

Impact of Transitional Provisions stated under Sec 140(3) of CGST Act, 2017



It has been two months since the implementation of GST and government has taken great initiatives to resolve the issues which are being raised by different sections of society. Still there are lots of issues which are pending to be resolved. Thus, it becomes imperative that in the midst of issues emerging, we professionals find ways to resolve such issues based upon our knowledge and experience. Therefore this article aims at highlighting some important transitional provisions and practical difficulties faced in the course of filing transitional return in GST. Further, an attempt has also been made to discuss some critical issues. Read on to know more....

Statutory provisions stated u/s 140(3)

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 the 20th June, 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



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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 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 eligible for input tax credit on such inputs under this Act;
- (iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;
- (iv) such invoices 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 this 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.

Interpretation of the above mentioned Provisions-

The stated provision intends to cover following aspects within its ambit-

❖ **Persons covered**

1. Exempted Categories: Persons who are now registered under GST but were earlier exempt under-
 - a. Central Excise Act, 1944: on Account of manufacturing
 - Non-excisable goods or non-dutiable goods



- Below taxable limit
 - Exempt under specific notification for e.g. 50/2003 (Area based exemption)
- b. Service tax (Finance Act, 1994): on Account of
 - Coverage under negative list or notification no. 25/2012
 - Below taxable limit
 - c. Traders/Dealers exempt under respective states on account of turnover based exemption, or dealing in exempted commodities.
2. Rendering Works Contract Services and availing benefit of Exemption notification 26/2012
 3. First Stage and Second Stage Dealer
 4. A Registered Importer or a depot of manufacturer

Comments

1. Manufacturers earlier covered under SSI Limits and having imported goods in stock as on 30.06.2017 on which CVD & SAD has been paid can claim the credit of CVD & SAD as CGST credit in its TRAN-1 form, subject to other conditions fulfilled.
2. Manufacturers earlier availing Area-based exemption but now taxable under GST, shall also be entitled to claim benefit of Section 140(3) subject to other prescribed conditions.
3. If the provision is literally interpreted, Benefit of Section 140(3) seems doubtful to Persons already registered under VAT (other than first stage/second stage or registered importer). But based upon the FAQ's and clarifications given by government from time to time, it is settled that the said provision intends to pass the benefits to existing registered persons also. The same have been shared in this Article.

❖ **Input tax credit of Eligible Duties**

1. ITC shall be allowed of Eligible duties being:-
 - a. Excise duty specified in first and second schedule to CETA, 1985
 - b. CVD Leviable u/s 3(1) of Customs Tariff Act, 1975
 - c. Special CVD Leviable u/s 3(5) of Customs Tariff Act, 1975
 - d. Additional duty of excise Leviable u/s 3 of Additional duties of Excise (Goods of special importance) Act, 1957



- e. Additional duty of excise Leviable u/s 3 of Additional duties of Excise (Textile and Textile Articles) Act, 1978
 - f. The National Calamity Contingent duty leviable under Section 136 of Finance Act, 2001.
2. ITC shall be available as on appointed date for-
 - a. Inputs held as Raw Material
 - b. Inputs contained in Work-in-process
 - c. Inputs contained in Finished Goods

Comments

1. Input as defined under clause 59 of Section 2 of the CGST Act states that- *“Input means any goods other capital goods used or intended to be used by a supplier in the course or furtherance of business”*. Thus as stated above, Input has been given wider meaning under the act. But the Input tax credit on such Inputs has to be taken in the manner prescribed under Section 16 to 21 of CGST Law.
2. An Important observation to be drawn from the above stated provision is that the benefit of CVD portion, earlier borne as cost by the trader, would now be eligible for ITC on the stock imported and held on the appointed date.
3. Similarly, the Special CVD portion borne as cost by the service provider would also get the benefit of Special CVD as ITC on goods/inputs imported and held in stock on appointed date to be used in effecting taxable supplies/Provision of taxable services.
4. Eligibility of credit of Input would be subject to definition of Input and therefore, if the same satisfies the eligibility criteria then only would the credit be allowable. (The same has to be taken care in case of Taxable Service Providers).
5. Attention of the readers is also drawn towards the fact that the benefit of ITC is being given only in respect of Inputs and not for the Capital goods or Input services as though the benefit

of the same must have been provided, but in case of services, it has been intentionally kept outside because the proportion of the same held in finished goods could not be reliably measured and the same is the case with capital goods, but in my opinion, the same should have been allowed because ultimately the same would have form part of cost of Registered person which would be recoverable from the taxable supplies and charged to GST. Therefore, some criteria must have been adopted because, if the case would have been for reversal of credit, then definitely some mechanism comes into play to reversing credit. Anyways, let it be, Registered Persons are at the mercy of the Government.

6. It is important to keep in mind the provision stated under Rule 37(1) of the CGST Rules, 2017 which although not directly stated under the transitional provisions but would also cover it. The same is being reproduced below for better understanding:

- Reversal of input tax credit in case of non-payment of consideration

(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof the value of such supply along with the tax payable thereon within the time limit specified in the second proviso to sub-Section (2) of Section 16, shall furnish the details of such supply and the amount of input tax credit availed of in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of issue of invoice.

(2) The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.

(3) The registered person shall be liable to pay interest at the rate notified under sub-Section (1) of Section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid.

❖ **Conditions to be satisfied**

Following conditions are to be necessarily fulfilled to claim benefit under the stated provisions and the same are as follows:-

1. Such Inputs/goods are to be used for making taxable supplies.

2. Registered Person is eligible to claim ITC under CGST Act.
3. Necessary documents are in possession as an evidence for payment of duty i.e., an Invoice wherein duty has been charged or where in case of taxes like CVD & Special CVD corresponding documents in support of the same is necessary to furnish.
4. Such invoices or other prescribed documents are not earlier than 12 months immediately preceding the appointed date.
5. Supplier of services is not eligible (not "actual claiming") for any abatement under this Act. Thus, no credit admissible on stock held if any abatement is being claimed under the provisions resulting in reduced or lower output tax liability.

Comments

1. In case Registered Person is making both taxable and exempt supplies then the credit would be subject to the provisions stated in respect of the same under new statute.
2. Service Providers claiming any abatement under the new taxation regime as the law may provide shall not be eligible for the benefits of the Provisions stated under Section 140(3).

❖ Proviso to Section 140(3)

This is also an important limb of the section which intends to pass benefits to the Dealers/Suppliers i.e., Registered Person other than Manufacturer and Service Providers where there is no Excise Invoice available in their hands to claim benefit of Input tax credit of the duty paid on their Inputs. The scheme has been provided in detail in the Transitional Rules i.e., Rule 117 of CGST Rules, 2017, the provisions in brief are discussed below:-

- i. Credit of Central Excise duty shall be allowed at the *rate of 60% of the Central Taxes (CGST)* applicable on supply of such goods which attract



- CGST @ 9% or more and 40% of CGST for goods attracting CGST less than 9%. In case where IGST has been paid on supply of goods, then, credit shall be at the rate of 30% of IGST where rate of tax is 18% or more and 20% of IGST where rate of tax is less than 18%.
- ii. This Scheme shall be available for six months from the appointed date i.e., 01.07.2017 to 31.12.2017. Thus, person who wants to avail this benefit has to clear his old stock within the stated period.
 - iii. Conditions to be satisfied-
 - a. Such goods were not unconditionally exempt from whole of duty of excise specified in the First Schedule to CETA, 1985 or were not NIL rated.
 - b. Documents for procurement of goods are available with the registered person.
 - c. Required detail of stock has been filed in TRAN-1 form and to avail the benefit, registered person is required to submit monthly details in TRAN-2 form.
 - d. The Stock of Goods so stored by the registered person is easily identifiable.

Comments

1. The above scheme can be explained with the help of the following example:-
Suppose M/s Abhishek & Co. is having duty paid goods valuing ₹2,00,000 in stock as on 30.06.2017 and the same are not older than 12 months, for which the Excise Invoice/duty paying document is not being held, the same has been sold fully in July month itself, assuming rest other conditions as specified in the scheme are satisfied, the provision would work as follows:-

Sale Value of Goods: ₹2,50,000	Rate of CGST: 9%
	Rate of SGST: 9%

CGST Leviable: ₹22,500

SGST Leviable: ₹22,500 Total Value of Goods: ₹2,95,500

CGST Collected and Paid to the Govt. : ₹22,500

SGST Collected and Paid to the Govt. : ₹22,500

Benefit of ITC available to the dealer: 60% of ₹22,500 = ₹13,500

This ITC shall be claimed by Dealer in TRAN-2 form to be filed for the month of July and the same shall be credited to his electronic credit ledger which can be utilised to settle the August month liability. It is important to mention here that dealer

has to declare the details of such stock in TRAN-1 form in Serial No. 7 (a) of the form because under Rule 117(4)(b) point (iii) clearly specifies that-
“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.....”

Thus, extreme caution has to be applied while claiming transitional benefits, because some person already registered in VAT in haste might file TRAN-1 form only for claiming benefit of VAT/ET or Duty where excise invoice are available.

Analysis of Benefit

Now, Assuming Supplier would have paid duty calculated @ 12.50% inclusive in ₹2 lakh amount, the same would amount to ₹22,222. But due to non-availability of required documents, govt. is still giving the benefit of ₹13,500. Situation would be reverse, if the Supplier is selling the product lower than the cost on account of fall in MRP. Thus in that case he will not be able to recover its cost and duty paid.

- An Important condition attached is that this benefit has to be passed on to the customer by way of reduced rate. In due course of time, it has been observed that car manufacturing companies like Hyundai, Ford, and Suzuki have reduced the rates of Stock held by dealers as on 30.06.2017, so that the benefit of Input tax could be passed on to the customers. Further in case of loss to Dealers, many companies are reimbursing to dealers. The whole concept of reduction in rates is that the prices could be controlled, because due to levy of GST, Dealer would be required to pay tax @28% (assuming CGST & SGST rate is 14% respectively) and thus stock which would have been sold at 14.5% VAT rate under existing law would be ultimately sold to customer @ 28%, thus inflating the ultimate prices of goods.

❖ Some Critical Issues

Let us now discuss about some critical issues being faced by the Industry in the transitional phase-

1. Availability of Credit on Excise on Purchases from Units claiming Area Based Exemption under Excise:-

Under Central Excise Notification No. 50/2003-NT, area based exemption was given to some industrial units established in notified areas. Now, question arises that registered dealers having stock as on 30.06.2017 consisting of

material purchased from these units would be eligible for deemed transitional credit or not.

In the given case, dealers would be eligible for Credit under proviso to Section 140(3). And the exemption claimed by manufacturer cannot be equated with the unconditional exemption to goods. Thus the Dealers having stock of goods which have been directly purchased from these units shall be eligible for 60%/40% credit as the case may be, provided other prescribed conditions are satisfied.

It is relevant to mention here that the government in a tweet has also given favourable response to a query raised-

Q. *We manufactured excisable goods. But unit availed the exemption benefits 50/2003. What about my dealers stock?*

A. *The dealer will get deemed credit @ 40% / 60% of the CGST paid on supply of such goods in GST.....*

2. Transitional credit to Units claiming Area based Exemption:

Concept of area based exemption no more exists in GST and now the units engaged in production of goods leviable to GST, will have to pay tax on the taxable supplies made from the appointed date.

Thus such manufacturing units stands on equal footing to the persons specified under Section 140(3) and therefore eligible for transitional credit other than proviso to Section 140(3).

3. Availability of credit on goods procured from Manufacturer claiming SSI Exemption:-

Similar view has been expressed in case of procurements made from units claiming SSI Exemption i.e., turnover of manufacturer is less than ₹1.50 crore. In such case also, if the goods are not NIL rated or are not otherwise unconditionally exempted, Dealers would be eligible for ITC on procurements made from SSI Dealers.

The answer to this question has also been tweeted in favour by the government.

4. Transitional Benefits eligibility for persons already registered under VAT but not under Central Excise:

Interpretational issues may arise owing to the opening line of Section 140(3) of the CGST Act, 2017 which reads as follows-

“A registered person, who was not liable to be registered under the existing law.....”

Now as per Section 2(48) of CGST Act, 2017, existing law means any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this act by Parliament or any authority or person having the power to make such law, notification, order, rule or regulation.

Now, a combined reading of provision would be-

A registered person, who was not liable to be registered under any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this act by Parliament or any authority or person having the power to make such law, notification, order, rule or regulation.

In my opinion, benefit of credit should not be barred to existing registered persons. Further to my knowledge, government has also not issued any unfavourable remark by way of tweet or otherwise on the stated provision.

My view is also strengthened based on the premise that the provision of CTD issued, to pass on the credit by branded goods manufacturer to their dealers, does not impose any restriction on the availability of credit to existing registered persons i.e., dealers registered in VAT.

5. Excise benefit to Manufacturers registered under Excise and claiming SSI Benefit:

Previously under Excise, small scale manufacturers whose turnover does not exceed ₹4 crore in the preceding F.Y. (as per prescribed calculation mechanism) were required to pay excise on turnover exceeding ₹1.50 crore, needless to say that these manufacturers claimed Cenvat credit on the dutiable stock only.

Now, question arises whether they shall be eligible to claim credit on the stock held as on 30.06.2017 which shall be cleared after being charged to GST because Section 140(1) of CGST Act, 2017 covers in its ambit persons registered under Central laws, who shall be allowed to claim benefit of Transitional Credit as per their return filed under existing laws, while Section 140(3) intends to pass benefits to manufacturers unregistered under existing law. Thus, whether such manufacturers who are not purely exempt but claiming turnover exemption till 30th June, be allowed to avail credit under Section 140(1) or shall be eligible under Section 140(3).

Some of the manufacturers have opted for Section 140(1) and have availed credit under existing excise return on stock carried forward (assuming rest other



conditions satisfied) on the logic, while many are awaiting clarification.

6. Excise benefit to Builders/Developers: This is going to be a challenging job for the builders. Calculation for Stock held on 30.06.2017 in completed/unfinished flats is really a cumbersome job. Calculation of proportion of excisable material like Iron & Steel, cement, Sanitary & Hardware items, etc. contained in finished/semi-finished flats and further compliance with respect to time limits prescribed for old stock is a tedious job.

Such issues demand immediate clarification from government on the working of the same, otherwise, it will lead to dispute in time to come and authorities may dispute the calculation.

7. Identification of stock for claiming transitional benefits: Let us consider a situation where a registered dealer of goods is having inventory of identical goods and there is no mechanism for him to identify the lot from which he clears the goods. And there may be inventory of items which may be more than 12 months old and also several items may be less than 12 months old.

Thus assuming other conditions as prescribed in law are satisfied, but the dispute may arise subsequently with respect to availability of credit on stock held older than 12 months or less than 12 months. This fact may be witnessed industry wise and fundamental accounting assumption that Inventory is being maintained on FIFO basis, might help in claiming credit. Thus, adequate document working should be done to avoid such disputes.

An attempt has been made to put forward various issues currently being faced by the Industry and might be faced afterwards drastically. Thus decision making should be coupled with adequate documentation so as to avoid disputes. ■