

GST – Transitional Provisions

By

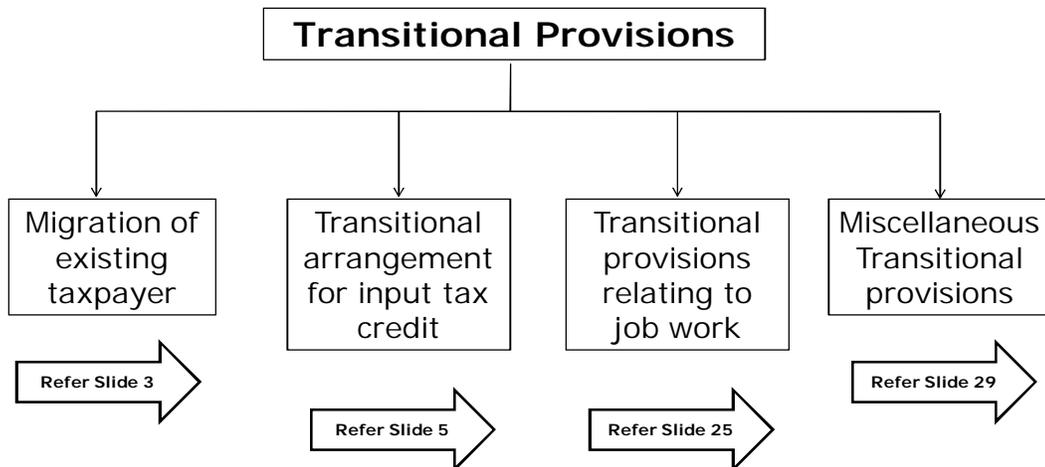
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SCOPE/COVERAGE



- ***Based on CGST Act, 2017; SGST Bills as passed by state & draft Transitional Rules***

Migration of Existing tax payers

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3

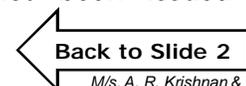
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Migration of Existing Taxpayers

- Every person registered under *existing* law, on the day immediately preceding appointed day, liable to register under GST w.e.f. Appointed day [S.22(2)]

Existing law – any law relating to levy and collection of duty / tax on goods / services or both passed / made before commencement of this Act

- Such person having valid PAN to be issued a provisional RC subject to condition and in form and manner prescribed [S.139]
- Provisional RC to be replaced by Final RC [S.139(2)] – If prescribed conditions not complied with provisional RC liable to be cancelled
- If such person not liable to register u/s 22 / u/s 24 to make an application for cancellation – Provisional RC deemed to have not been issued [S.139(3)]



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Transitional Arrangement for Input Tax Credit

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Transitional arrangement for Input Tax [Section 140]

- Carry forward of cenvat credit availed / pending availment under existing laws
- Availment of credit on inputs / SFG / FG held in stock by certain specified persons
- Cenvat credit availment on ***Spillover transactions***

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Carry forward of cenvat credit availed under existing law

S. 140(1) & (2)

- Cenvat credit carried forward in return relating to period ending with day immediately preceding appointed day entitled to be taken in electronic credit ledger of registered person
- Not Entitled to the above credit if –
 - Credit is not admissible as input tax credit under present law
 - All required returns under existing law for a period of 6 months immediately preceding the appointed day have not been furnished
 - Credit relates to goods manufactured and cleared under notified exemption notifications

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Carry forward of cenvat credit availed under existing law

S. 140(1) & (2)

- Not applicable to Registered person opting for payment of tax under composition levy under GST
- Unavailed cenvat credit on capital goods (aggregate amount of Cenvat credit on Capital goods *minus* credit already availed) not c/f in return – entitled to be credited in electronic credit ledger provided allowed under existing law & the present law
To furnish electronically ITC on capital goods availed under existing law till appointed day & amount of ITC yet to be availed

SGST Bills – similar provisions to

Carry forward of VAT Credit availed under existing law

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Variation in State Act

Claims of credit in respect of following transaction—to be reduced to the extent of claims on account of non-obtaining forms / non-compliance of conditions

section	Deals with	Form
S.3	Lower of CST Rate; or rate applicable in appropriate state	C
S.5(3)	Sale / purchase preceding sale / purchase occasioning export	H
S.6	Subsequent sale by way of transfer of document of title to goods to registered dealer during the course of interstate movement of goods	EI & EII [from Vendor] Form C [from customer]

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Claims of credit in respect of following transaction—to be reduced to the extent of claims on account of non-obtaining forms / non-compliance of conditions

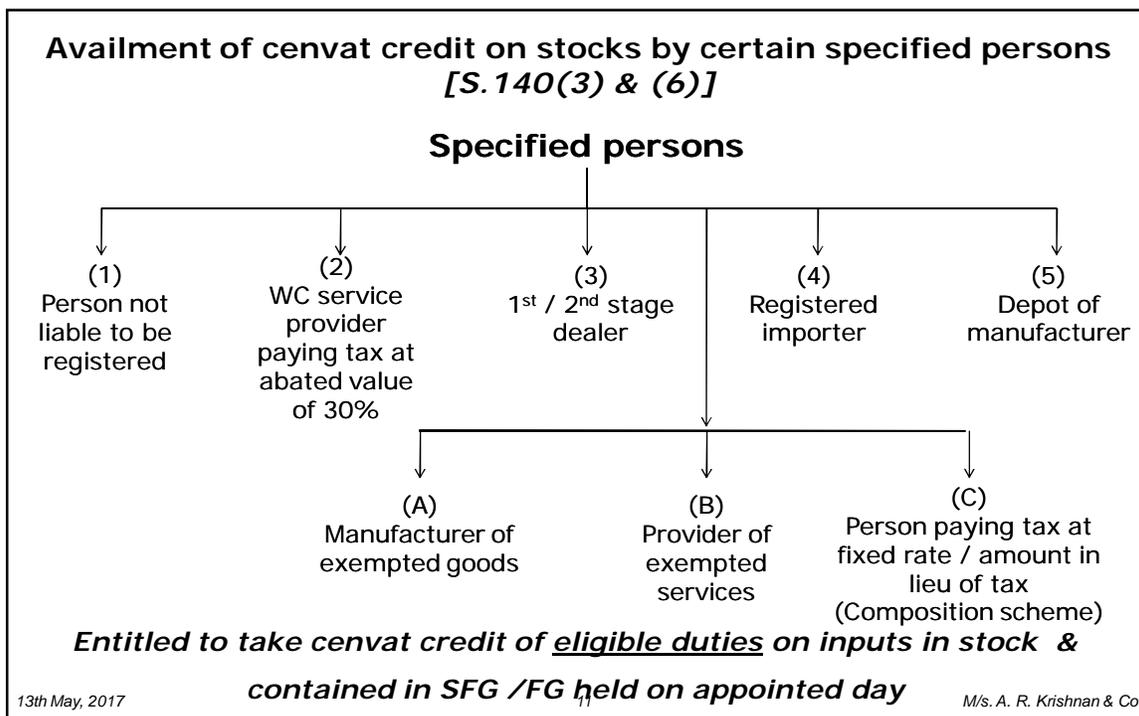
section	Deals with	Form
S.6A	Transfer to other state otherwise than by way of sale – Branch transfer	F
S.8(8)	Sale to SEZ developer	I

Credit to be refunded on substantiation of claim / compliance of conditions but cannot be taken in electronic credit ledger

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Common condition for availment of credit

- Inputs / goods **used / intended to be used** for making taxable supply
- Registered person eligible for credit on inputs under CGST Act
- Registered person to have Tax invoice evidencing payment of eligible duties
- Date of issuance of Tax invoice not earlier than 12 months from appointed day
- Supplier of service not eligible to claim abatement under CGST Act (*not applicable for C category of specified person*)
- Registered person not to pay tax under composition levy (*applicable only for C category of specified person*)

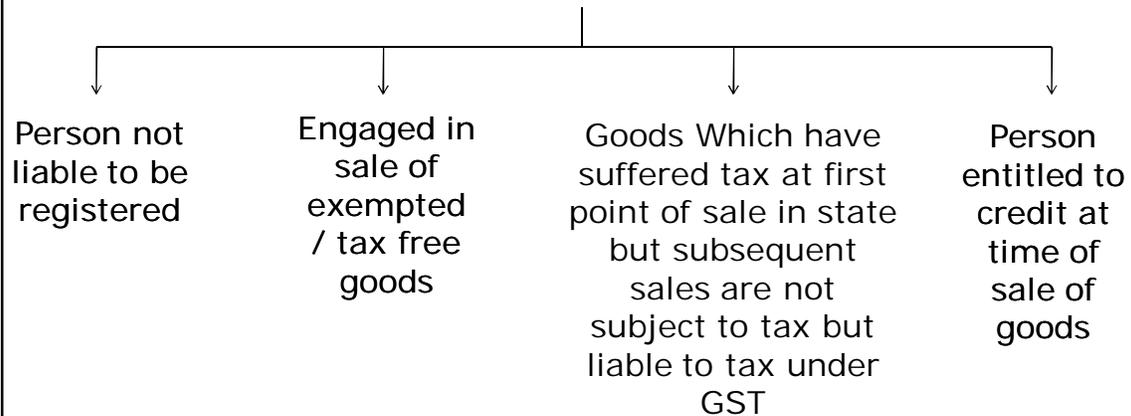
- specified persons falling under category (1) to (5) entitled to avail credit even if not in possession of tax invoice evidencing payment of eligible duties subject to following conditions
 - Credit eligible @ 40% of CT – to be credited in electronic credit ledger only after payment of CT on supply of such goods
 - Such goods not wholly exempted under CETA or 'nil' rate
 - Document of procurement of goods should be available with registered person

Contd..

- Such goods to be stored in easily identifiable manner
- Scheme available for 6 tax period (6 months) - Registered person to furnish statement of supplies effected & stock held at end of each Tax period
- Benefit of ITC to be passed on to recipient by way of reduced prices
- *Details of stock held on appointed day to be furnished electronically*

Similar provisions in SGST Bills for availment of credit of VAT on goods held in stock

by following **Specified persons**



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SOME ISSUES / CHALLENGES

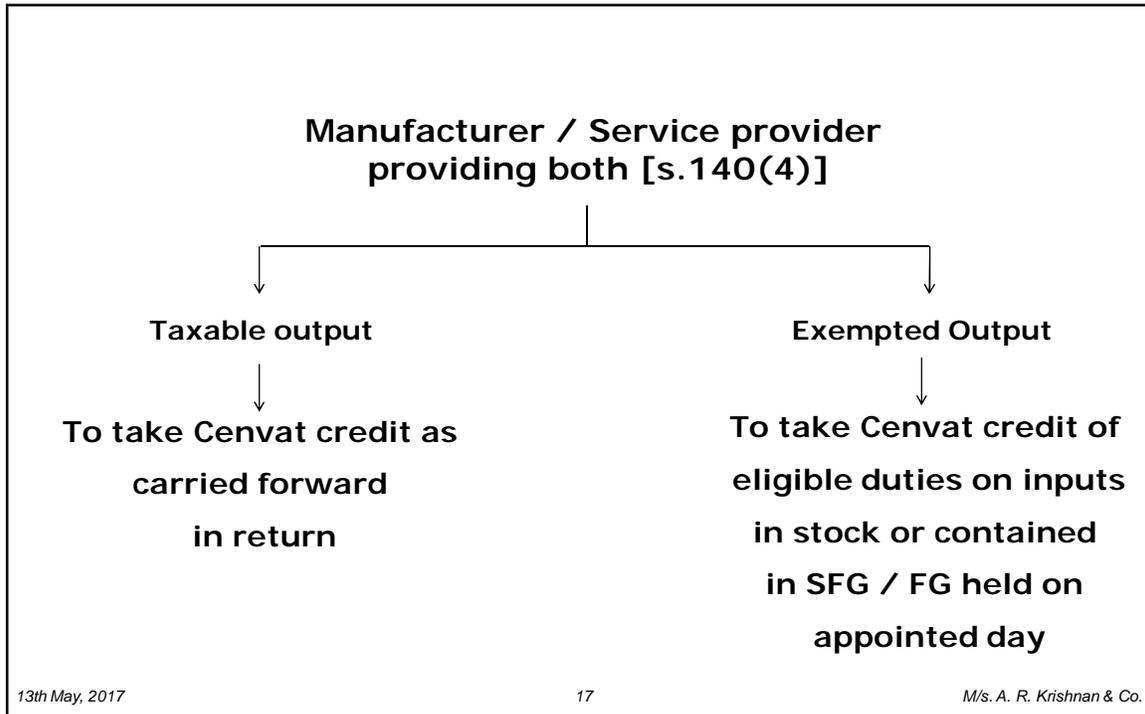
1st /2nd stage dealer or Depot of Manufacturer having stock of goods received under an Excise Invoice which was issued prior to 1 year before the appointed day

Would the credit of excise duty paid on such stocks be lost 

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Credit availment on Spillover transaction

- Input / input services received after appointed day – tax in respect of which paid by supplier under existing law subject to conditions [S.140(5)] Refer Slide 19
- Input services received before appointed day by ISD – but invoice received after appointed day – eligible for distribution as credit under CGST Act [S.140(7)]
- Credit reversed under existing law due to non- payment of consideration within 3 months – credit reclaimable if consideration paid within 3 months from appointed day [S.140(9)] Refer Slide 22

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Conditions

- Invoice / duty paying document of input / input services recorded in Book of Accounts of registered person (recipient) within 30 days from appointed day
- Period to be extended by 30 days by Commissioner if sufficient cause shown
- Registered person to furnish statement of such credit taken in prescribed manner

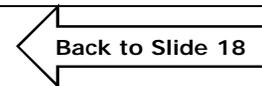
Prescribed details to be furnished electronically

- name of supplier and sl. no. & date of issue of invoice
- Description, quantity and value of supply
- amount of exigible duties & taxes and VAT charged thereon
- Date on which receipt of goods / services is entered in books of accounts of recipient

SOME ILLUSTRATIVE SITUATIONS

SI	<i>Receipt of input / service</i>	<i>Issue of Invoice</i>	<i>Payment of tax</i>	<i>Action point</i> 
1.	Before	Before	Before	
2.	Before	Before	After	
3.	Before	After	Before	
4.	Before	After	After	
5.	After	After	Before	
6.	After	Before	After	
7.	After	Before	Before	

Before & After w.r.t. Appointed day



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SOME ISSUES / CHALLENGES

Sale of goods prior to appointed day – Buyer taking delivery of goods in parts from sellers godown

Would delivery taken post appointed day be supply liable for GST 

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SOME ISSUES / CHALLENGES

Advance towards purchase paid by buyer to seller prior to appointed day – sale taking place under GST regime

Which tax should be levied on the transaction 

- VAT
- CT + ST

Special provisions for existing centrally registered assessee s. 140(8)

- Credit carried forward in return for the period ending with day immediately preceding appointed day entitled to be credited in electronic credit ledger
- Return furnished within 3 months from appointed day credit admissible on –
 - Original return
 - Revised return only if credit claim reduced from original return
- Cenvat credit transferable to any registered person having same PAN which was also centrally registered
- Credit admissible under CGST Act



Transitional Provisions relating to Job-Work

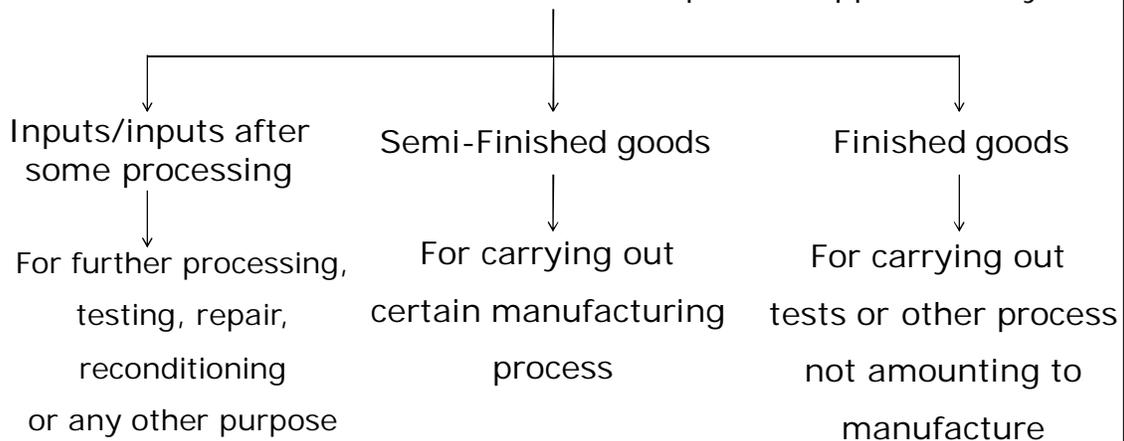
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Transitional provisions relating to Job work [S. 141]

Goods sent from a POB to Job worker prior to appointed day



No tax payable if goods returned to POB within 6 months

from appointed day

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Conditions to be complied

- Goods to have been removed to job worker in accordance with existing law
- Manufacturer & job worker to declare details of such goods held on appointed day in such form and manner & within such time as prescribed
- Time limit of 6 months for returning of goods further extendable by 2 months by Commissioner if sufficient cause shown

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Conditions to be complied

- If goods not returned within 6 months credit availed on such inputs / goods to be recovered
- Manufacturer may remove SFG / FG from job workers place to any place of registered person –
 - Supplying in India on payment of tax
 - Exporting out of India without Payment of tax

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Miscellaneous Transitional Provisions

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Miscellaneous Transitional Provisions

- Substantive Provisions
- Sales return within specified time
 - Price revision
 - *Spillover transactions*

- Procedural Provisions
- Refund
 - Appeal, Review or Reference relating claim of cenvat / output tax
 - Assessment / adjudication
 - Revision of returns

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Miscellaneous Transitional Provisions

Substantive Provisions

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Transitional provisions – Sales Return within specified time

IF

Sale by	Registered person
Date of Sale	Within 6 months prior to appointed day
Sale return by	Unregistered person
Date of Sale's Return to POB	Within 6 months from appointed day

Then

Registered Person Entitled to Refund	of Duty paid on removal of such goods
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Conditions-

Goods are identifiable to satisfaction of proper officer

Sales return by Registered person deemed to be supply

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Some of the Scenarios

Sale by	Registered person	Registered person
Date of sale	Beyond 6 months prior to appointed day	Within 6 months prior to appointed day
Sale return by	Unregistered person	Unregistered person
Date of sales return to POB	Within 6 months from appointed day	Beyond 6 months from appointed day
Refund	Not eligible	Not eligible

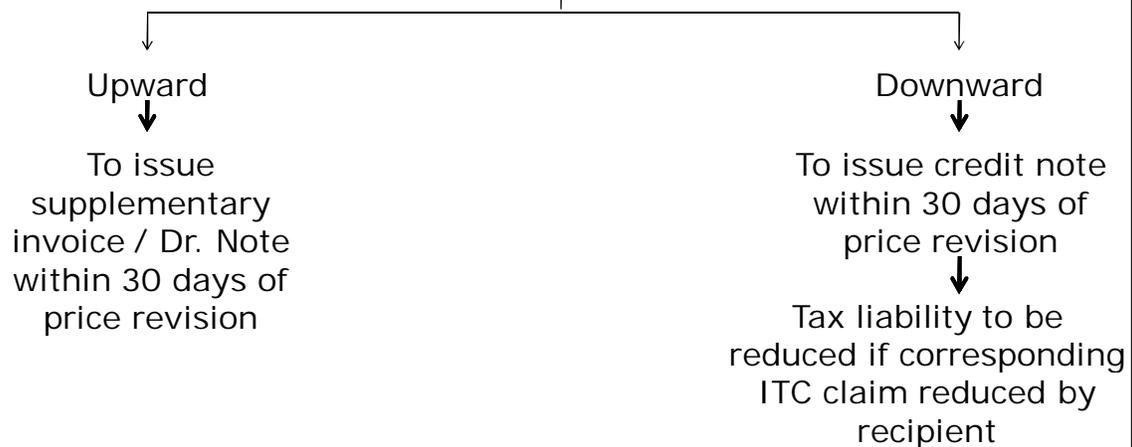
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Contract to have been entered into & supply made prior to appointed day

Price Revision after appointed day



Deemed to be in relation to outward supply made under the CGST Act

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Spillover transaction			
Sl.	Prior to Appointed day	On or after appointed day	Tax applicable
1.	Contract entered into	Supply made	GST
2.	To the extent Tax leviable on goods under existing VAT law	TOS of goods	No GST if VAT paid
3.	To the extent Tax leviable on services under existing service tax law	TOS of service	No GST if ST paid

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Spillover transaction			
Sl.	Prior to Appointed day	On or after appointed day	Tax applicable
4.	VAT & ST both paid	Supply made	GST payable but credit of VAT & ST calculated in prescribed manner available
5.	Sale of goods where VAT TDS deductible under SGST/UTGST & invoice in respect of same issued	Payment made to supplier	No TDS deductible under Section 51 of GST law

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Sl.	Prior to Appointed day	On or after appointed day	Tax applicable
6.	Goods sent on approval not earlier than 6 months	Rejected / not approved & returned	<p>No Tax payable if returned within 6 months extendable by 2 months by Commissioner on sufficient cause shown</p> <ul style="list-style-type: none"> • <i>To submit details of such goods within 60 days</i> • Goods Not returned – <i>Person sending on approval liable for GST</i>  • Returned after specified period – <i>Person returning liable to pay GST</i>

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SOME ISSUES / CHALLENGES

Renting of premises – Invoice for Advance Rent raised prior to appointed day – whether there is a need to levy GST on proportionate rent for the period post appointed day 

SOME ISSUES / CHALLENGES

- Contract for provision of services entered prior to appointed day for Rs. 10 lakhs
- Value received in Advance – 5 Lakhs
- Services rendered post appointed day

What would be the GST implication 

SOME ISSUES / CHALLENGES

- Credit reversed under Rule 4(7) of Cenvat credit Rules for non-payment of value of service and service tax thereon to the input service provider
- S.140(9) – credit reclaimable only if payment made within 3 months from appointed day

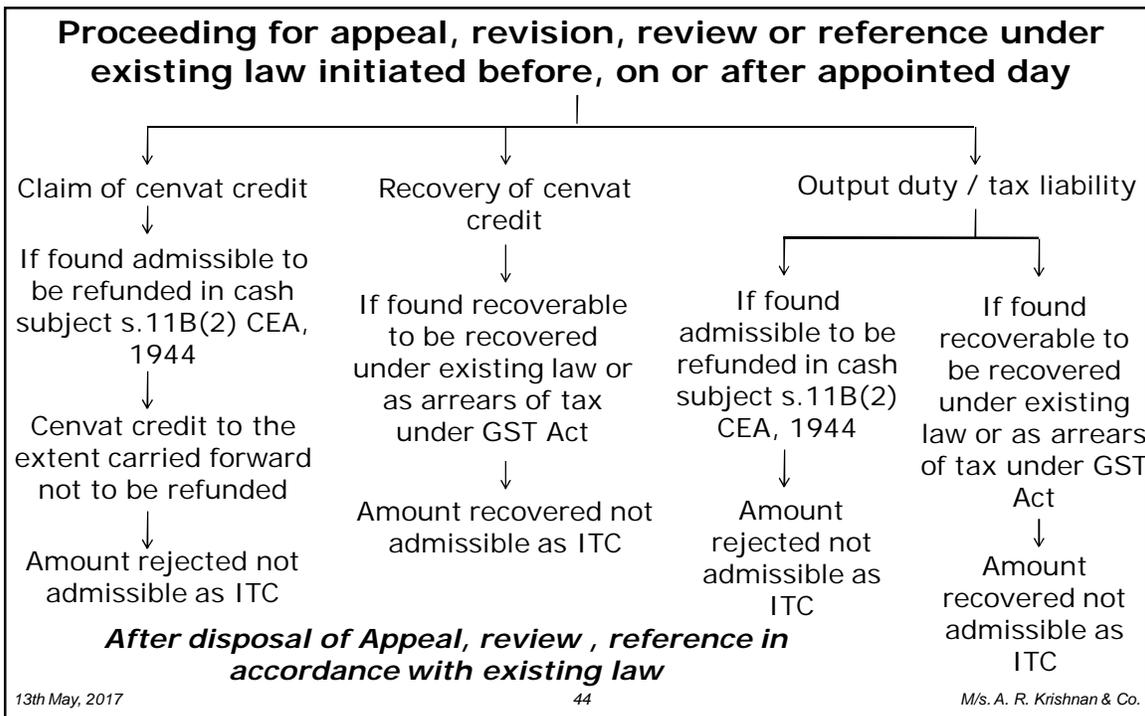
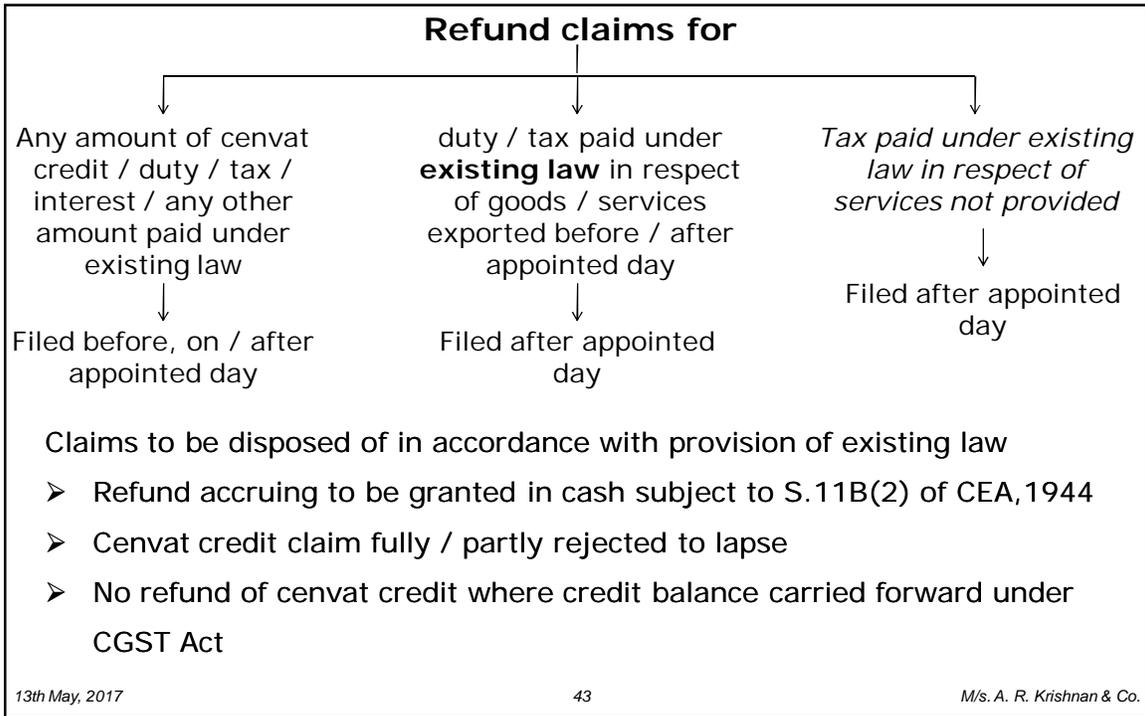
If payment not made within 3 months would the cenvat credit get lapsed 

SOME ISSUES / CHALLENGES

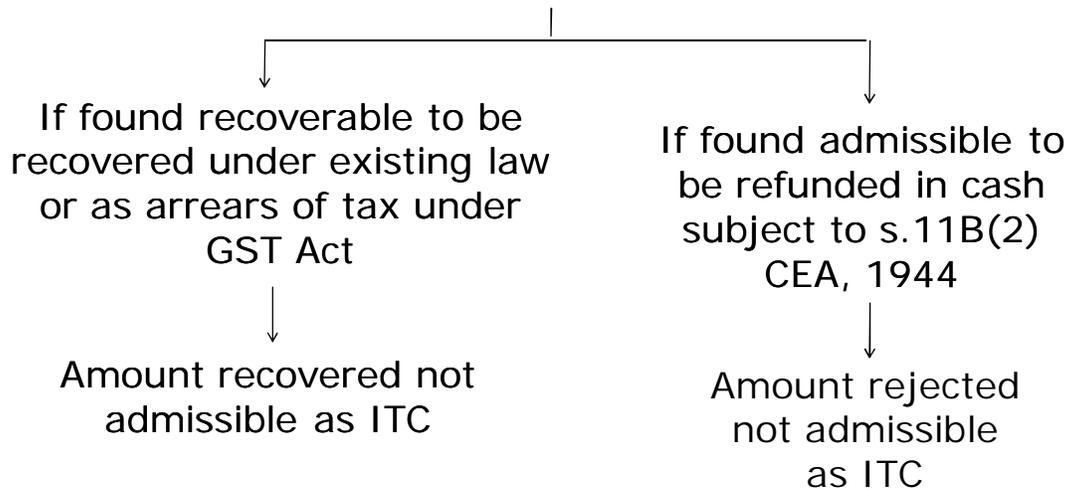
- Legal consultancy services received in May 2017
- Payment for services made post appointed day
- Tax payable under Reverse charge – *POT/TOS date of payment*

Whether to pay service tax / CT+ST while discharging RCM liability 

Miscellaneous Transitional Provisions Procedural Provisions



On assessment or adjudication proceeding under existing law instituted before on or after appointed day if tax, interest, fine or penalty

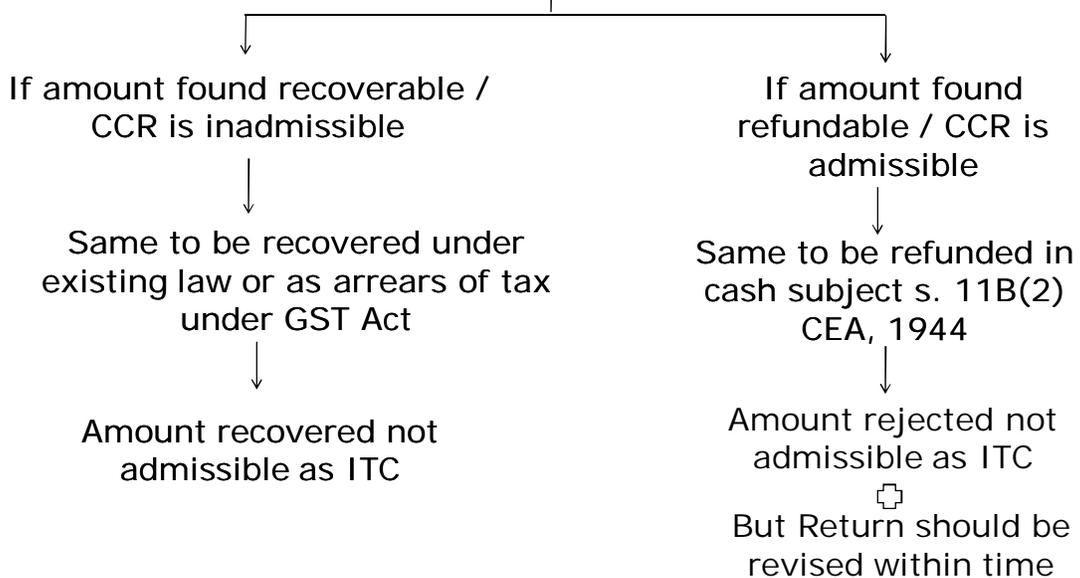


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Return furnished under existing law revised after appointed day & pursuant to such revision



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Similar provision in State GST Bills for VAT but Additional Provisions in State GST Bills

- Agent entitled to take credit of tax paid on goods / CG belonging to principal lying at his premises on day immediately preceding appointed day
- Credit entitlement subject to
 - Agent a registered person under SGST Act
 - Both agent & principal declare stock of such goods *within 60 days of appointed day*
 - invoices for such goods not issued earlier than 12 months immediately preceding appointed day
 - Principal not to avail ITC in respect of such goods & if claimed to reverse the same to the extent availed by him

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47

Go to Slide 49

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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 (58 of 1957)
- ii. the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975)
- iii. the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975)
- iv. the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978)
- v. the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);
- vi. the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986)
- vii. the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001 (14 of 2001) and
- viii. *the service tax leviable under section 66B of the Finance Act, 1994, (32 of 1994)*

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48

Back to Slide 11

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49

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50

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