




GOODS AND SERVICES TAX- TRANSITIONAL PROVISIONS

**At ICAI, Nagpur Branch
On Monday 15/05/2017
By: CA Milind Patel**





**TRANSITIONAL PROVISIONS
RELATED TO CGST LAW :**

**SECTIONS 139 to 142 of
THE CGST ACT, 2017**

Migration of Existing Taxpayers – Section 139

Shall be issued a certificate of registration on a provisional basis in such form and manner as may be prescribed.



Shall be valid unless replaced by a final registration of certificate.



Provisional Certificate shall be liable to be cancelled if the conditions so prescribed are not complied with.



The final certificate of registration shall be granted in such form and manner and subject to such conditions as may be prescribed.



The certificate of registration issued to a person 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.

Every Registered person under any previous Law + Having a Valid PAN= Provisional RC will be granted





Migration from Existing Law

Person registered under existing law to enrol on the Common Portal by validating e-mail address and mobile number.

Registration granted on provisional basis in **FORM GST REG-25**.

Person granted multiple registrations under existing law on single PAN basis to be granted only one provisional registration under GST.

If information not furnished or is incomplete or incorrect, provisional registration shall be cancelled in **FORM GST REG-26**, but only after opportunity in **FORM GST REG-27**.

If information found to be correct and complete, RC will be issued in **FORM GST REG-06**.

Submit an application in **FORM GST REG-24** along with information and documents required within 3 months of the grant of provisional registration.

Person not liable to register under GST, shall file an application in **FORM GST REG-28** within 30 days from the appointed day, for cancellation of provisional registration.

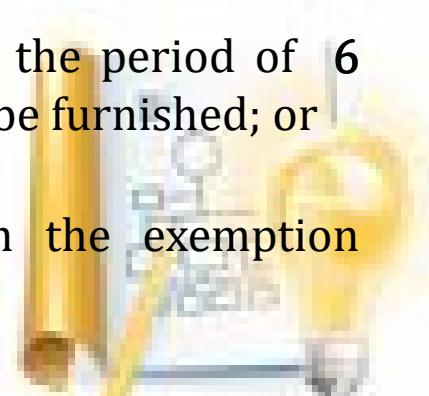


TRANSITIONAL ARRANGEMENTS FOR INPUT TAX CREDIT – Sec.140

AMOUNT OF CENVAT CREDIT CARRIED FORWARD IN A RETURN

Section 140(1)

- Entitled to take amount of Cenvat Credit carried forward in a return furnished under **existing law** in respect of the period ending with the day immediately preceding the appointed day. (Other than person opting to pay tax under Composition under Sec 10)
- The registered person shall not be allowed to take credit in the following circumstances, namely:—
 - (i) where the Credit is **not admissible** as input tax credit under this Act; or
 - (ii) **All** the returns required under the existing law for the period of **6 months** immediately preceding the appointed date are to be furnished; or
 - (iii) where the credit relates to goods exempted in the exemption notification.



APPLICATION IN RESPECT OF TAX OR DUTY CARRIED FORWARD

RULE

- Every registered person entitled to take credit of input tax under section 140 shall, within 60 days of the appointed day, submit an application electronically in **FORM GST TRAN-1**, specifying therein separately, the amount of tax or duty of which the said person is entitled .



APPLICATION IN RESPECT OF TAX OR DUTY CARRIED FORWARD

RULE

- In the application following shall be specified separately—
 - (i) the value of claims under section 3, 5(3), 6, 6A and 8(8) of the CST Act, 1956 made during the financial year relating to the relevant return, and
 - (ii) the serial number and value of declarations in Forms C and/or F and Certificates in Forms E and/or H or Form I specified in rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 in support of the claims referred to in (i) above.

(Only for SGST)



UNAVAILED CENVAT CREDIT ON CAPITAL GOODS

Section 140(2)

- Reg. taxable person is entitled to take credit of Unavailed Cenvat Credit in respect of Capital Goods not carried forward in return furnished under existing law.
- Unavailed credit = Total Credits - Credit Availed under existing law.
- Above Unavailed credit is allowed if admissible under both existing and GST law.


Under Existing Law	Under GST	Result
Unavailable	Available	Not Admissible
Available	Unavailable	Not Admissible
Available	Available	Admissible





RULE

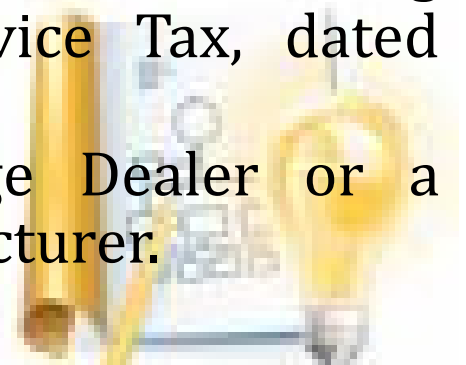
PARTICULARS TO BE SPECIFIED SEPARATELY IN APPLICATION

- Every application in FORM GST TRAN-1 shall 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 under the existing laws till the appointed day, and
 - (ii) the amount of duty or tax yet to be availed or utilized under the existing laws till the appointed day.
- 

CREDIT OF ELIGIBLE DUTIES IN RESPECT OF INPUTS HELD IN STOCK

Section 140(3)

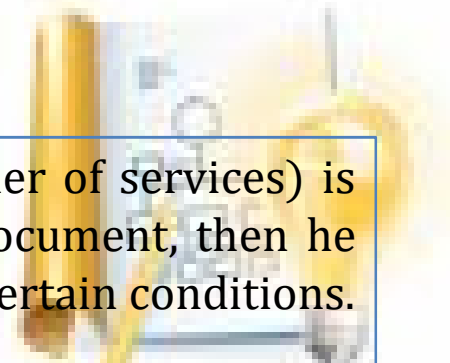
- Following Registered Taxable Person, entitled to take credit of “eligible duties” in respect of input held in stock and contained in semi/finished goods held in stock on the appointed day subject to Certain “CONDITIONS” :-
 - Who was not liable to be registered under existing law
 - Who was engaged in manufacture of exempted goods or provision of exempted services
 - Who was providing work contract service and availing benefit of Notification No. 26/2012-Service Tax, dated 20.06.2012
 - a First Stage dealer or a Second Stage Dealer or a Registered Importer or a depot of a manufacturer.



CONDITIONS

- Inputs/Goods used or intended to be used for making taxable supplies in GST.
- Credit allowed if admissible under GST law.
- Possession of invoice and other related documents evidencing payment of duty.
- Such invoice/document shall not be older than 12 months preceding the appointed day.
- Supplier of Service not eligible for any abatement under this Act.
- Taxable Person passes on the benefit of credit by way of reduced prices to the recipient.

Where taxable person (other than manufacturer or supplier of services) is not in possession of an invoice or any other evidencing document, then he shall be allowed to take credit at the rate of 40% subject to certain conditions.



CREDIT TO BE ALLOWED AT THE RATE OF 40% OF CENTRAL TAX

RULE

(In CGST Rules)

This scheme shall be available for 6 'tax periods' from the appointed day subject to the following conditions:

- Central tax payable on supply of such goods has been paid.
- Such goods were not wholly exempt from excise duty or Nil rated.
- Document for procurement of such goods is available.
- Registered person submits a statement in **FORM GST TRAN---** at the end of each of the six tax periods indicating therein the details of supplies of such goods effected during the tax period.
- The amount of credit allowed shall be credited to the electronic credit ledger.
- The stock of goods on which the credit is availed is so stored that it can be easily identified.

CREDIT TO BE ALLOWED AT THE RATE OF 40% OF STATE TAX

RULE

(In SGST Rules)

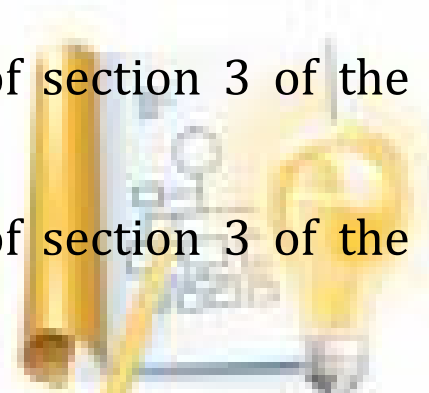
- A registered person, holding stock of goods which have suffered tax at the first point of their sale in the State and the subsequent sales of which are not subject to tax in the State, shall be allowed to avail input tax credit on goods held in stock on the appointed day in respect of which he is not in possession of any document evidencing payment of value added tax.
- This scheme shall be available for six 'tax periods'.
- All the other conditions to avail credit are same as in case of CGST Rules.



ELIGIBLE DUTIES

[For the purpose of Sec. 140(3), (4) & (6)]

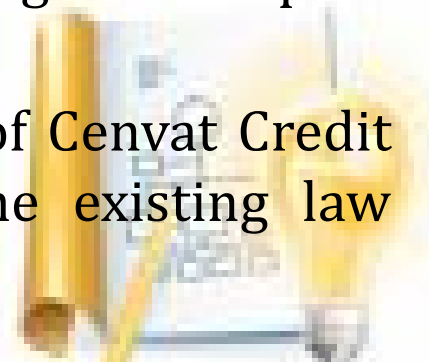
- The duty of excise specified in the First Schedule to the Central Excise, 1985;
- The duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985;
- The additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978;
- The additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;
- The National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001;
- The additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;
- The additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975.



CREDIT OF ELIGIBLE DUTIES IN RESPECT OF INPUTS HELD IN STOCK

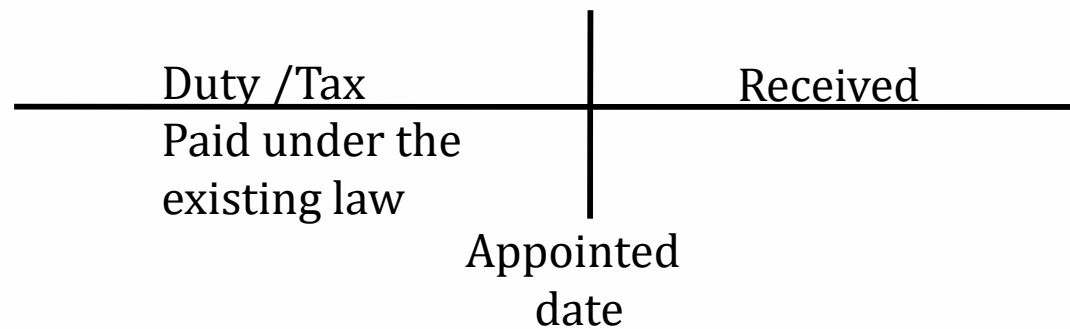
Section 140(4)

- Registered taxable person:
 - ❖ Engaged in manufacture of Taxable as well as Exempted goods
 - ❖ Engaged in provision of Taxable as well as Exempted Service under the existing laws, but which are taxable under GST shall be entitled to take:
- Situation I – In terms of Sec. 140(3), Credit available for inputs held in stock and inputs contained in semi-finished /finished goods in stock as on the appointed day (relating to exempted goods or services).
- Situation II – In terms of Sec. 140(1), Amount of Cenvat Credit carried forward in return furnished under the existing law (relating to taxable goods and services).



CREDIT of ELIGIBLE DUTIES in RESPECT of INPUTS or INPUT SERVICES in TRANSIT

Section 140(5)



A registered taxable person entitled to take credit in his electronic credit ledger if he has recorded such invoice in his books of accounts within 30 days of the appointed day.

RULE 1(2)(c)

The name of supplier, serial number, date of issue of invoice, description, quantity, value of goods/services, the amount of eligible duties /taxes and the date on which receipt of goods/services are entered in the books of accounts of recipient: These details are to be furnished in GST TRAN-1 (within 60 days of appointed day)



ELIGIBLE DUTIES

[For the purpose of Sec. 140(5)]

All the duties which are eligible for the purpose of Section 140(3), (4) and (6) are also eligible for the purpose of Section 140(5), the only additional tax eligible is:

- The service tax leviable under section 66B of the Finance Act, 1994.
- Statement of such credit is to be submitted in such manner as may be prescribed.



PERSON SWITCHING OVER FROM COMPOSITION SCHEME

Section 140(6)

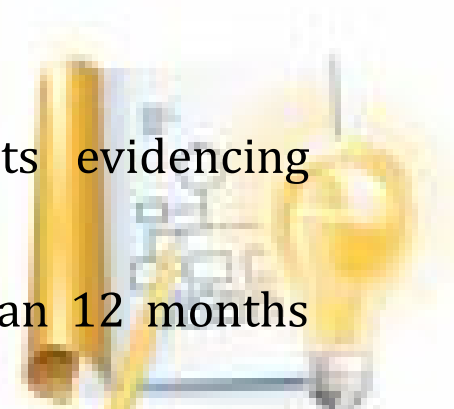
Person who has opted composition scheme under existing laws



Allowed Credit of eligible duties and taxes in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day .

Conditions:

- Inputs/Goods used or intended to be used for making taxable supplies in GST.
- Not availed Composition scheme under GST.
- Credit allowed if admissible under GST law.
- Possession of invoice and other related documents evidencing payment of duty under the existing law.
- Such invoice/document shall not be issued earlier than 12 months immediately preceding the appointed day.



CREDIT DISTRIBUTION by ISD

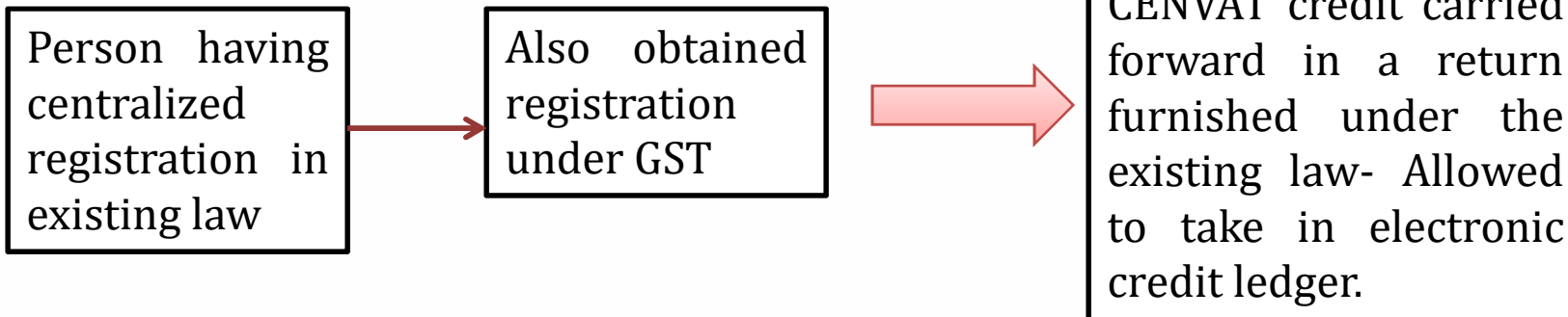
Section 140(7)

The ISD shall be eligible for distribution of ITC on account of any services received prior to the appointed day as credit under GST even if invoice relating to such services received on or after the appointed day.



UNUTILIZED CENVAT CREDIT BY PERSON HAVING CENTRALIZED REGISTRATION UNDER

Section 140(8) THE EXISTING LAW



Then Input will be allowed as claimed in **Original return** or **reduced amount** where it is reduced in the **revised return**.

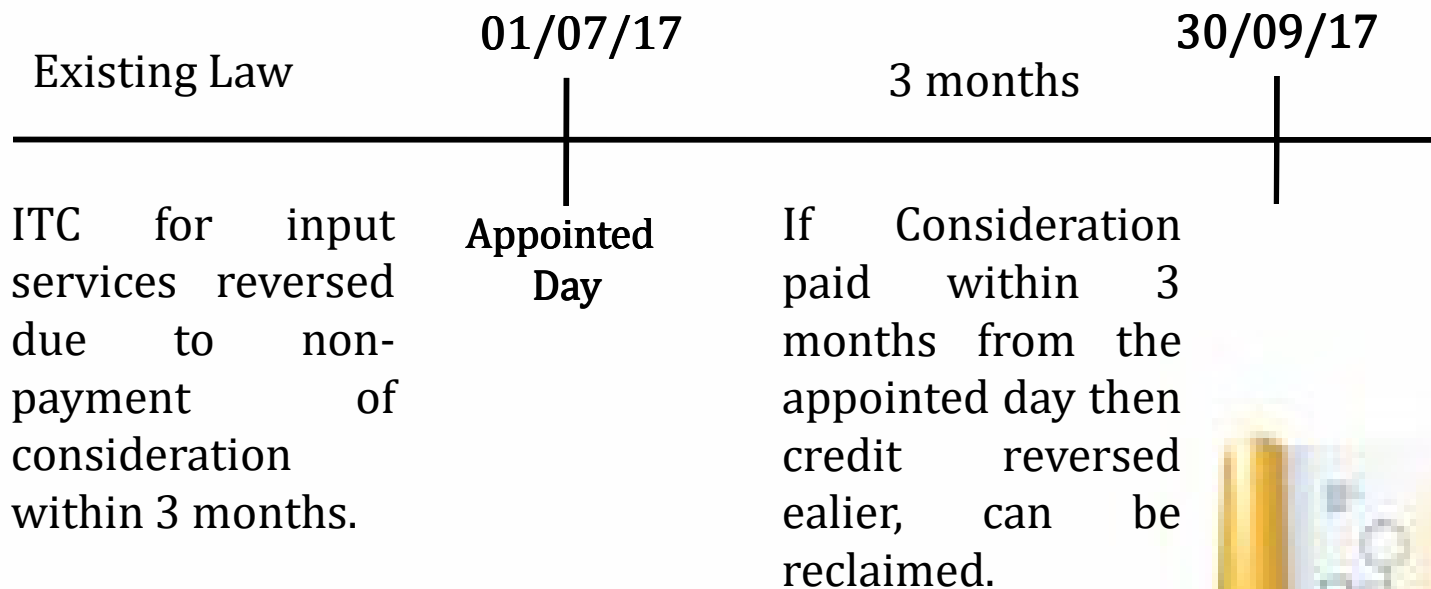
Return under existing law to be furnished within 3 months from the appointed day.

- Credit allowed only if admissible under GST.
- Credit may be transferred to any of the unit of the registered taxable person having the same PAN for which centralized registration was taken.



TRANSITIONAL PROVISION FOR RECLAIMING CENVAT CREDIT

Section 140(9)



CALCULATION OF AMOUNT OF CREDIT

Section 140(10)

The manner in which amount of credit is to be calculated, in the following cases, is yet to be prescribed:

Section 140(3)

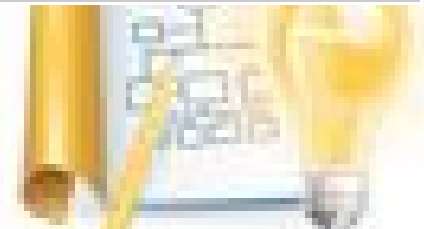
Credit of eligible duties in respect of inputs held in stock where a person is not liable to be registered in the existing law.

Section 140(4)

Credit of eligible duties in respect of inputs held in stock (when supplier is engaged in both exempted and taxable supplies)

Section 140(6)

Person switching over from composition scheme.

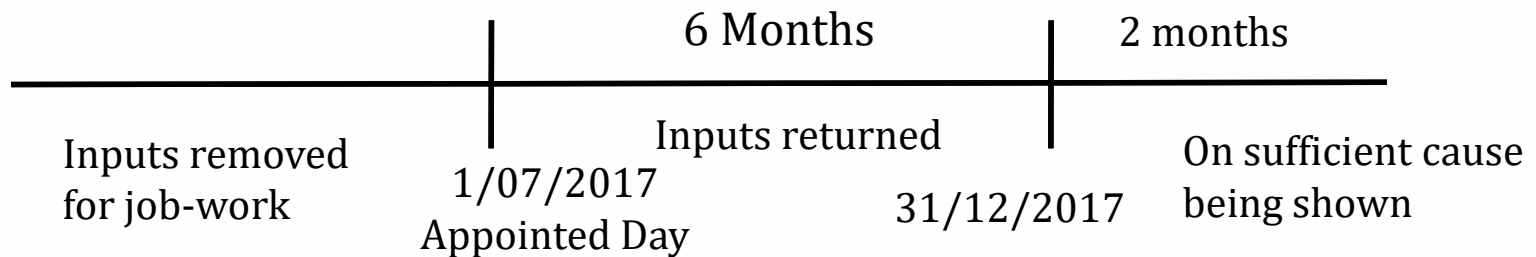




TRANSITIONAL
PROVISIONS RELATING
TO JOB-WORK:
SECTION- 141

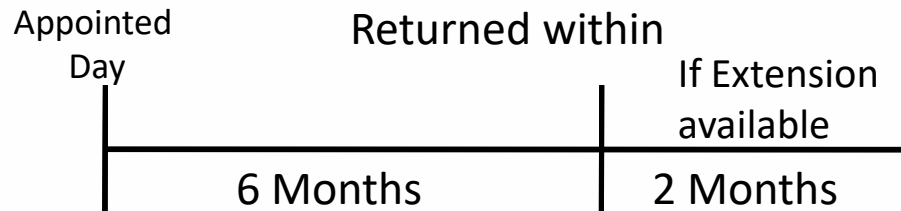
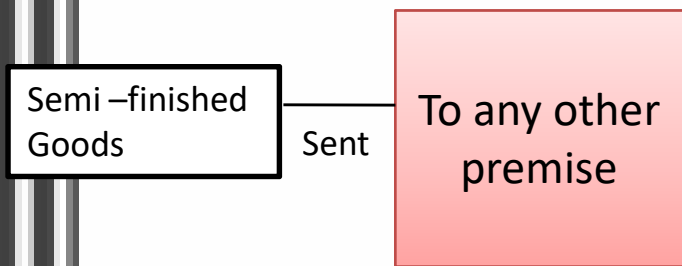
INPUTS REMOVED FOR JOB WORK AND RETURNED IN POST-GST ERA

Section 141(1)



S NO	existing Law	GST	Taxability
1	Goods sent as such or after partially processed to Job Worker	Returned by Job Worker within 6 months + 2 months (If Extension available)	No tax payable
2	Goods sent as such or after partially processed to Job Worker	Returned by Job Worker after the above prescribed period.	Input tax credit on such inputs will be recovered as an arrear of tax under GST.

SEMI-FINISHED GOODS REMOVED FOR CERTAIN MANUFACTURING PROCESS AND RETURNED IN POST-GST ERA



Section 141(2)

The manufacturer may directly transfer the said goods to any registered taxable person on payment of tax in India or export without payment of tax within six months or the extended period from the appointed day.

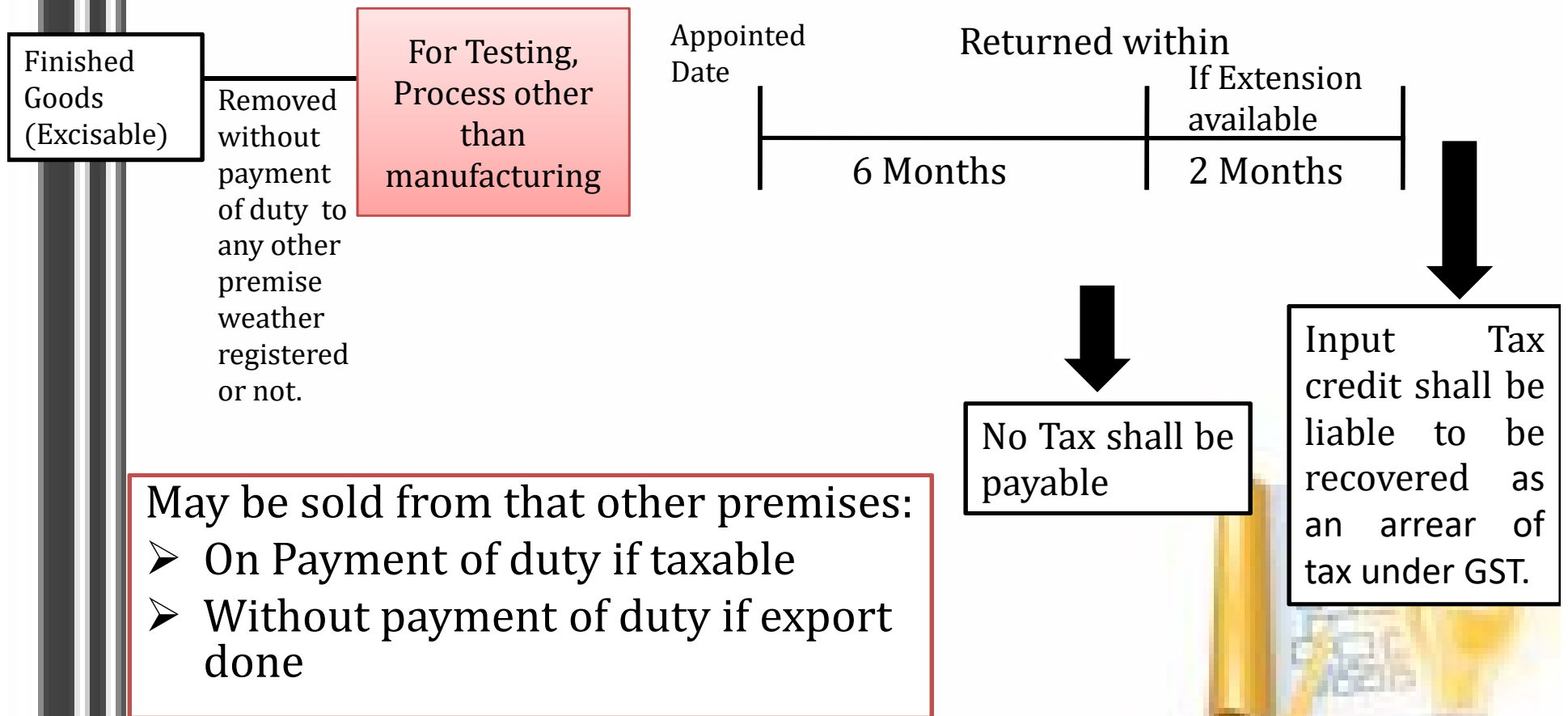
No Tax shall be payable

Input Tax credit shall be liable to be recovered as an arrear of tax under GST.



FINISHED GOODS REMOVED FOR CARRYING OUT CERTAIN PROCESSES AND RETURNED IN POST-GST ERA

Section 141(3)



Declaration of Details of Inputs or Goods held in Stock by Job-Worker

Section 141(4)

- Both the manufacturer and the job worker have to declare the details of the inputs or goods held in stock by the job-worker on behalf of the manufacturer on the appointed day.
- Application shall be submitted within 60 days of the appointed day
- FORM GST TRAN-1, specifying the stock or capital goods held by job-worker on behalf of principal.
- Details to be given separately as agent/branch wise.

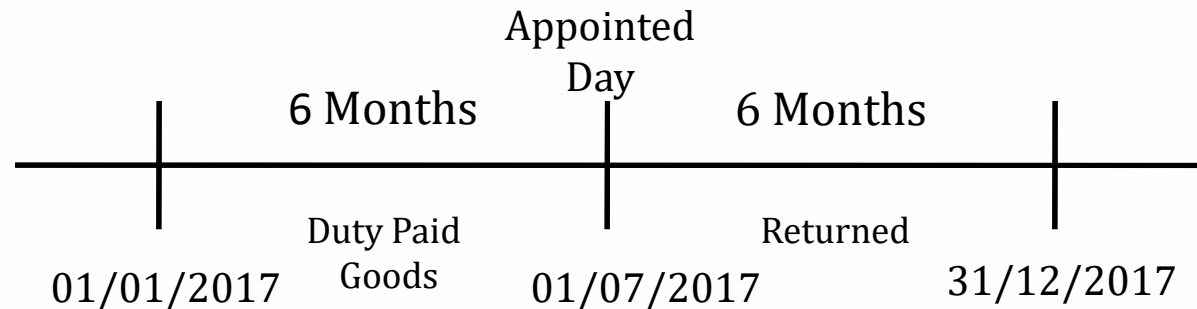




MISCELLANEOUS
TRANSITIONAL
PROVISIONS:
SECTION- 142

DUTY PAID GOODS RETURNED IN POST-GST ERA

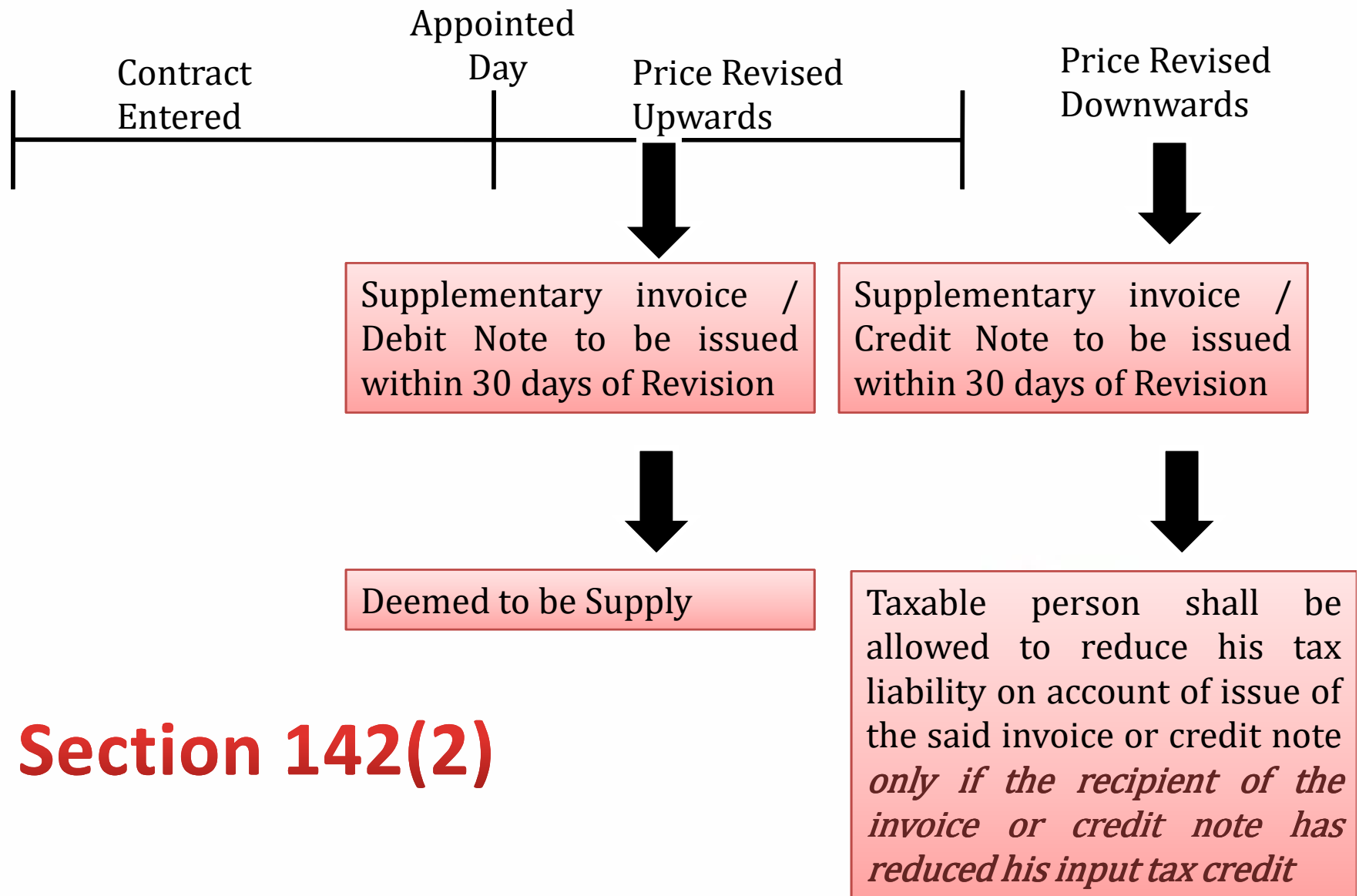
Section 142(1)



S No	Removal/Sale under Existing Law	Returned in post GST-era	Taxability
1	Taxable & removed not earlier than 6 months from appointed day.	By Non Taxable Person within 6 months from appointed day and are identifiable to the satisfaction of the proper officer.	Refund to registered taxable person.
		By Taxable Person (B to B).	Refund Not Available (Deemed as supply)



PRICE REVISION IN POST-GST ERA



Section 142(2)

Pending Refund Claims to be disposed under Existing Laws

Section 142(3)

Existing Law	GST
Refund was claimed under existing law (Where refund was claimed either before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax or interest paid before the appointed day)	After appointed day, refund will be paid in cash as per existing Law Except 11B(2)

- Partially/ completely rejected refund claim shall be lapsed.
- No refund claim 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.



Refund claims filed after the appointed day for goods cleared or services provided before the appointed day and exported before or after the appointed day to be disposed of under existing law

Section 142(4)

Existing Law	GST
Every claim for refund of any duty or tax paid under existing law, filed after the appointed day, for the goods or services <u>exported before or after</u> the appointed day.	It shall be disposed off in accordance with the provisions of existing law.

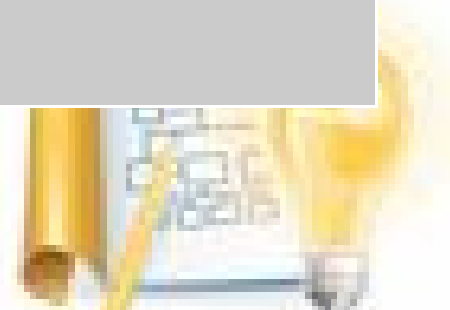
- Partially/ completely rejected refund claim shall be lapsed.
- No refund claim allowed of any amount of CENVAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.



REFUND CLAIMS FILED IN POST-GST ERA IN RESPECT OF SERVICES NOT PROVIDED

Section 142(5)

Existing Law	GST
Every claim for refund of tax deposited under the existing law filed after the appointed day , in respect of services not provided:	It shall be disposed off in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash Except Section 11B(2) of C. Excise.



CENVAT CREDIT CLAIMS TO BE DISPOSED OF UNDER EXISTING LAWS

Section 142(6)

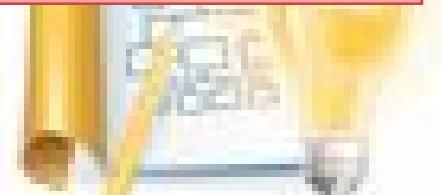
Every proceeding of appeal, review or reference relating to

A Claim of CENVAT Credit under the existing law, initiated whether before, on or after the appointed day

Shall be disposed off in accordance with the provisions of existing law

- If appeal etc. allowed, amount refundable in cash [Subject to Sec. 11B(2) of Central Excise Act]
- If amount of credit becomes recoverable, it is recovered as arrear of tax under this Act.
- Amount recovered not admissible as input tax credit under GST.

No Refund shall be allowed when Cenvat credit is carried forward under GST.



Finalization of proceedings relating to output duty or tax liability

Section 142(7)

Every proceeding of appeal, review or reference relating to any output duty or tax liability

Shall be disposed of in accordance with the provisions of the existing law whether initiated before, on or after the appointed day

Suppose
Output duty Initially determined =Rs 100/-
Output duty Finalized =Rs 120/-
Rs 20/- will be recovered as an arrear of duty or tax under this Act
Rs 20 will not be admissible as ITC.

Suppose
Output duty Initially determined =Rs 100/-
Output duty Finalized =Rs 80/-
Rs 20/- will be refunded in cash except 11B(2).
Rs 20 will not be admissible as ITC.



Treatment of the amount recovered or refunded in pursuance of assessment or adjudication proceedings

Section 142(8)

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/refundable

Suppose

Tax, Interest, Fine, Penalty Initially determined =Rs 100/-
Finalized =Rs 120/-
Rs 20/- will be recovered as an arrear of duty or tax under this Act
Rs 20 will not be admissible as ITC.

Suppose

Tax, Interest, Fine, Penalty Initially determined =Rs 100/-
Finalized =Rs 80/-
Rs 20/- will be refunded in cash to the taxable person except 11B(2).



Treatment of the amount recovered or refunded pursuant to revision of returns

Section 142(9)

01/07/17

Return Furnished	Return Revised-Amount
Under existing law	Recoverable or Input Inadmissible

To be treated as recovery of Arrear of tax under GST

Not Admissible as ITC

01/07/17

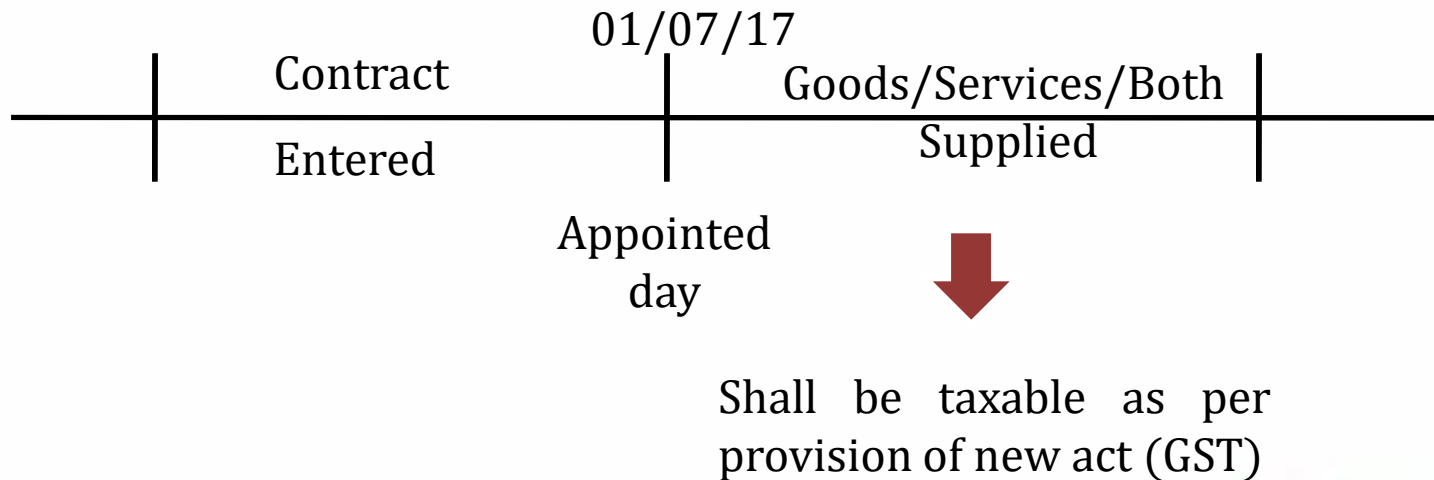
Return furnished	Return revised within time
Under existing law	-Amount Refundable or Credit admissible

To be Refunded in cash subject to provisions of 11B (2) of Central Excise and amount rejected if any, not admissible as ITC.



TREATMENT OF LONG TERM CONTRACTS

Section 142(10)



So the contracts entered before 01/07/2017 stating the tax provision of existing law has to be modified accordingly



TAXABILITY IN CERTAIN CASES

Section 142(11)

Section 142(11)(a)	Section 142(11)(b)	Section 142(11)(c)
<p>No tax payable on goods under GST to the extent the tax was leviable on the said goods under the VAT of the State.</p>	<p>No tax payable on services under GST to the extent the tax was leviable on the said services under Chapter V of The Finance Act, 1994.</p>	<p>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 GST 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. (Manner of calculation of credit is yet to be prescribed.)</p>

Goods sent on approval basis returned on or after the appointed day

Section 142(12)

01/01/2017	01/07/2017	31/12/2017	28/02/2018
	Goods sent on Approval Basis	Returned or not approved	On Sufficient cause being shown
	Appointed Day		

If not returned within 6 months or extended period then seller is liable to pay GST.(As per Sec 31(7), invoice is to be issued at the end of six months from the date of removal)

No Tax shall be payable by the buyer

Liable to Tax if taxable under GST (by person returning the goods)

RULE 3 OF TRANSITIONAL PROVISIONS: Person who has sent goods shall submit details of such goods sent in **FORM GST TRAN-1** within 60 days of the appointed day.



DEDUCTION OF TAX SOURCE

Section 142(13)

- No TDS under GST where payment made to supplier on or after the appointed day if :-
 - Goods sold in respect of which tax was required to be deducted under existing law of a State or Union Territory relating to VAT and Invoice issued before the appointed day.





TRANSITIONAL
PROVISION RELATING TO
IGST LAW:
SECTION- 21

Import of services made in GST era – Sec.21

- GST shall be payable on import of services made in post-GST regime regardless whether such transaction initiated in pre-GST regime.
- If tax paid in full in the existing law, no tax is payable under GST.
- If tax paid in part in the existing law, balance amount of tax shall be payable under GST.

Transaction deemed to be initiated in pre-GST regime if:

- either invoice is received or
- payment, either in full or in part, has been made before the appointed day.



Suggestions/Caution

- Full claim of ITC under the existing law.
- Filing of all returns under existing law for six months prior to appointed day.
- CENVAT credit of input services to be utilized before appointed day.
- Carry forward stock should not be older than 12 months.
- Stock in transit or on approval or on job-work or lying at other places to be minimum.
- Carry forward stock to be disposed of within 6 months.
- Purchase of capital goods in post-GST regime.
- Pending refund claims, appeals, assessments to be get settled prior to appointed day.
- Revision of long-term contracts with reference to impact of GST.
- Information with reference to carry forward of stock or lying with others within 60 days.

Thanks!