



M/s PRANJAL JOSHI & CO
CHARTERED ACCOUNTANTS

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Which are the activities to be done on transition ? (i.e. Transition Provisions)

Objectives and Importance of this chapter –

Important part of GST preparations is understanding as to treatment of existing cenvat credit available to such assessee under existing law. Following extract therefore highlights such important matters.

Migration of existing taxpayers –

This is already in progress, wherein existing vat / excise / service tax assesses are being given provisional user ID for GST. Final Registration certificate will be issued on appointed date.

CENVAT credit (or VAT credit) c/f in the last return prior to GST under existing law to be available as ITC under GST

A registered person, other than a person opting to pay tax under composition scheme, shall be entitled to take credit in his electronic credit ledger the amount of CENVAT (or VAT credit) credit carried forward in the return of the last period before the appointed day, subject to following conditions –

- the said amount of credit is admissible as input tax credit under GST;
 - the registered person has furnished all the returns required under the existing law (i.e. Central Excise and VAT) for the period of six months immediately preceding the appointed date;
 - where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government
 - where the said amount of credit relates to units not entitled to claim set-off under rule 79 of the Maharashtra Value Added Tax Rules, 2005
 - Additionally, credit related to CST that is not substantiated within 3 months shall not be eligible to be credited to the electronic credit ledger (However, an amount equivalent to such credit shall be refunded under the existing law when the said claims are substantiated in the prescribed manner).
1. Every registered person entitled to take credit of input tax as above, shall within ninety days of the appointed day, submit a declaration electronically in **FORM GST TRAN- 1**
 2. 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 existing law, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person **within a period of thirty days** from the appointed day



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Unavailed CENVAT credit in respect of capital goods

A registered person, other than a person opting to pay tax under composition scheme, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT / Vat 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. The registered person shall be allowed to take credit only if the said credit was admissible as CENVAT / Vat credit under the existing law and is also admissible as input tax credit under GST as well.

Cenvat / Vat credit for A registered person, who was not liable to be registered under the existing law –

A registered person, who was not liable to be registered under the existing law or who was engaged in the sale of exempted goods or tax free goods, by whatever name called, or 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 under the existing law but which are liable to tax under this Act or where the person was entitled to the credit of input tax at the time of sale of goods, if any, shall be entitled to take, in his electronic credit ledger, credit of the value added tax and entry tax 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 tax under the existing law in respect of such inputs ; and
- (iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day :

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 tax in respect of inputs, then, such registered person shall, be allowed to take credit as follows –

- a. 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
- b. 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`
- c. The scheme shall be available for six tax periods from the appointed date.



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Manufacturer of taxable and exempted goods or Provider of taxable and exempted services –

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 the 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

Inputs and Input Services received after appointed date but bills issued earlier –

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 existing law.

But the invoice or tax paying document for the same must be recorded in the books of accounts within 30 days from the appointed day (60 days if permitted by Commissioner). Such person must submit the specific statement related to such transactions.

Registered person paying tax at fixed rate under existing law -

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.

However, following conditions must be satisfied –

- Such inputs or goods are used or intended to be used for making taxable supplies under GST;
- The registered person is not paying tax under composition scheme;
- The registered person is eligible for input tax credit on such inputs under GST;
- The registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law and
- Invoices or other prescribed documents were issued within 12 months immediately preceding the appointed day.

Input Service Distributor –

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 GST even if the invoices relating to such services are received after the appointed day.



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Registered person having centralised registration under the existing law but requiring decentralised registration under GST –

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.

Such credit may be transferred to any of the registered persons having the same Permanent Account Number for which the centralised registration was obtained under the existing law.

CENVAT on Input Services which was reversed due to non-payment to service provider –

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 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.

Transitional provisions relating to job work

- a. No tax shall be payable - Where any inputs received at a place of business had been removed as such or removed after being partially processed (or any semi-finished goods removed) 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.
- b. However, such inputs or any semi-finished goods, after completion of the job work or otherwise, must returned to the said place within 6 months (8 months if permitted by commissioner) from the appointed day. However, if the said goods are not returned within such period then, the input tax credit shall be liable to be recovered under GST.
- c. Additionally, manufacturer and the job-worker must 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 prescribed form, to avail such benefit of no tax payment.

Miscellaneous transitional provisions

1. Return of Goods after GST - Where any goods on which duty had been paid under the existing law at the time of removal thereof within six months before GST appointed date are returned after the appointed date, then the registered person shall be eligible for refund of the duty paid if such goods are returned by a person, other than a registered person, to the said place of business within a period of six months.

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

2. Increase in price after GST to be treated as supply – 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 shall issue to the recipient a supplementary invoice or debit note within thirty days of such price revision and for the purposes of this Act such



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supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under this Act.

3. Decrease in price after GST may entitled for credit - 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 may issue to the recipient a credit note and such credit note shall be deemed to have been issued in respect of an outward supply made under this Act.

But, 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.

4. Refund claim 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, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law.

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.

But where any claim for refund of CENVAT credit is fully or partially rejected, the amount so rejected shall lapse.

Further 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

Important forms –

Sr No	Form No	Particulars
01	FORM GST TRAN- 1	Declaration for Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day
02	FORM GST TRAN 2	Statement showing details of stock

Important FAQ's

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

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



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

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

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

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

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

Ans. A manufacturer having a turnover of say Rs 60 lakh who is enjoying SSI exemption under the existing law will have to be registered under GST as the said turnover exceeds the basic threshold of Rs 20 lakh - section 22. A trader having turnover below the threshold under VAT but, making sales through e-commerce operator will be required to be registered in GST. There will be no threshold for such person(s) – section 24.

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

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

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

Ans. Where tax has been paid under the existing law [CST, in this case] on any goods at the time of sale, not being earlier than six months prior to the appointed day, and such goods are returned by the buyer after the appointed day, the sales return will be considered as a supply of the said buyer in GST and tax has to be paid on such supply, if – (i) the goods are taxable under the GST Law; and (ii) the buyer is registered under the GST Law. However, the seller is entitled to refund of such tax [CST, in this case] paid under the existing law if the aforesaid buyer is an unregistered person under GST and the goods are returned within 06(six) months (or within the extended period of maximum two months) from the appointed day and the goods are identifiable - Section 142(1).

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

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