

Input Tax Credit- GST

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Agenda

- ▶ Introduction
- ▶ Concept of Input Tax Credit
- ▶ Availability of Credit in Special Circumstances
- ▶ Apportionment of Credit
- ▶ Blocked Credit
- ▶ Challenges & Practical Impediments
- ▶ Interactive Q&A Session

Input Tax Credit- Definitions

- ▶ **Section-2(59)** "input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;
- ▶ **Section-2(60)** "input service" means any service used or intended to be used by a supplier in the course or furtherance of business;
- ▶ **Section-2(19)** "capital goods" means goods, the value of which is capitalized in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;
- ▶ **Section-2(62)** "input tax" in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him
- ▶ **Section-2(63)** "input tax credit" means the credit of input tax;

- ▶ * **Section 155. Burden of proof.-**
- ▶ Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person

Process Chart- Purchase (Input)- Sale

Business Person (if Registered in GST Law)

Input Goods & Services	Input Tax Credit on Purchase	Finished Goods	Value of Sale	Output Tax on Supply
Hard Disk	1,000	Manufactured a Laptop	1,00,000	18,000
RAM	2,000			
Labour	2,300			
CA Services	1,000			
Other Parts	4,500			
Total	10,800		Total	18,000

Process Chart- Purchase (Input)- Sale

Registered Person

Particulars	Tax	Remarks
Total Output Tax Liability	18,000	Input Tax Credit used for Output Supply
Less ITC on Purchase	10,800	
Net Output Tax	7,200	

Input Tax Credit- Legal View

**Case- Law- Eicher Motors Ltd V/s Union of India on 28th January 1999
(106) ELT 3 (Supreme Court)**

Article 19 (1) (g)- Right to trade or practice in any business or profession

Article- 300A- Right to Property

No person shall be deprived of his property save by the authority of law.

The right to avail ITC does not vest until all the condition/restriction mentioned in respective law are satisfied. Once it vests, it become absolute and guarded by Article 300A of Indian Constitutional which gives right to property to every citizen. However it is only a **Constitutional right** and not a fundamental right.

Section-16.

Eligibility and conditions for taking input tax credit.

Section-16. **Eligibility** and **conditions** for taking input tax credit.

(1) **Every registered** person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in [section 49](#), be entitled to take credit of input tax charged on any supply of goods or services or both to him which are **used or intended to be used** in the **course or furtherance of his business** and the said amount shall be credited to the electronic credit ledger of such person.

- ❑ Registered person
- ❑ Used or
- ❑ Intended to be used
- ❑ In the course or
- ❑ Furtherance of the Business
- ❑ ITC shall be credited in **Electronic credit ledger**.

Section-16. Eligibility and conditions for taking input tax credit.

(2)Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, -

- (a). Invoice/Debit- (Rule-36(1))- Tax Invoice, Debit Note
- (b). Goods or Service received- LR, GRN, Receipt Note or Toll pass documents (Bill to Ship to)
- (c). Payment of the Tax by Supplier- GSTR-3B or DRC-03
- (d). Return filed by Recipient - GSTR-3B u/s-39
 - Payment to supplier in 180 days (Rule-37/37A)

Section 16. Eligibility and conditions for taking input tax credit. –

- The government started **GSTR-2A** functionality in September 2018.
- They have inserted **Rule 36(4)** from 01-10-2019 and restricted ITC up to 20% extra of GSTR-2A. 10% and 5% thereafter,
- **Case law-** (Bharti Airtel V/s Union of India) arising out of SLP (C) No.8654 of 2020, Supreme order in favor of Government October 28, 2021.

01-01-2022, 39/2021-C.T. 21/December/2021

¹[(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have **been communicated to the recipient of such invoice** or debit note in the manner specified under [section 37](#);

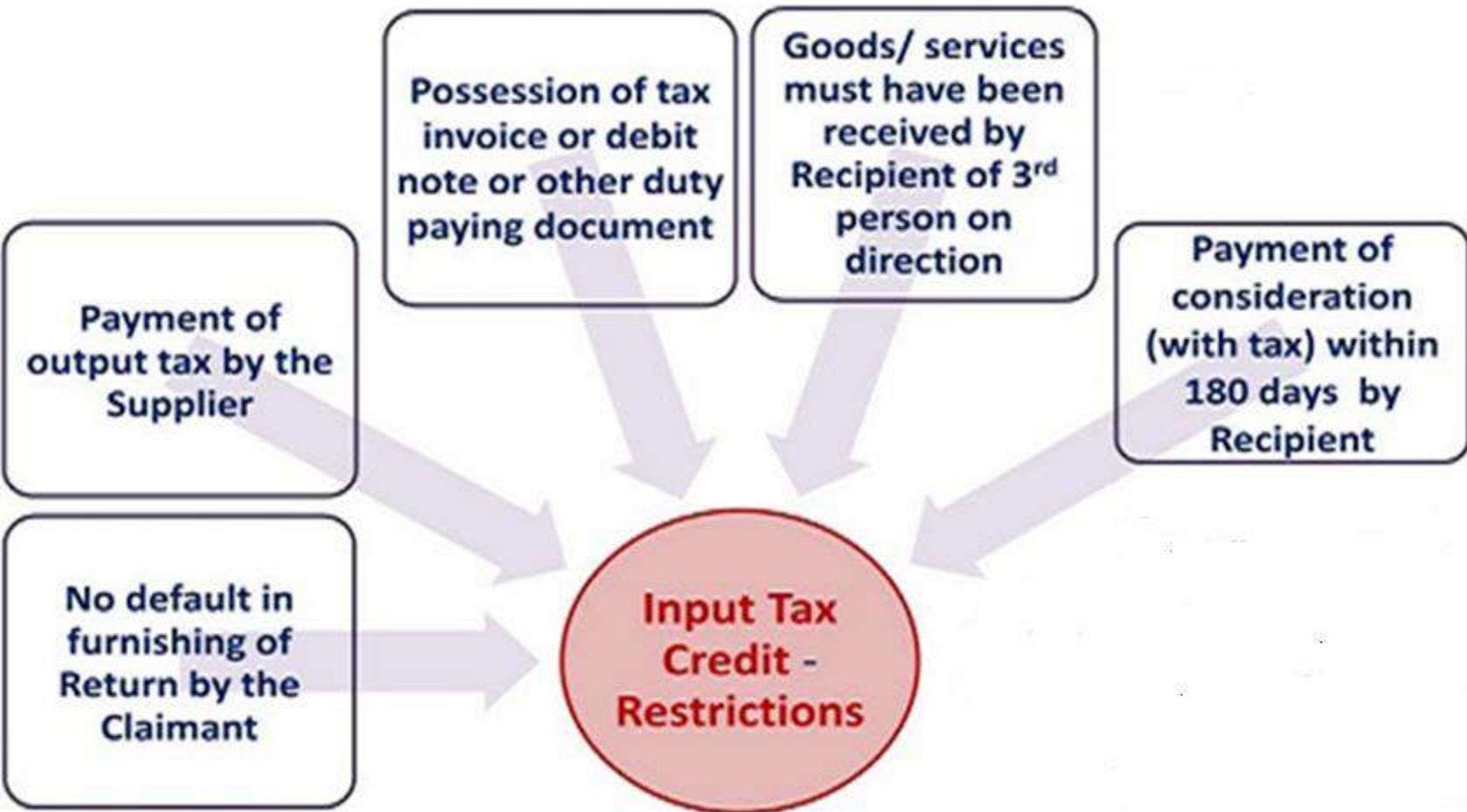
[w.e.f. 1st October, 2022 vide Notification No. 18/2022 – CT dated 28.09.2022](#)

[(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has **not been restricted**;

Six Condition-38(2)(b)- 1-New GST Taxpayer 2-Defaulter Payment 3-R-1- and 3B 4-2B-3B 5-Rule-86B 1%, Default discharging liability sec-49 6-May be prescribed

Section 16 (2). Condition

ITC – Primary Conditions u/s 16(2)



Section-16. Eligibility and conditions for taking input tax credit.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the 6[thirtieth day of November] following the end of financial year to which such invoice or 7[****] debit note pertains or furnishing of the relevant annual return, whichever is earlier.

- Depreciation on the ITC part is not Allowed
- Limitation-Error/omission rectified till 30th Nov after subsequent year (Earlier it was due date of September GSTR-3B)

Section-18.

Availability of credit in special circumstances.

Section-18. Availability of credit in special circumstances.

Where you are not able to claim input tax credit in GSTR-3B

- ❑ (1) Subject to such conditions and restrictions as may be prescribed-
 - (a). Liability to take Registration u/s 22 or 24
 - (b). Voluntary registration u/s 25(3)
 - (c). Where cease to pay tax u/s 10 (Composition)
 - (d). Where exempt supply becomes taxable

Special Circumstances-

Category	Date on which Liable for Registration	Date on which registration approved	Date on which eligible to Claim ITC	Form and Time
(a). Liability to take Registration u/s 22 or 24	01-Aug-2023 (Applied in 30 Days)	01-Sep-2023	31 st July 2023 (Midnight) Inputs held in Stock	Rule-41 Form ITC-01 (with in 30 Days of Registration)
(b). Voluntary registration u/s 25(3)	NA	01-Sep-2023	31 st August 2023 (Midnight) Inputs held in Stock	
(c). Where cease to pay tax u/s 10 (Composition)	01-Aug-2023 Liability u/s-9	NA	31 st July 2023 (Midnight) Inputs held in Stock and Capital Goods	
(d). Where exempt supply becomes taxable	01-Aug-2023 Liability u/s-9	NA	31 st July 2023 (Midnight) Inputs held in Stock and Capital Goods	

the expiry of **one year from the date of issue of tax invoice relating to such supply.**

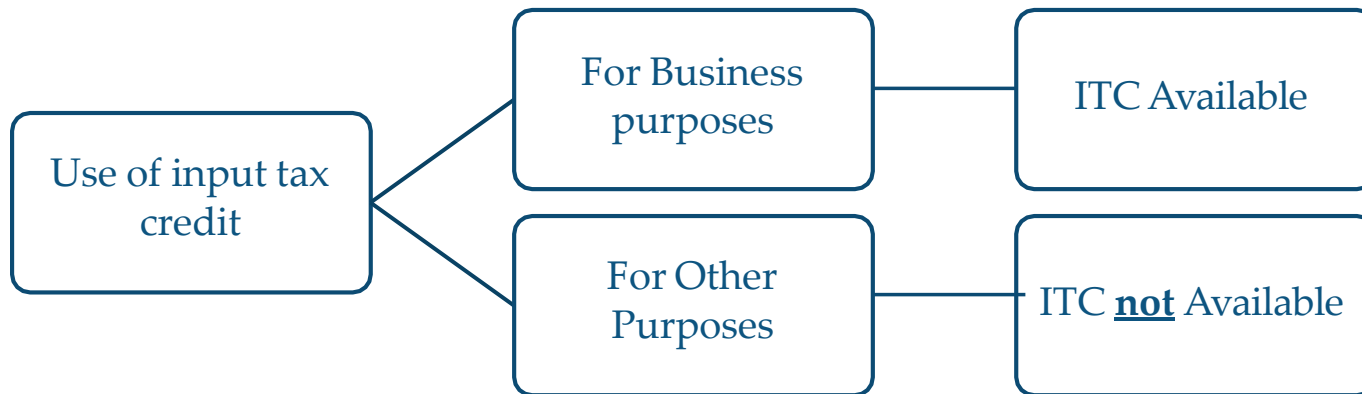
Section-18. Availability of credit in special circumstances.

- ❑ Where change in Constitution due to Sale, Merger, Demerger amalgamation, lease or Transfer
 - The un-utilized credit specified in FORM GST ITC-02 shall be credited to his electronic credit ledger
- ❑ Where opt to pay tax u/s 10 (Composition)
- ❑ Where taxable supply becomes exempt
 - Rule-44- Reversal of that ITC amount shall be furnished in **FORM GST ITC-03**
 - Rule-43- Manner for Calculation for Reversal of ITC in case of Capital Goods

Section-17.

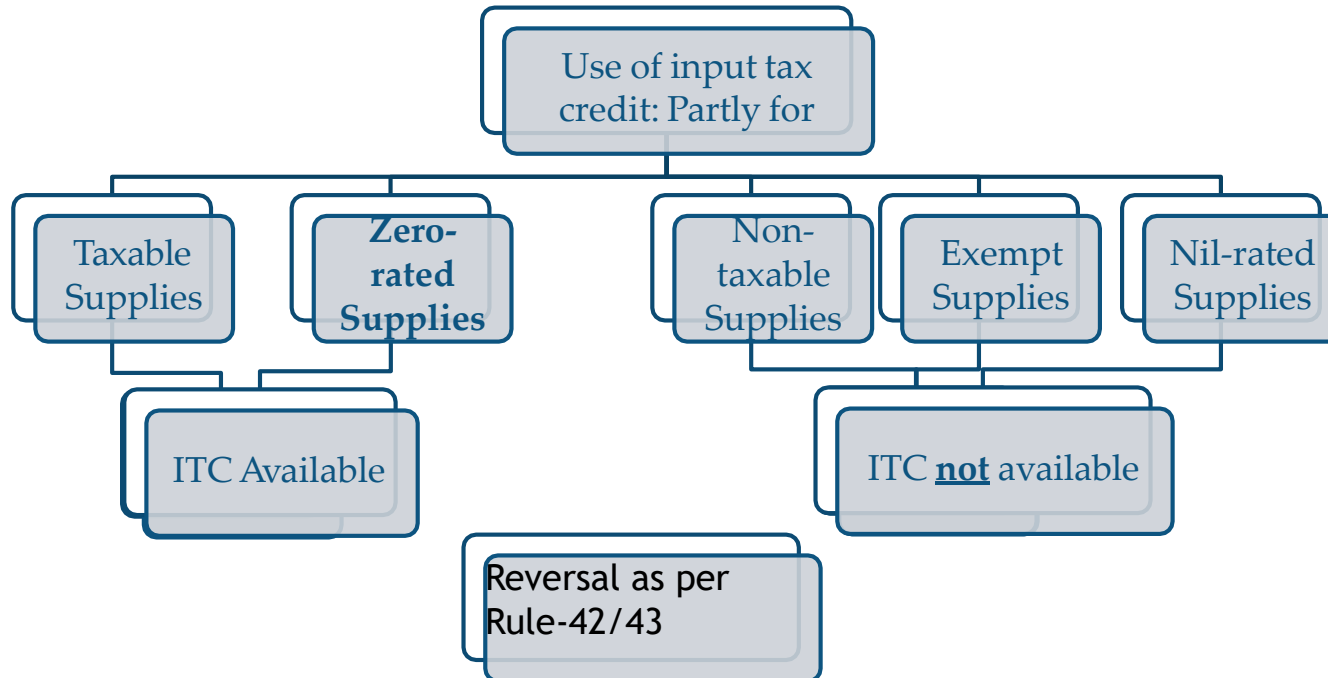
Apportionment of credit and blocked credits.-

ITC on the Basis of use of Inputs – Sec 17



***Note:** Attribution of ITC to be made as per the manner prescribed in the ITC Rules*

ITC on the Basis of use of Inputs – Sec 17



Note: Attribution of ITC to be made as per the manner prescribed in the ITC Rules

Alternative to apportionment between taxable and exempt supplies in case of banking companies, NBFC and financial institutions:

- Yearly option to avail a standard rate of 50% of eligible ITC on inputs, capital goods and input services on a monthly basis or
- Above option
- 50% shall not be applied on tax paid on supplies made by one registered person to another registered person having same PAN

ITC on the Basis of use of Inputs – Sec 17

Non-taxable Supplies

1. Liquor
2. Natural Gas
3. Petrol
4. Diesel
5. Electricity

Exempt Supplies

1. Notification-02/2017
Central Tax- Fish, Egg
etc
2. Notification- 12/2017
Central Tax-
Transportation service
by GTA

Nil-rated Supplies

1. Grains,
2. salt,
3. Jaggery, etc.

Alternative to apportionment between taxable and exempt supplies in case of banking companies, NBFC and financial institutions:

Section-17. (5)

Apportionment of credit and blocked credits.-

Section 17(5) of the CGST Act lists the cases where input tax credit shall not be available to the taxpayer. The provision states that input tax credit shall not be available in the following situations:

(5) Notwithstanding anything contained in sub-section (1) of [section 16](#) and sub-section (1) of [section 18](#), input tax credit shall not be available in respect of the following, namely:-

a) Motor Vehicles

ITC of Motor Vehicles for transportation of passenger will **NOT be available** for Seating capacity 13 person (including Driver)

Except
when they are used for

- Making the following taxable services:
 - i. Further supply of such motor vehicles /
 - ii. Transportation of passengers, or /
 - iii. Imparting training on driving of such motor vehicles

Sec 17(5) Blocked credits

aa) Vessels and Aircraft

ITC of Vessels and aircraft will **NOT** be available

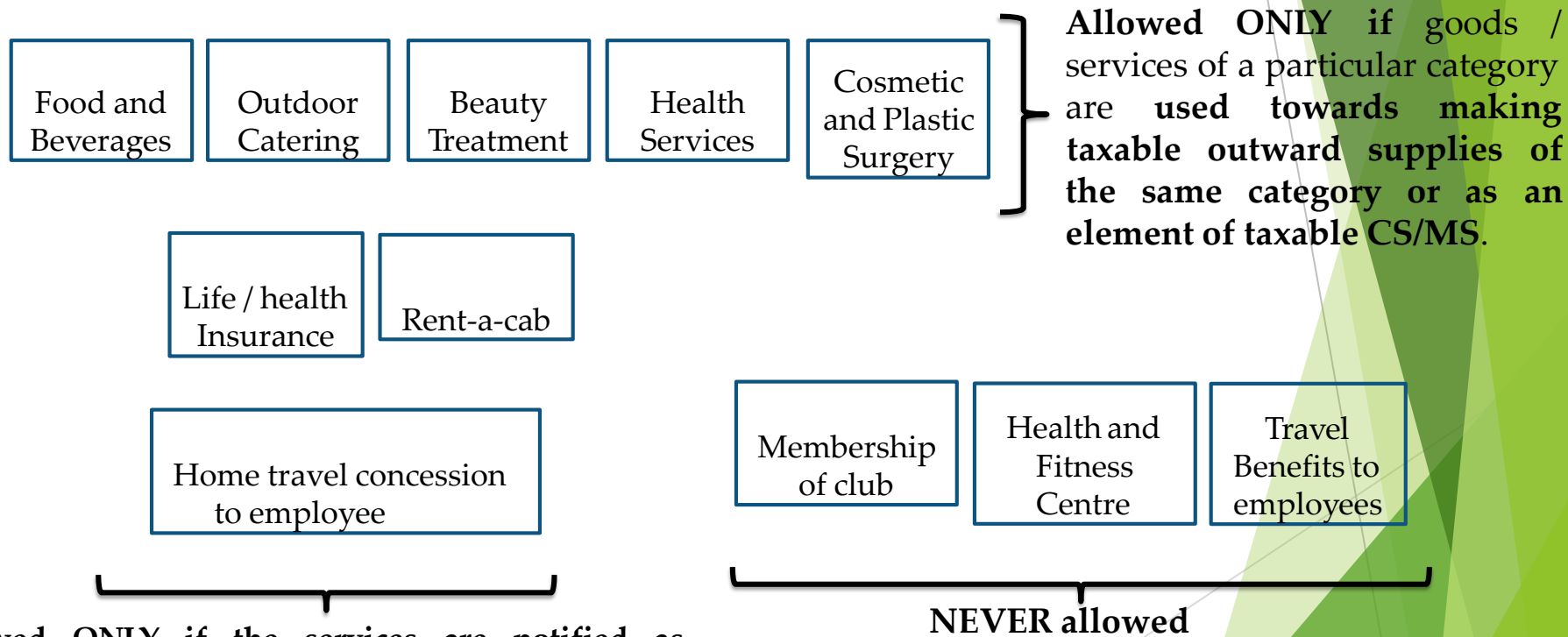
Except when they are used for

- Making the following taxable services:
 - i. Further supply of such vessels or aircraft
 - ii. Transportation of passengers/goods /
 - iii. Imparting training such vessel or aircraft

ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Sec 17(5) Blocked credits

b) Supply of goods and services being:



Allowed ONLY if goods / services of a particular category are **used towards making taxable outward supplies** of the same category or as an element of taxable CS/MS.

Allowed ONLY if the services are notified as obligatory for an employer to provide an employee or services of a particular category are used towards making taxable outward supplies of the same category or as an element of taxable CS/MS.

Sec 17(5) Blocked credits

Construction of Immovable Property (other than plant and machinery)

c) Works contract services, except where it is an input service for further supply of works contract service

(d) Goods or services received by a taxable person for construction of an immovable property on his own account even when used in course or furtherance of business;

ITC not Available

Construction includes re-construction, renovation, additions or alterations or repairs to the extent of capitalisation

Sec 17(5) Blocked credits

- (e) Taxes on supply of goods or services paid u/s 10
- (f) Goods or services or both received by a non-resident taxable person except on goods imported by him, shall not be allowed
- (fa) CSR activity under companies act 2013. (newly inserted provision)
- (g) Goods or services or both used for personal consumption
- (h) Goods lost, stolen, destroyed, written off or disposed of by way of gift or free supplies and
- (i) Any tax paid in accordance with the provisions of sections 74, 129 and 130 i.e. tax paid after detection of fraud or suppression or goods removed in contravention of GST Act. In such cases of the supplier issues tax invoice at a later stage, it should be clearly marked as 'INPUT TAX CREDIT NOT ADMISSIBLE'.

Other important Provision

- **Mismatch in GSTR-2A v/s GSTR-3B-**
- **Circular-183/15/2022-GST-27-Dec-2022-** Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19
- **Circular- 193/05/2023-GST- 17-Jul-2023-** Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for the period 01.04.2019 to 31.12.2021
- **¹[Rule 37A. Reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment thereof.-**
- **“88D. Manner of dealing with difference in input tax credit available in auto-generated statement containing the details of input tax credit and that availed in return.-Notice in FORM GST DRC-01C**
- **Rule-59(6e)- GSTR-1 blocked**

Queries

Thank you

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