysis****I. No CGST shall be levied on:**

**1. Goods**, to the extent tax was leviable under the Value Added Tax Act of the state; Considering the non-obstante clause, it is provided that even though any of the ingredients of supply prescribed in section 12 occur after the appointed date, if VAT was lawfully levied (even if not yet paid), VAT alone will be leviable and not GST.

**2. Service**, to the extent Service Tax was leviable on the said service.

In short, GST shall not be levied on a supply to the extent Value Added Tax or Service Tax, as the case may be, was leviable on the said supply.

Eg: Advance of Rs.1,00,000/- was received on 10th June, 2017 for service to be rendered in July, 2017. The invoice for the service was raised for Rs.1,50,000/- on 31st July, 2017. GST shall be levied only on Rs.50,000/-.

Relying upon the salutary principles contained in section 6 of the General Clauses Act regarding the force and power of 'repeal and saving' clause in any legislation, it would be appropriate to mention the results of application of that law in certain situations:

(i) Where services have been rendered under the earlier law and invoice has also

<sup>27</sup> Substituted vide Notf no. 36/2017-CT dt. 29.09.2017

been issued under the earlier law and tax duly levied on provision of service but the payment of this tax was required on 'receipt basis', service tax will continue to be paid as and when outstanding receivables are realized. Tax once levied cannot be levied again (as GST) merely because the service tax was 'lawfully' not payable until realization.

- (ii) Where services have been reference under the earlier law but invoice for the same has not been issued and is permitted to be issued within 30 days from the date of completion of service, when the invoice is actually issued, service tax alone ought to be applied. This invoice will not be covered by section 140(5) as the invoice has not been issued before the appointed date. Also the service tax charged will not be available to claim as a refund under 142(3) to 142(8). These reasons do not justify levy of GST on the services already provided.
- (iii) Where services (liable to reverse charge or partial reverse charge) have been rendered along with invoice duly issued prior to the appointed date but the tax (on reverse charge basis) has been paid in July 2017, this tax is not available as transition credit to the recipient (making reverse charge payment of tax) as it would not be included as CENVAT credit in the last ST3 (to be filed by 15 Aug 2017) and therefore not be covered within section 140(1). Had the service tax (on reverse charge basis) been paid before the appointed date (by sufficient planning), the same would have been included in the transition credit under section 140(1). Also, refund of such taxes paid is not covered by sections 142(3) to 142(8) although it can be attempted under the earlier law itself.

To address the above issue, the CBEC has issued Circular 207/5/2017- Service Tax dated 28<sup>th</sup> September, 2017, clarifying that such credit arising as consequence of payment of service tax on reverse charge basis after 30<sup>th</sup> June, 2017 shall be indicated in Part I of form ST 3 in entries I3.1.2.6, I3.2.2.6 and I3.3.2.6. The circular also provided for revision of form ST 3 already filed by the assessee to include the said entries.

- II. Where tax was paid under both Value Added Tax Act and under Finance Act, 1994, viz., Construction service, works contract or supply of food/beverages, Tax shall be leviable under CGST Act on the supplies effected after the appointed day and the Value Added Tax or Service Tax shall be admitted as credit to the taxable person.

Eg: Contract entered in March, 2017 for Rs.1,00,00,000/-. Advance received till 30<sup>th</sup> June, 2017 amounts to Rs.10,00,000/-. Value Added Tax of Rs.40,000/- and Service Tax of Rs.60,000/- have been paid on the said advance. GST shall be levied on Rs.1, 00, 00,000/- as per Sec 13 of the CGST Act. The value added tax and service tax paid shall be allowed as credit under the erstwhile law in the manner as may be prescribed.

- III. Supplies liable to both VAT as well as ST are provided for in this clause. For eg. Works contracts, Hoteliers when the time of supply under CGST Act applies. The differential tax under GST and those already paid under erstwhile law will become payable. Credit of tax already paid must not be understood as 'input tax credit' as defined u/s 2(63).

This is an apparent conflict but not so u/s 140(5) of the CGST Act which needs to be reconciled. The said credit pertains to the credit under erstwhile laws and the same shall be available as credit under erstwhile laws.

Rule 118 of CGST Rules, 2017 provides for declaration of proportion of supply on which value added tax or service tax has been paid before the appointed day but the supply is made after the appointed day and the input tax credit applicable there on in FORM GST TRAN-1. It is important to note that if taxes already paid have been charged to the customer (who may have even taken credit), this provision would not apply because credit cannot be allowed to the customer as well as to the supplier under this provision.

The absence of non-obstante clause in this provision indicates that taxes paid under the earlier law must be without being leviable under those laws. This is because tax once levied and assessed under the earlier laws must only be paid and cannot be abrogated by the repeal. And most certainly not get levied again under the new law. For this reason, it is opined that, even transactions such as works contract or supply of food, would be saved by clauses (a) and (b) operating jointly if taxes were lawfully levied under the earlier laws. And clause (c) comes into operation only when taxes have been paid in advance of levy actually attracting under the earlier laws.

#### Issues / Concerns:

- a. RCM services under the earlier laws: Where the vendor has raised the invoice for the services (such as manpower or works contract service on which reverse charge is applicable) rendered in the month of June 2017 and the payment to the vendor is made in the month of September 2017, the nature of tax to be paid is not clear i.e. whether to pay service tax or GST in the instant case, since the services were provided under the service tax law and the payment is made under the GST law.
- b. Sabka Vishwas (Legacy Disputes Resolution) Scheme 2019: This scheme has permitted 'voluntary' disclosure and payment of undisputed and unknown dues. Experts advise that taxpayers carrying undischarged service tax liability, particularly, RCM liability for Apr-Jun 2017 to come forward and avail this option. With full relief from interest and penalty, paying entire unpaid tax is a welcome relief.

#### Statutory Provisions

##### **142(12) Taxability of supply of goods sent on approval basis.**

*Where any goods sent on approval basis, not earlier than six months before the appointed day, are rejected or not approved by the buyer and returned to the seller on or after the appointed day, no tax shall be payable thereon if such goods are returned within six months from the appointed day:*

*Provided that the said period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:*

*Provided further that the tax shall be payable by the person returning the goods if such*

*goods are liable to tax under this Act, and are returned after a period specified in this subsection:*

*Provided also that tax shall be payable by the person who has sent the goods on approval basis if such goods are liable to tax under this Act, and are not returned within a period specified in this sub-section.*

#### Extract of the CGST Rules, 2017

##### **120. Details of goods sent on approval basis.**

*Every person having sent goods on approval under the existing law and to whom sub-section (12) of section 142 applies shall, within <sup>28</sup> [the period specified in rule 117 or such further period as extended by the Commissioner], submit details of such goods sent on approval in **FORM GST TRAN-1**.*

#### **142.12.1 Introduction**

This transition provision covers the goods sent on approval basis under erstwhile law returned to the supplier within a period of 6 months from the appointed day or extended period and beyond.

#### **142.12.2 Analysis**

No CGST shall be payable for goods sent on approval basis, returning to the supplier due to rejection or non-approval by the buyer within a period of 6 months or the extended period of 2 months. However, tax shall be payable by the person returning the goods as well as by the person sending the goods if the goods are returned after the period of six months and such goods are liable to tax under the CGST Law.

#### **142.12.3 Time period:**

- (a) **Sending of goods:** It should have taken place not earlier than 6 months prior to the appointed day.
- (b) **Return of goods:** It should be within 6 months from the appointed day or as extended by the commissioner by a period not exceeding two months on sufficient causes being shown.

If goods are returned after the said period, CGST shall be paid by the person returning the goods.

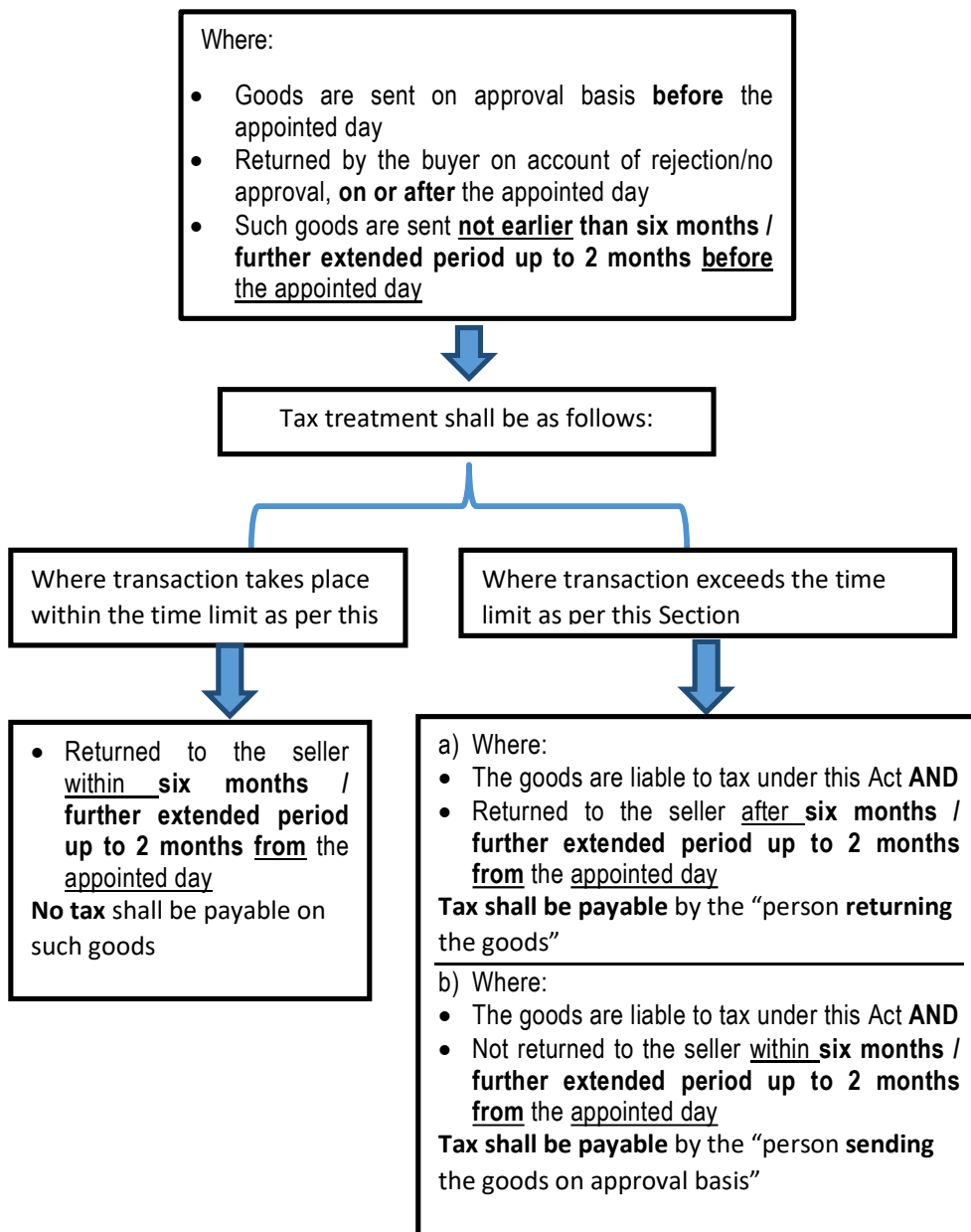
If the goods are not returned within the period specified, the person who has sent the goods on approval shall pay GST on the said goods. This shall be available as credit to the purchaser of the goods.

In case of sale of approval prior to appointed date, the details of goods so sent on approval

<sup>28</sup> Substituted vide Notf no. 36/2017-CT dt. 29.09.2017

basis are to be declared in FORM GST TRAN -1 to be filed within time limit as prescribed. (Before 27<sup>th</sup> Dec, 2017, vide order No.9/2017-GST dt. 15/11/2017, by the Commissioner.)

**Flowchart analysing the transitional provisions in Section 142(12).**





**Statutory Provisions****142(13) Supply of goods in respect of which tax is to be deducted at source.**

*Where a supplier has made any sale of goods in respect of which tax was required to be deducted at source under the any law of a State or Union Territory relating to Value Added Tax and has also issued an invoice for the same before the appointed day, no deduction of tax at source under section 51 shall be made by the deductor under the said section where payment to the said supplier is made on or after the appointed day.*

**Related provisions of the Statute**

Statute	Section	Description
CGST	Section 51	Tax deduction at source

**142.13.1 Introduction**

This transition provision is in respect of TDS under Section 51. It is a transitional provision to ensure that there is no double deduction of tax at source due to introduction of GST.

**142.13.2 Analysis**

This Section would apply in the following circumstances:

- (i) The supplier had sold any goods under the erstwhile law; and
- (ii) TDS applies on such transactions under erstwhile law; and
- (iii) The supplier had issued the invoice before the appointed day;
- (iv) Payment is made to the supplier after the appointed day.

It provides that merely because payment is made to the supplier after the date of introduction of GST, the TDS provisions under Section 51 of the CGST Act will not apply. In other words, no tax shall be deductible under CGST Act at the time of making payment to the supplier.