

PART-I

BLOCKED CREDIT UNDER GST

Blocked credit refers to the input tax credit claim on specified goods and services that are prohibited to be availed by the taxpayer. Section 17(5) of the CGST Act, commonly known as blocked credit outlines a set of purchases for which GST has been paid, but Input Tax Credit (ITC) is not allowed. When making purchases listed in this provision, taxpayers are unable to claim ITC while settling output tax. This provision provides various clauses under which ITC cannot be claimed.

Section 17(5) is revised to include expenditure on Corporate Social Responsibility (CSR) initiatives for corporates under ineligible ITC-

In the following cases input tax credit is not available

Conveyance and Transportation – Section 17(5) Clause (a), (aa), and (ab)

ITC cannot be claimed on passenger transport vehicles like -

- Three wheeler auto-rickshaws
- Four-wheeler motor cars
- Two-wheeler cycles or motorbikes
- Buses or Tempo travellers having 13 seats or less
- Any other vehicle used on the road

However, an ITC claim is still available for purchasing passenger transport vehicles if the buyer is engaged in the following businesses -

- Passenger transportation service/ cab service/ bus rental service/ lease service
- Automobile retail shops, manufacturing establishments, and showrooms.

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- Driving schools

Clause (a) of section 17(5)

ITC claim is not available on GST paid for the purchase of vessels, ships, and aircraft. However, ITC can be claimed if the buyer is engaged in the following businesses -

- Reselling of ships, vessels, and aircraft
- Has training school for flying aircraft and navigating vessels/ships.
- Plane service/ cruise service/ boat rental service/ passenger transportation service.
- Goods transportation service through trailers/trucks and tractors.

Clause (aa) of Section 17(5)

ITC also cannot be claimed for buying insurance or the repair cost of servicing the **cabs, tempo travellers/mini buses, ships, vessels, or aircraft**. ITC is allowed if the buyer is engaged in the following businesses -

- Exceptions under clause (a) and (aa)
- Manufacturers of conveyances listed above clause (aa)
- Insurance companies selling general insurance for above mentioned conveyances.

Clause (b) - Vehicle Renting, Food, Catering

ITC cannot be claimed on the purchase of the following -

- Expenses on outdoor food, beverages, or catering.
- Expenses on cosmetic surgery, beauty treatment, plastic surgery, and health services.

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- Renting or leasing vessels, aircraft, or motor vehicles is permitted.
- Obtaining life insurance and health insurance
- Incurring expenses for club memberships or health and fitness centers
- Expenses related to employee leave or home travel concession during vacations.

Exceptions under clause (b)

ITC can be claimed -

- On resale of the same goods or services
- Composite or mixed sale together with other goods.
- When it is mandatory to provide goods and services to employees for legal compliance

Clause (c) and (d) - Building Construction

If you're registered for GST, you can't get a tax credit for the GST you paid on building construction or Man power expenses, whether it's for commercial or residential buildings, including materials.

Also, if you spend money for renovating buildings, even if it's recorded as an asset, still you can't claim a tax credit.

However, if you're a construction company, builder, or promoter selling these buildings after construction, you can claim a tax credit on those expenses. And you can also get a tax credit for buying or building plants and machinery.

Clause (e) and (f) - Non-resident and Composition

Section 10 imposes a restriction on composition taxpayers, disallowing them from claiming Input Tax Credit (ITC) on GST paid for purchases, given their quarterly turnover tax payment. Additionally, Section 17(5) of the CGST Act specifies that

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ITC is not accessible for composition-taxable persons, regardless of whether they supply goods or services.

For non-resident taxable persons, advance tax deposits are required. They can seek ITC for Integrated GST (IGST) paid on imported goods but are not eligible to claim ITC for any other domestic purchases.

Clause (g) - Personal Use

ITC cannot be claimed on goods purchased and used for personal purposes. If the goods purchased are partly used for personal and partly for business use, then ITC is allowed on the value of goods/services used for business purposes.

Clause (h) - Free Sample and Lost

ITC cannot be claimed if the goods are lost, stolen, written off, damaged, or given away as free sample.

Clause (i) - Fraudulent ITC Claims

Input Tax Credit (ITC) cannot be claimed for the following -

- Non-payment or insufficient tax payment,
- Overpayment of tax refunds,
- Unlawful utilization or fraudulent acquisition of excessive ITC, or
- Willful misstatements, suppression of facts, or confiscation and seizure of goods.

Note:

If the taxpayer fails to comply with the provisions of section 17(5) of the CGST Act, he has to reverse ITC that was claimed wrongfully. They might also have to pay interest @24% from the date of making the claim to the date of claim reversal.

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PART-II

FREQUENTLY ASKED QUESTIONS

1. What is blocked credit under GST?

ITC on specific goods and services is disallowed under Section 17(5) of the CGST Act.

2. Can ITC be claimed for vehicle purchases?

ITC is allowed only for certain businesses like transportation, driving schools and retailer of vehicle

3. Is ITC available for employee benefits?

No, unless legally required, such as mandatory insurance.

4. Can ITC be claimed on goods used for personal purposes?

No, ITC is restricted to goods used for business purposes.

5. What happens if blocked credit is claimed?

Reversal of ITC with interest at 24% may be required.

6. What is the purpose of blocked credit provisions?

To prevent misuse of ITC on non-business-related purchases.

7. Are hotel accommodation expenses eligible for ITC?

No, unless directly linked to business activities like seminars or training.

8. Can ITC be claimed on entertainment expenses?

No, ITC on goods/services used for personal entertainment is blocked.

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9. What is the penalty for claiming ineligible ITC?

Reversal of ITC with 24% interest and possible penalties.

10. Are construction materials eligible for ITC?

No, unless they are directly used in the construction of plant and machinery.

11. Can ITC be claimed for free samples?

No, ITC is not allowed for goods given as free samples.

12. Are CSR expenses eligible for ITC?

No, ITC on CSR-related expenses is blocked.

13. Can ITC be claimed on stolen goods?

No, if ITC has been claimed on goods and they are lost or stolen, the ITC must be reversed..

14. Are gifts to employees eligible for ITC?

No, ITC is blocked for goods or services used as gifts.

15. Is ITC allowed on business club memberships?

No, expenses related to club memberships are ineligible.

16. Can ITC be claimed on rental expenses for commercial properties?

Yes, ITC can be claimed on GST paid for rent of commercial properties used for business purposes.

17. Are repairs and maintenance expenses eligible for ITC?

Yes, if directly related to plant and machinery, but not for personal vehicles.

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18. Can ITC be claimed on food and beverages served at business events?

No, ITC is blocked for food and beverages served at business events.

19. What is the role of Section 17(5) in blocked credits?

It defines the goods and services for which ITC is restricted.

20. Can ITC be claimed on capital goods?

Yes, unless specified under blocked credit provisions.

21. Are ITC restrictions uniform across states?

Yes, blocked credit provisions under CGST Act are uniformly applicable.

22. Can ITC on blocked credits be litigated?

Yes, taxpayers can appeal if they believe ITC restrictions were wrongly applied.

23. Are government-mandated employee benefits eligible for ITC?

Yes, if mandated by law, such as safety equipment.

24. Can taxpayers track blocked credits in GST returns?

Yes, adjustments for blocked credits are reflected in GSTR-2B and GSTR-3B.

25. Can incorrect ITC claims trigger GST audits?

Yes, incorrect or fraudulent ITC claims can lead to audits, scrutiny, and demand notices from tax authorities.

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PART-III

RELATED CIRCULAR/NOTIFICATIONS/CASE LAWS

**CIRCULAR NO. 219/13/2024-GST [F. NO. CBIC-20001/4/2024-GST],
DATED 26-6-2024**

Summary of Clarification on ITC for Ducts and Manholes in optical fiber cables (OFCs) Networks

Subject: Clarification on availability of input tax credit (ITC) for ducts and manholes used in the network of optical fiber cables (OFCs) under section 17(5) of the CGST Act, 2017.

The Cellular Operators Association of India (COAI) has raised concerns regarding the denial of ITC on ducts and manholes used in OFC networks. The tax authorities have blocked ITC on the grounds that these items are immovable property, as per section 17(5) of the CGST Act.

Clarification Issued:

Legal Provision:

Section 17(5) of the CGST Act disallows ITC for:

Works contract services for the construction of immovable property (excluding plant and machinery).

Goods or services received for constructing immovable property (excluding plant and machinery) on the taxpayer's own account.

Definition of Plant and Machinery:

As per the explanation in section 17 of the CGST Act, "plant and machinery" includes apparatus, equipment, and machinery fixed to earth used for making outward supply and includes their foundations and supports. However, it excludes

land, buildings, civil structures, telecommunication towers, and pipelines outside factory premises.

Ducts and Manholes:

Ducts and manholes are essential components of the OFC network, used for housing and maintaining the optical fiber cables. They are integral to providing telecommunication services.

These components qualify as “plant and machinery” since they are used for making outward supplies of telecommunication signals and are not classified under the excluded items in the definition.

Conclusion:

ITC on ducts and manholes used in OFC networks is not restricted under clauses (c) or (d) of section 17(5) of the CGST Act.

These items are deemed part of “plant and machinery” and thus eligible for ITC.

IN THE SUPREME COURT

***CHIEF COMMISSIONER OF CENTRAL GOODS AND SERVICES TAX
(GST)***

Versus

M/S SAFARI RETREATS PRIVATE LTD. [2024 (10) TMI 286]

Issue

The primary issue in this case was whether Safari Retreats Private Limited could claim Input Tax Credit (ITC) on goods and services used for constructing a shopping mall intended for leasing, despite the restrictions imposed by Section 17(5)(d) of the CGST Act. The taxpayers contended that the denial of ITC resulted in cascading taxes and was arbitrary, as leasing rental income is subject to GST. The Revenue Department argued that ITC is a statutory right, not a fundamental one, and that restricting ITC for immovable property construction was a valid legislative decision to prevent revenue loss.

Held

The Supreme Court upheld the constitutional validity of Section 17(5)(c) and (d) of the CGST Act, affirming that ITC entitlements can be restricted by law. The Court clarified that the phrase "Plant or Machinery" in Section 17(5)(d) should not be equated with "Plant and Machinery" as defined elsewhere in the Act. It rejected the Revenue's argument that "or" should be read as "and," emphasizing the deliberate legislative distinction between the terms. The Court also noted that leasing is a taxable supply under GST, which maintains the tax chain.

***M/S.ARS STEELS AND ALLOY INTERNATIONAL PRIVATE LIMITED VS
THE STATE TAX OFFICER***

W.P NO31,33 & 35 OF 2022 DJ

DATED 24.10.2024

Issue

The petitioner challenged the denial of input tax credit availed on goods viz., “Gold Coins” and “T-shirts” purchased by the petitioner for sales promotion of the goods manufactured by the petitioner for the respective Assessment Years.

Whether ITC not available for Goods Purchased for Sales Promotion Activities under GST?

Held

The court observed that Section 17(5)(h) of GST Act specifically prohibits ITC on goods lost, stolen, destroyed, written off, or disposed of as gifts or free samples. This restriction applies uniformly to all goods, whether manufactured or traded. The petitioner’s claim for ITC on T-shirts and gold coins used in sales promotional activities falls under this embargo. Consequently, the petitioner’s claim for ITC on T-shirts and gold coins was found untenable under the law. The writ petitions were dismissed accordingly

Thanks and Regards

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