

Master Class on GST - WIRC of ICSI

- Subject** : 1) Input Tax Credit
2) Related Transitional Provisions
- Date & Day** : 18th February, 2017 (Saturday)
- Venue** : 5th floor, Jolly Maker, Chambers No. 2,
Nariman Point, Mumbai - 400 021
- Faculty** : CA Naresh Sheth

Preamble

- Presentation is based on revised Model GST Law ('RMGL') put on public domain on 26.11.2016
- RMGL is in draft form and hence can be regarded as tentative till final enactment of GST law
- Presentation needs to be revisited on enactment of final GST law
- Reference to provision in presentation means reference to CGST/SGST Act unless otherwise specified
- **Legal provisions relating to Input tax credit :**
 - Sections 16 to 22 of CGST/ SGST Act
 - Section 17 of IGST Act – ITC related provisions under CGST/SGST Act which applies to IGST also
- **Purpose of this presentation is to apprise participants of:**
 - Provisions relating to Input Tax Credit ('ITC') under GST
 - its impact on trade and business
 - Professional and legal challenges

Relevance & Purpose of ITC mechanism in indirect taxes

Input Tax Credit Mechanism – Relevance

- Basic principles/objectives of Indirect taxes such as VAT, Excise, Service Tax and GST:
 - It is a value added tax wherein every player in transaction chain pays tax on value added by him in the transaction
 - Business entities in transaction chain are pass through entities and should not bear indirect tax incidence
 - It is a destination based consumption tax
 - Tax on goods and services to be borne by ultimate customer
 - Ultimate consumer to bear tax on final value of goods / services excluding tax incidences in intermediate stages in distribution chain
- Two alternative mechanism for achieving above objectives:
 - No tax at intermediate stages and levy of tax only at last stage of transaction chain i.e. at stage when goods are sold to end consumer
 - Levy tax on value of goods / service on vendors at each stage of transaction chain with set off input tax paid by such vendors on procurement of goods/service for business/profession

Existing Cenvat Credit Scheme - Shortcomings

- Non-fungibility of input tax credit:
 - Manufacturers / Traders not eligible for input CST credit
 - Service provider not eligible for input VAT credit
 - Service provider not eligible for credit of SAD paid on imports
 - Traders not eligible for credit of input excise duty and service tax
 - Traders not eligible for credit of CVD paid on imports
- Restrictive tax credits – non admissible tax credits
- Cascading effect of taxes
- High prices of goods/services for end consumers

GST Input Tax Credit Mechanism – Purpose


- To ensure fungibility of tax credit
- To ensure levy of tax on value addition by respective assessee in transaction chain
- To ensure efficient system of value added tax is in place
- To eliminate or minimize possibilities of levy of tax on tax
- To eliminate or minimize cascading effect of indirect taxes
- To minimize tax incidence on ultimate consumer of goods / services



ITC under GST - Relevant legal provisions

Legal Provisions – Input Tax Credit (ITC)

Particulars	Section of RMGL
Eligibility and conditions for taking ITC	16
Apportionment of credit and blocked credits	17
Availability of credit in special circumstances	18
Recovery of ITC and interest thereon	19
Input Tax Credit in respect of inputs / capital goods sent for job work	20
Manner of Distribution by Input Service Distributor	21
Manner of recovery of credit distributed in excess	22
Claim of input tax credit and provisional acceptance thereof	36
Matching, reversal and reclaim of input tax credit	37
Manner of Utilisation of ITC	44
Refund of unutilised / accumulated ITC	48(3) r.w 44



ITC under GST
- Important
definitions and
concepts

Meaning- Capital Goods, Input, Input service

➤ **Capital goods** means [sec 2(19)] :

- Goods, the value of which is capitalized in the books of accounts of the person claiming the credit; and
- Which are used or **intended** to be used **in the course or furtherance of business**

➤ **Input** means [sec 2(52)] :

- Any goods other than capital goods,
- Used or **intended** to be used by a supplier **for in the course or furtherance of business**

➤ **Input Service** means [sec 2(53)] :

- Any service;
- used or **intended** to be used by a supplier **in the course or furtherance of business**

Meaning – in course or furtherance of Business

- Business Includes [Section 2(17) of CGST/SGST Act]:

Trade	Commerce	Manufacture	Profession
Vocation	Adventure	Wager	Or any other similar activity

Whether or not for pecuniary benefit and **irrespective of volume, frequency, continuity or regularity**

- Supply / acquisition of goods (Including capital assets) and services in connection commencement or closure of business
- Scope of Inputs, Input services and capital goods has been widened as compared to CCR
- Under CCR, credits available only when inputs or inputs services are used either in manufacturing of final products or for providing output services
- Service provider may not have to prove nexus between the input and output services in GST. He has to simply establish that input/ input services are used in course or furtherance of business

In course or furtherance of business

- One may refer to decision of Honourable Bombay High Court in case of Coca Cola India Pvt Ltd [2009-TIOL-449-HC-MUM-ST] to understand concept of “in course or furtherance of business”
- This might eliminate usual controversy as to admissibility of credit in respect of following types of services:

Research & Development expenses	Cost incurred on abandoned project	Items distributed as part of corporate social Responsibility
Renting of car parking space for employees	Hotel accommodation services for the auditors	Cleaning services
Arranging visa and immigration documents for employees travelling abroad	Garden maintenance service	Renting of equipments for organizing events
Advertisement and sponsorship services for promoting the brand name of company	Telephone, Security, courier Expenses	Sales promotion expenses
Bank commission charges for collection of sales proceeds	Repair and maintenance of factory building	Repair of car and motor vehicles owned by company

Meaning of Output tax, Outward supply, Taxable supply

- **Output tax** in relation to a taxable person means [sec 2(71)] :
 - CGST/SGST chargeable under this Act;
 - On taxable supply of goods/services made by him or by his agent
 - **Excludes** tax payable by him on reverse charge basis
- **Outward supply** in relation to a person means [sec 2(72)] :
 - Supply of goods and/or services
 - Whether by sale, transfer, barter, exchange, license, rental, lease or disposal or any other means
 - Made or agreed to be made by such person
 - In the course or furtherance of business,
- **Taxable supply** means [sec 2(99)] :
 - A supply of goods and/or services
 - Which is chargeable to tax under this Act

Exempt Supplies and Non-Taxable supplies

➤ **Exempt Supply** means [sec 2(44)]:

- Supply of any goods and / or services which are not taxable under this Act; and
- Includes:
 - such supply of goods and / or services which attract nil rate ; or
 - which may be exempt from tax u/s 11

➤ **Non-taxable supply** means [sec 2(100)] :

- A supply of goods or services
- Which is not chargeable to tax under this Act

Zero Rated Supplies [Sec 2(111)] and Section 16 of IGST Act

- **Zero Rated Supply** means [sec 2(111) of CGST/SGST Act]
 - Supply of any goods and / or services in terms of Section 16 of IGST Act
- **Section 16 of IGST Act means :**
 - Following taxable supply of goods and/or services –
 - Export of goods and/or services; or
 - Supply of goods and/or services to a SEZ developer or an SEZ unit
 - Subject to provisions of sub section (3) of section 17 of the CGST Act, credit of input tax may be availed for making zero rated supplies, even if that supply is an exempt supply

Meaning of Input Tax Credit ('ITC')

- **Input Tax Credit** means credit of 'input tax' as defined in section 2(55) [Section 2(56)]
- **Input Tax** in relation to taxable person: [Sec 2(55)]:

Means	Includes	Excludes
<ul style="list-style-type: none">• IGST (Including that on import of goods)• CGST; and• SGST <p>Charged on any supply of goods or services to him</p>	<p>Tax payable under section 8(3)</p> <p>Under reverse charge</p>	<p>Tax paid under section 9 under composition levy</p>

Exclusion from ITC [Section 17(4)]

Particulars	Credit restricted on
Motor vehicles and other conveyance [Section 17(4)(a)]	All Motor Vehicle and other conveyance except when they are used for: <ul style="list-style-type: none">• Making the following taxable supplies<ul style="list-style-type: none">▪ Further supply of such vehicles or conveyance; or▪ Transportation of passengers ; or▪ Imparting training on driving, flying, navigating such vehicles or conveyance• Transportation of goods

Exclusion from ITC [Section 17(4)]

Particulars	Credit restricted on
Specified supply of goods or services [Section 17(4)(b)]	<ul style="list-style-type: none">• Food and beverages• Outdoor catering• Beauty treatment• Health services• Cosmetic and plastic surgery• Membership of a club, Health and fitness center• Rent-a-cab• Life insurance• Health insurance• Travel benefits extended to employees on vacation such as leave or home travel concession <p>Except where said category of inward supply of goods or services are used for making an outward supply of goods or service of same category</p> <p>Except where the government notifies the services which are obligatory for an employer to provide to its employees</p>

Exclusion from ITC [Section 17(4)]

Particulars	Credit restricted on
Works contract services [Section 17(4)(c)]	When supplied for construction of immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service
Goods or services [Section 17(4)(d)]	When it is received by a taxable person for construction of an immovable property on his own account (other than plant and machinery) even when used in course or furtherance of business

Exclusion from ITC [Section 17(4)]

- **Construction** includes :

Re-Construction	Renovation	Additions	Alterations	Repairs
To the extent capitalization, the said immovable property				

- **Plant and Machinery** means :

Apparatus	Equipment	Pipelines	Machinery
Telecommunication tower fixed to earth by foundation or structural support that are used for making outward supply and includes such foundation and structural supports but excludes land, building or any other civil structures			

- ITC of Works contract resulting into 'plant and machinery' is admissible
- Whether ITC on works contract for completion & finishing services, repairs, maintenance, renovation or restoration in respect of immovable property are also excluded from ITC?

Exclusion from ITC [Section 17(4)]

Particulars	Credit restricted on
Goods and/or services	<ul style="list-style-type: none">➤ Tax paid under Section 9 [Composition levy] - [Section 17(4)(e)]➤ Used for personal consumption - [Section 17(4)(f)]➤ Goods which are lost, stolen, destroyed, written off or disposed of by way of gift or free samples- [Section 17(4)(g)]➤ Any tax paid in terms of the following : [Section 17(4)(h)]<ul style="list-style-type: none">• Tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful – misstatement or suppression of facts [Section 67]• Detention and release of goods and conveyance in transit [Section 89]• Confiscation of goods or conveyance and levy of penalty [Section 90]
<ul style="list-style-type: none">➤ Central or a State government may, by notification issued in this behalf, prescribe the manner in which the credit referred above be attributed - [Section 17(5)]	

Exclusion from ITC [Section 17(4)]

- Whether services like car insurance, repairs and maintenance of cars, etc. availed for motor vehicles eligible for ITC?
- Double whammy' in case of supplies for private use/ consumption to related parties.
- Whether assessee would be entitled to ITC of following :
 - Pick up and drop facility for employees – section 17(4)(iii)
 - Food provided to employees - section 17(4)(i)
 - Medical or health kit for employees - section 17(4)(i)
 - Group insurance for employees - section 17(4)(iii)
 - Free crèche services for employees
 - Security expenses of staff quarter
 - Insurance of staff quarter

A decorative graphic consisting of a dark gray square with a yellow border on the left and top sides, and a blue border on the right and bottom sides. The text "ITC availment" is centered within the square.

ITC availment

Persons Eligible for ITC

➤ **Person Eligible to take ITC:**

- Registered Taxable person [Section 16 of CGST/ SGST Act]
- Person making **zero rated supplies** [Section 16(3) of IGST Act]

➤ **Person Not Eligible to take ITC:**

- Non-registered taxable person
- Person having aggregate turnover below threshold limit
- Supplier under Composition Scheme
- Supplier exclusively engaged in making **exempt or non-taxable** supplies
- Agriculturist
- Government or any local authority making supplies specified in Schedule IV to MGL

Manner of availing ITC [sec 16(1)]

- **Every registered taxable person**
- subject to such conditions and restrictions as may be prescribed; and
- Within the time and manner specified in section 44



Entitled to **take ITC admissible** to him



Said amount to be credited to the **electronic credit ledger** of such person

For pipelines and telecommunication tower fixed to earth by foundation or structural support including foundation and structural support thereto **shall not exceed**

1/3 of total ITC in the financial year in which the said goods are received

2/3 of total ITC (including the credit availed in 1st financial year **immediately succeeding** the year in which goods were received

Balance ITC in any subsequent financial year

Conditions for availing ITC [Section 16(2)]

- Registered person shall **not** be entitled to take credit of any input tax in respect of any supply of goods and/or services to him **unless**:

He is **possession** of:

- Tax invoice
- Debit note
- Such other tax paying document as may be prescribed

Issued by supplier registered under the Act

Receipt of goods and / or services

- Can ITC be claimed on tax paid on advance?

Payment of tax charged in respect of such supply to credit of appropriate government in:

- Cash; or
- Utilization of ITC admissible in respect of said supply

Furnished **return** u/s 34

- Whether this refers to return filed by :

- Vendor ; or
- Assesse

- Where goods against an invoice are received in instalments / lots – ITC will be available only after receipt of last lot / instalment

Conditions for availing ITC [Section 16(2)]

- **Explanation** as to term receipt of goods [Explanation to sec 16(2)]:
 - For the purpose of receiving goods it shall be deemed that the taxable person has received the goods where:
 - the goods are delivered by the supplier to a recipient or any other person on the direction of such taxable person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise
- Q 27 of Chapter of FAQs released by CBEC on 21.09.2016 clarifies that:
 - In 'Bill to – ship to' scenario, ITC on goods will be available to person on whose order the goods are delivered to third person

Conditions for availing ITC [Section 16(2)]

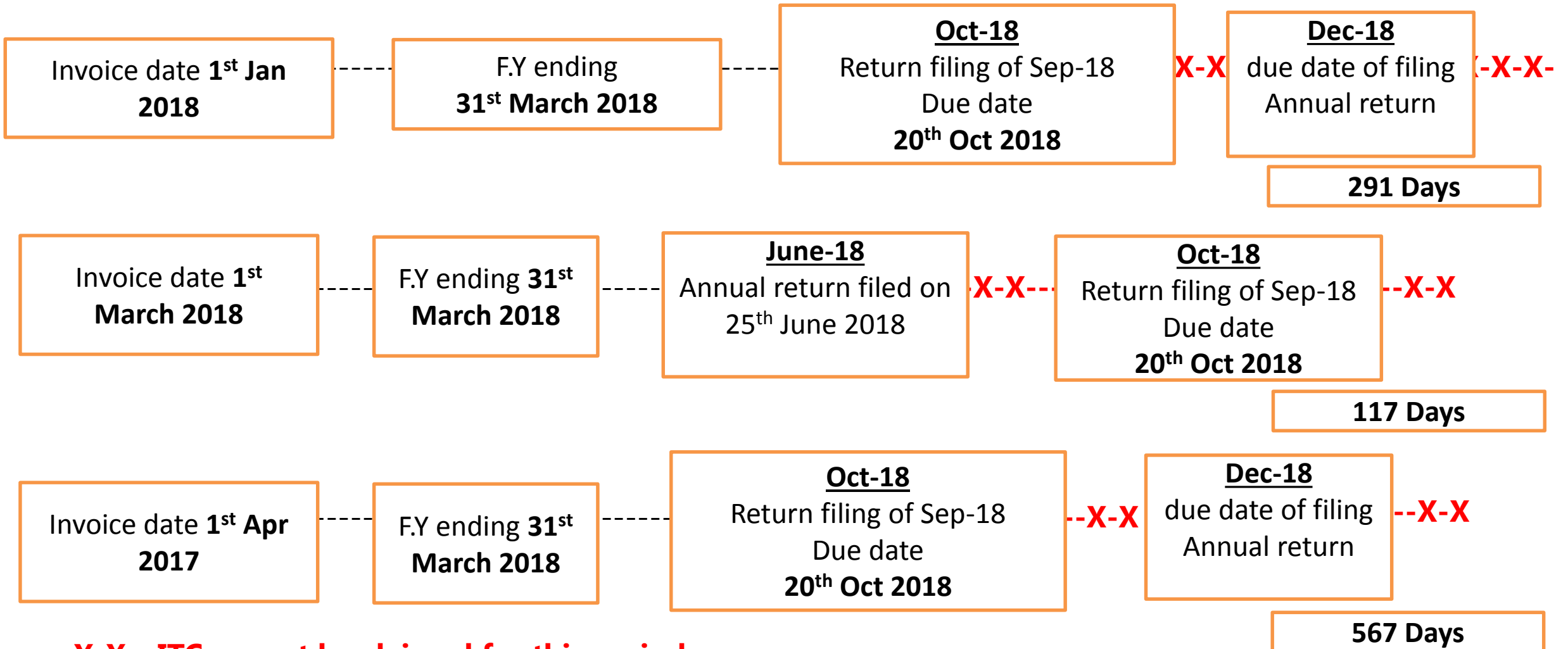
- Where recipient fails to pay the supplier of **services within 3 months** from the date of issuance of invoice by the supplier, following consequences follows :
 - Amount of ITC credit taken on such services shall be added to recipient's output tax liability ; and
 - Interest thereon will have to be discharged
 - in the manner as may be prescribed
- What about reclaiming of ITC credit (reversed earlier) on payment made to service vendor?

Denial of ITC and Time limit [Section 16(3) & 16(4)]

- Input tax credit will not be allowed to the registered taxable person on the tax component who has already claimed depreciation on the tax component of the cost of capital goods under the provisions of Income Tax Act, 1961 (43 of 1961)
- A taxable person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods and/or services after:
 - Filing of the return u/s 34 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains; or
 - Furnishing of the relevant annual return

Whichever is earlier

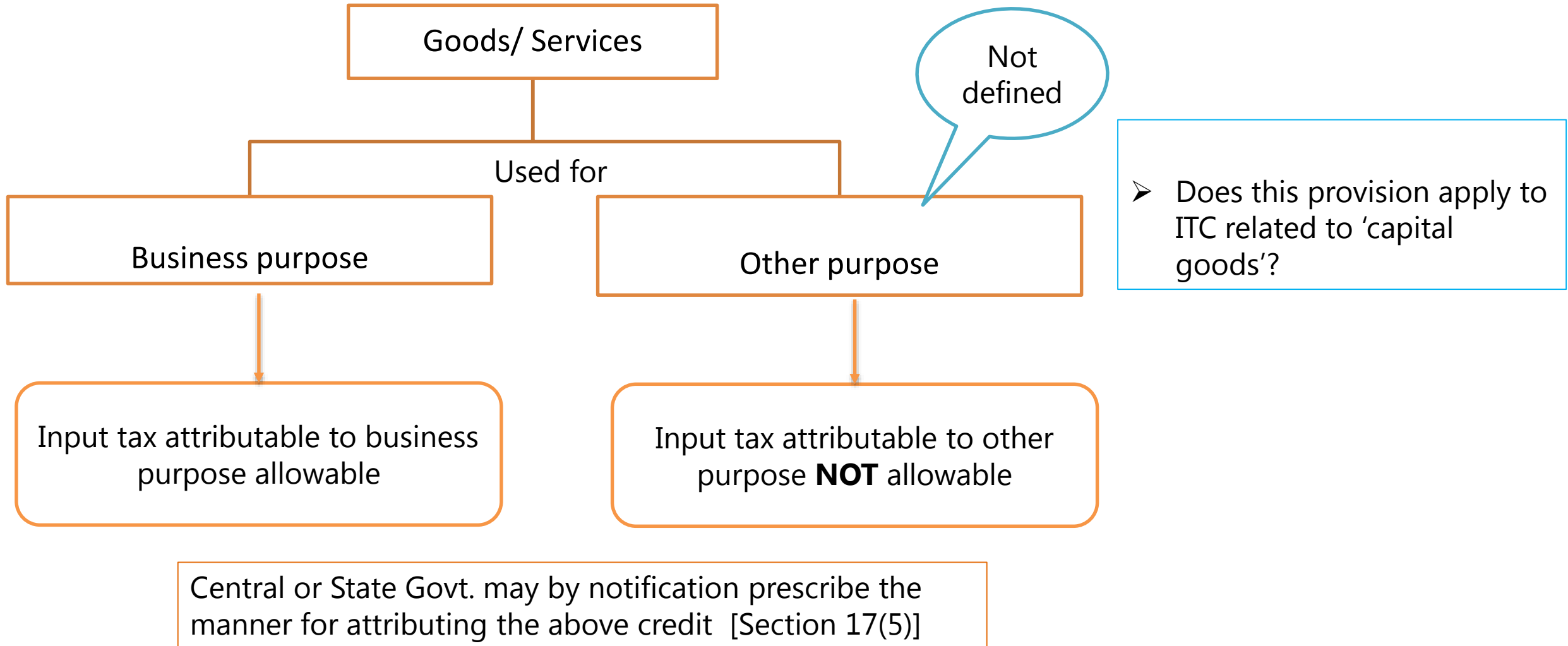
Time limit for availing ITC [Section 16(4)]



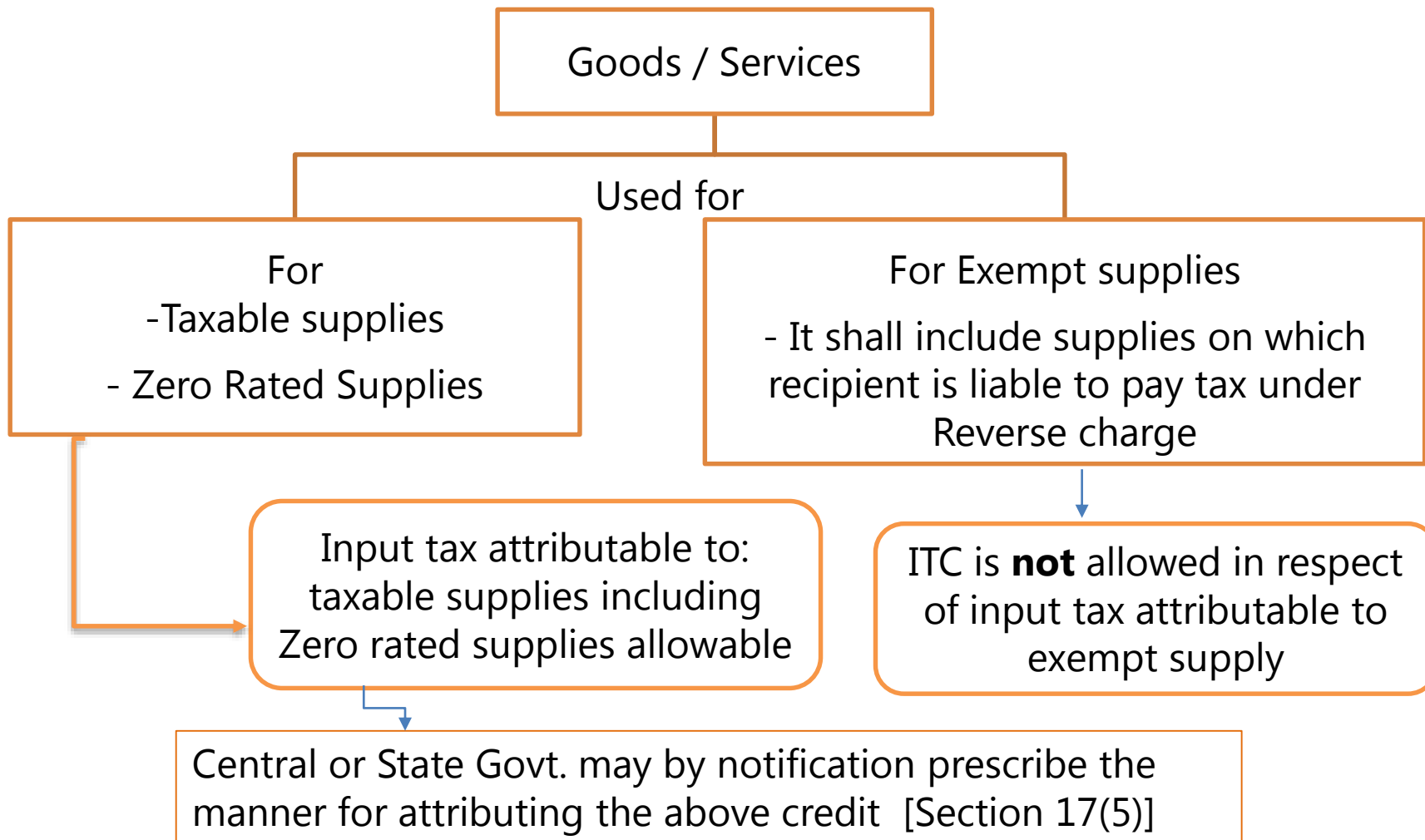
--X-X – ITC cannot be claimed for this period

Apportionment of ITC and blocked credits

ITC – Business and other purposes [Section 17(1)]



ITC – Exempt Supplies [section 17(2)]



- **Zero rated supply is defined u/s 2(111) r.w. section 16 of IGST Act to mean :**
 - Exports of goods/service
 - Goods/service supplied to SEZ units / developer of SEZ
- Zero rated supply does not include goods/services supplied to EOU
- Does this provision apply to ITC related to 'capital goods'?

ITC – Banking company, Financial institution and NBFC

[Section 17(3)]

- Banking company or a financial institution (Including a non banking financial company) engaged in supplying services by way of accepting deposits, extending loans or advance shall have the following options :
 - Avail ITC in accordance with provisions of Section 17(2) i.e. under normal provisions; **or**
 - Avail an amount equal to 50% of the eligible input tax credit in that month relating to :
 - Inputs [Section 2(52)]
 - Capital goods [Section 2(19)]
 - Input services [Section 2(53)]

- Once option is exercised, it cannot be withdrawn during the remaining part of financial year

ITC availability - Summary

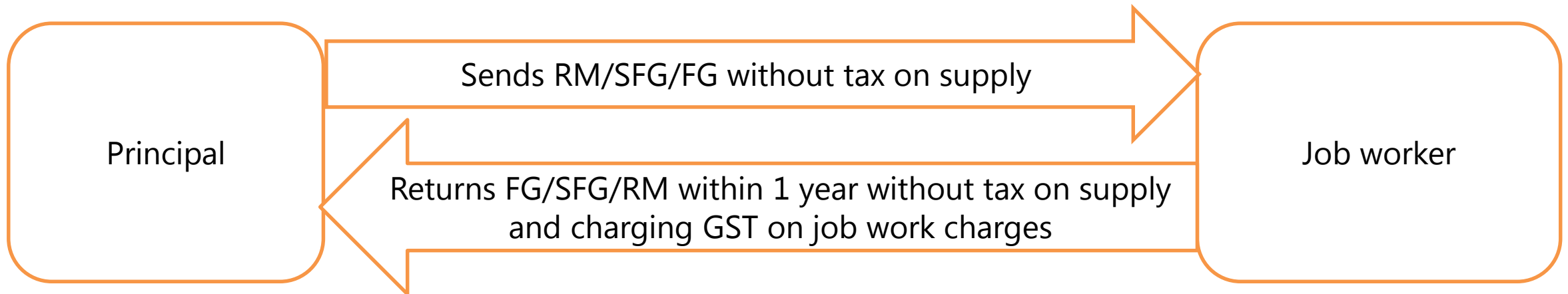
Nature of Supply made by taxable person	Credit Admissible
Wholly taxable supplies	Yes
Wholly zero-rated supplies	Yes
Both taxable and zero-rated supplies	Yes
Wholly non-taxable or exempt supply	No
Wholly for non-business purpose	No
Both business and non-business purpose	Proportionate credit
Both taxable and non-taxable supply	Proportionate credit



Job Work - ITC availment

ITC – Inputs sent for job worker (Section 20)

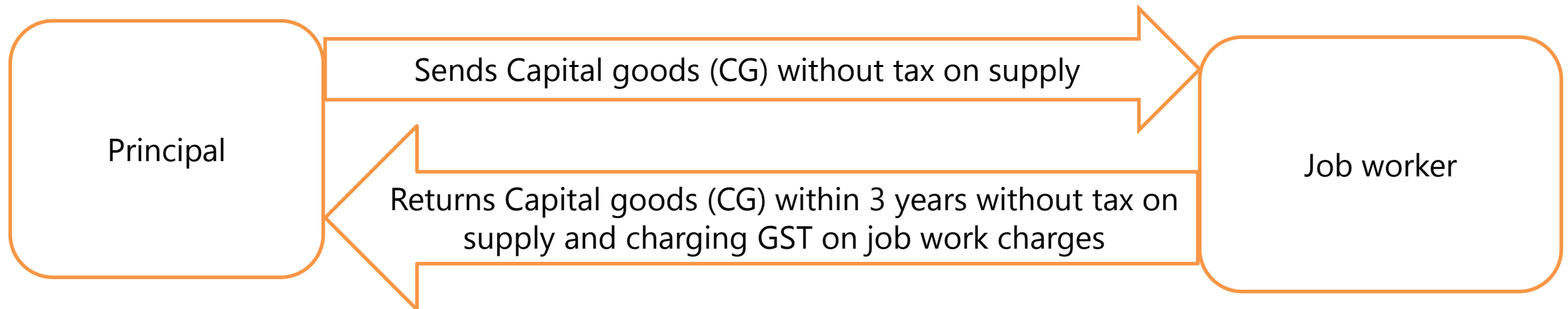
Principal can avail ITC on inputs to the job worker **on receipt of inputs by him or directly by job worker**



- RM- Raw material ; SFG- Semi finished goods; FG – Finished goods

ITC – Capital goods sent for job worker (Section 20)

Principal can avail ITC on capital goods to the job worker **on receipt of capital goods by him or directly by job worker**





ITC availment in special cases

New Registrant – ITC availment

[Sections 18 (1) & (2)]

Person who has applied for registration within 30 days from the date he become liable and has been granted certificate of registration

Entitled to take credit of input tax in respect of input held in stock, and inputs contained in semi- finished or finished goods on the day immediately preceding the **date from which he becomes liable to pay tax**

Person who has taken Voluntary Registration u/s. 23(3) of GST Act

Entitled to take credit of input tax in respect of input held in stock, and inputs contained in semi- finished or finished goods on the day immediately preceding the **date of grant of registration**

- Amount of credit to be calculated in the manner to be prescribed [Sec 18(9)]
- Taxable person is not entitled to take input tax credit in respect of such goods if invoice pertaining to such goods is issued beyond 1 year [Sec 18(5)]

New Registrant – ITC availment

[Sections 18 (3) & (4)]

Registered Taxable person ceases to pay tax u/s. 9 i.e. Composition Levy

Entitled to take credit of input tax in respect of input held in stock, and inputs contained in semi- finished or finished goods and **capital goods (subject to reduction prescribed percentage)** on the day immediately preceding the **date from which he becomes liable to pay tax u/s 8** (Normal levy)

Supplier of exempt goods/services becomes a taxable supply

Entitled to take credit of input tax in respect of input held in stock, and inputs contained in semi- finished or finished goods held in stock relatable to such exempt supply and **capital goods (subject to reduction prescribed percentage)** on the day immediately preceding the **date from which such supply becomes taxable**

- Amount of credit to be calculated in the manner to be prescribed [Sec 18(9)]
- Taxable person is not entitled to take input tax credit in respect of such goods if invoice pertaining to such goods is issued beyond 1 year [Sec 18(5)]

ITC – Change in constitution of taxable person [Section 18(6)]

Where there is change in constitution of registered taxable person

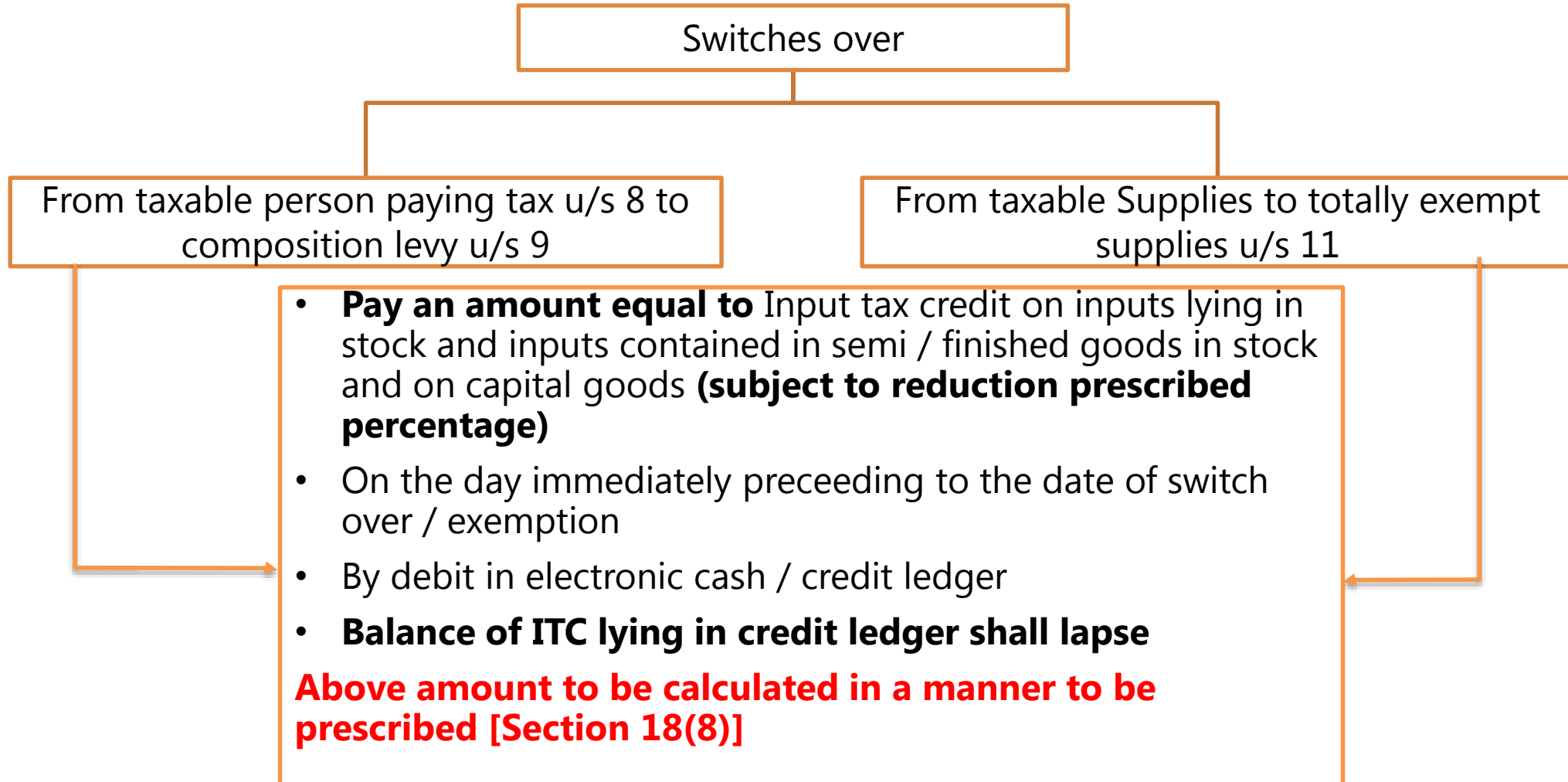
On account of :

- Sale;
- Merger;
- Demerger;
- Amalgamation
- Lease; or
- Transfer of Business

With specific provision of transfer of liabilities

- Said registered taxable person shall be allowed **to transfer** unutilised input tax credit in its books of account
- To such sold, merged, demerged, amalgamated, leased, or transferred business in the manner prescribed

Switch over provisions [Section 18(7)]



ITC – Other provisions

Supply of capital goods or plant and machinery on which ITC has been taken [Section 18(10)] :

Registered taxable person shall pay an amount equal to ;

- ITC availed as reduced by Specified % points; or
 - Tax on transaction value u/s 15(1)
- } Whichever is higher

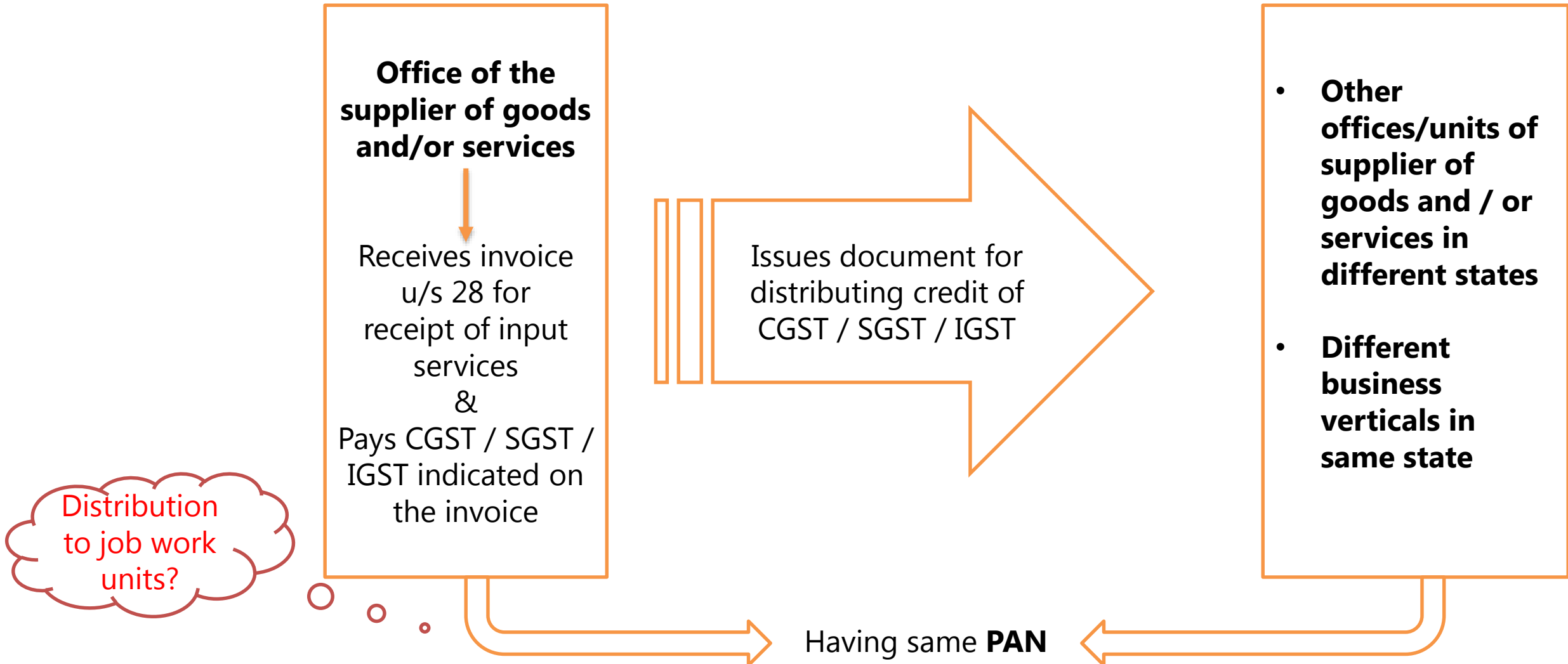
Recovery of input tax credit and interest thereon (Section 19)

Where credit has been wrongly , same will be recovered from registered taxable person in accordance with the provisions of the Act



Input Service Distributor

Meaning of Input Service Distributor [Section 21]



Manner of distribution of credit by ISD – Section 21 (1) & (2)

Nature of Input tax	Credit may be distributed as under	Situation
CGST or SGST or IGST	IGST	Where the distributor and the recipient are located in different states
CGST or IGST	CGST	Where the distributor and recipient of credit, being a business vertical, are located in the same state
SGST or IGST	SGST	

Conditions/Restrictions For Distribution of ITC –Section 21(3)

Credit should be distributed through prescribed document containing prescribed details

Amount of credit distributed \leq Amount of credit available

Credit attributable to a supplier to be distributed only to that recipient

Credit attributable to more than one supplier to be distributed on Pro rata basis
ie
$$\frac{\text{T/O of all individual unit}}{\text{Aggregate T/O of all units}}$$

During the **Relevant Period**

➤ **Recovery of credit distributed in excess [Section 22]**

- Same can be recovered from such recipient along with interest u/s 66 or 67 of the Act

Meaning of Relevant Period

If the recipients of the credit have turnover in their states in the Preceding Financial Year

- Then the relevant period is the Preceding Financial year

If some or all recipients of the credit do not have any Turnover in their states in the Preceding Financial Year

- Then the Relevant Period is the last Quarter for which details of such turnover of all the recipients are available, Previous to the month during which credit is to be distributed.

Transitional provision – ISD (Section 190)

- ISD shall be eligible for distribution as credit under GST in respect of input tax :
 - On account of any **services** received prior to appointed day ;
 - **Even if** invoices relating to such **services are received on or after the appointed day**
- Whether ISD balance as on day immediately preceding appointed day is eligible for distribution post GST?

ITC - Utilisation

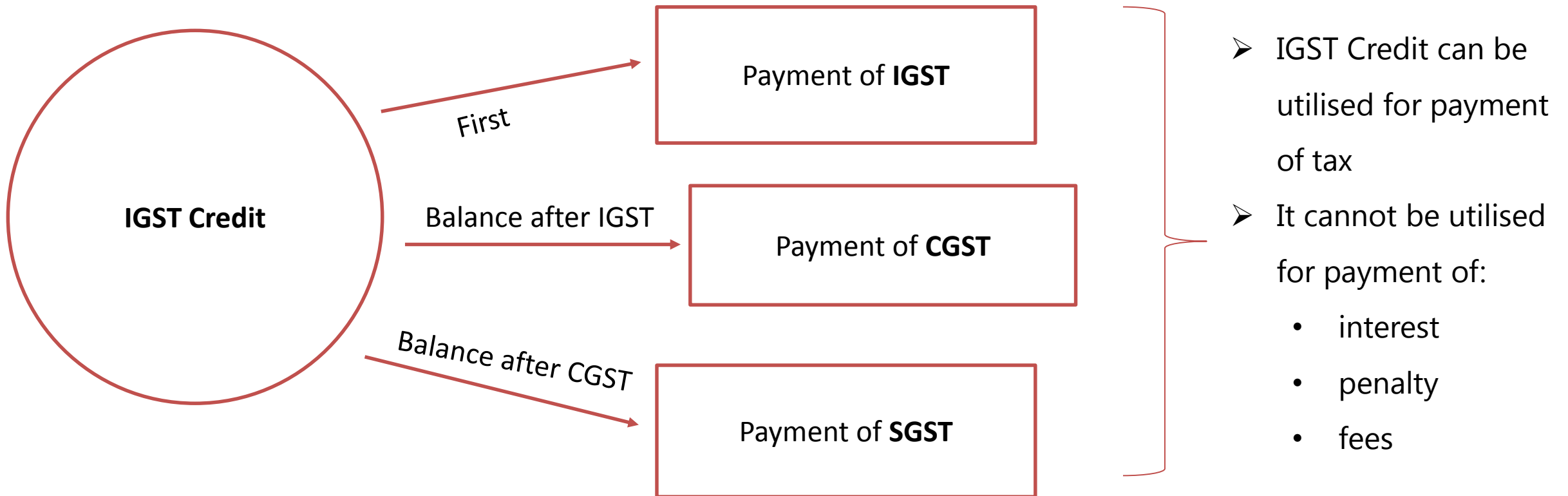
ITC Availment and utilisation – basic

- Input tax credit (as self assessed in the return of taxable person) shall be credited to its electronic credit ledger [Section 44(2)]
- Amount available in the electronic credit ledger can be utilised for making payment towards output tax : [Section 44(4)]:
 - In such manner; and
 - subject to conditions; and
 - **Within such time as may be prescribed (Is it an intention to provide time limit for utilization of ITC?)**
- Electronic credit ledger balance cannot be utilised for payment of:

Interest	Penalty	Fees	Liability under Reverse charge	Any other amount payable under Act or Rules made thereunder
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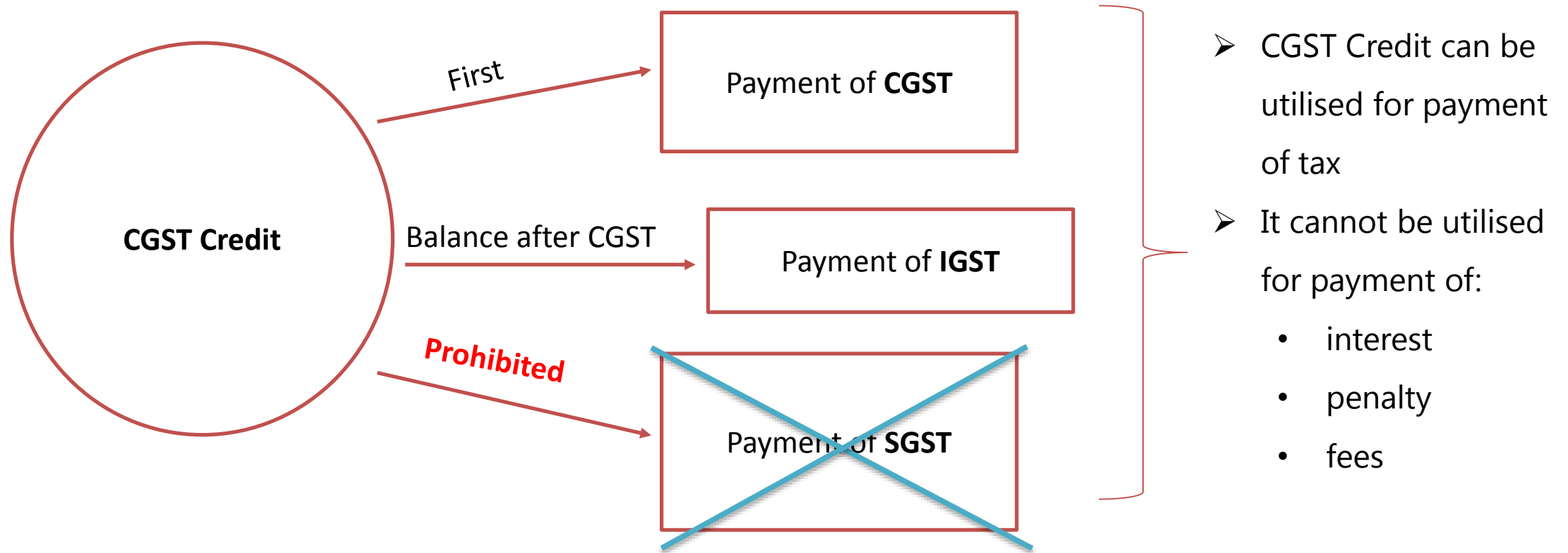
- Whether payment for pre-deposit u/s 98(6) and 101(9)(a) can be made from electronic credit ledger?
- Balance in electronic credit ledger after permitted payments can be [section 44(6)]:
 - Refunded under provisions of section 48 ; or
 - Carry forward

Manner of Utilization – IGST Credit [Section 44(5)(a)]



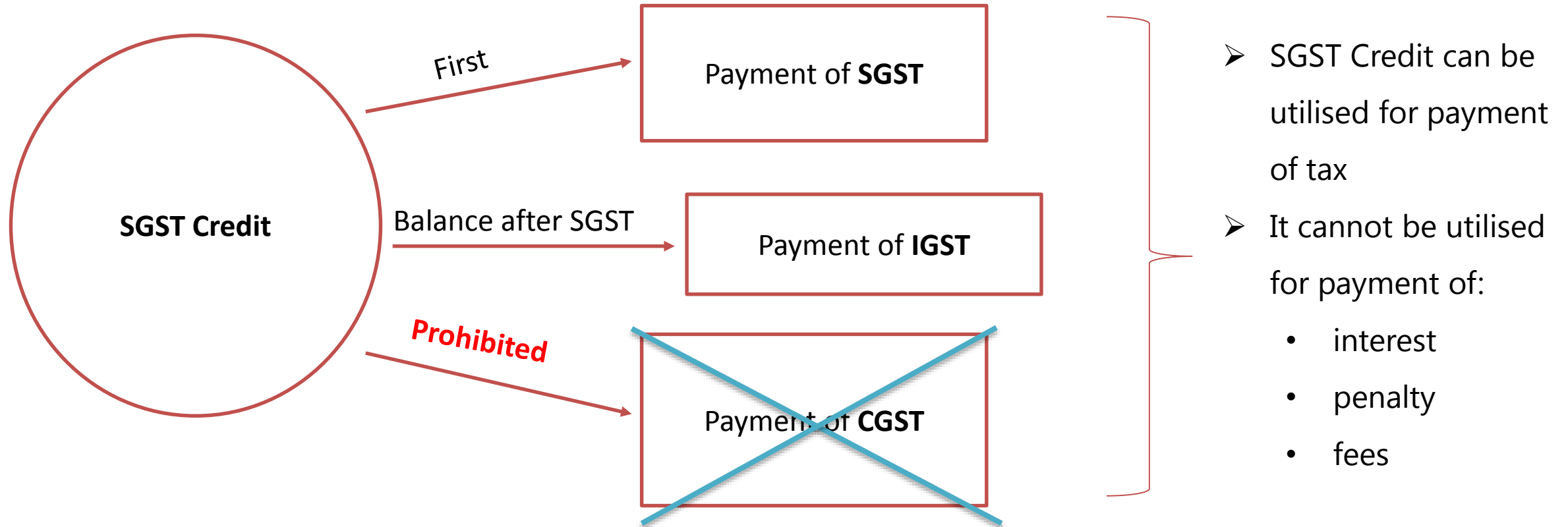
- Can it be utilised for arrears of eligible tax payments?
- Whether IGST balance in one state can be utilised against output liability of IGST in other states?

Manner of Utilization – CGST Credit [Section 44(5)(b) & (c)]



- Can it be utilised for arrears of eligible tax payments?
- Whether CGST balance in one state can be utilised against output liability of CGST in other states?

Manner of Utilization – SGST Credit [Section 44(5)(b) & (c)]



- Can it be utilised for arrears of eligible tax payments?
- Whether SGST balance in one state can be utilised against output liability of SGST in other states?

Refund of ITC

Refund of unutilized / accumulated ITC

- Balance in the credit ledger after payment of tax [section 44(6) r.w. sec 48]:
 - may be refunded in accordance with provisions of section 48; and
 - the amount collected as CGST / SGST shall stand reduced to that extent
- Refund of unutilized ITC to be allowed only in following cases [Proviso to section 48(3)]:
 - Exports **(including zero rated supplies)**
 - Exception – No ITC on exports which are subject to export duty
 - credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on outputs
- Refund to be claimed within two years from relevant date [section 48(1)]

Refund of unutilized / accumulated ITC

- Refund of unutilised credit on account of export of goods / services to be granted as under :
 - provisional refund of 90% of claim amount without detailed verification (time limit??)
 - Balance 10% to be granted after due verification within 60 days[sec 48(6) and 48(7)]
- In case claimant has defaulted in furnishing any return or payment of tax, interest or penalty, Officer has power to:
 - Withhold payment of refund due until the said claimant has submitted the return or has paid the tax, interest or penalty as the case may be
 - Deduct from the refund due, any tax, interest or penalty which claimant (taxable person) is liable to pay but remains unpaid
- If refund is not granted within 60 days from date of receipt of application, interest at prescribed rate shall be payable from the date immediately after the expiry of 60 days from application date till actual date of refund

Refund of unutilized / accumulated ITC

➤ Relevant date for refund:

Provision	Particulars	Relevant date
Exp. 2(a) to sec 48	Export of goods <ul style="list-style-type: none"> - By sea or air - By land - By post 	<ul style="list-style-type: none"> - Date on which ship or aircraft leaves India - Date on which goods passes the Frontier - Date of dispatch of goods by the Post Office
Exp. 2(b) to sec 48	Supply of goods as deemed exports	Date of filing of return relating to such deemed export
Exp. 2(c) to sec 48	Export of service <ul style="list-style-type: none"> - Supply of service complete before receipt of payment - Payment of service received prior to date of issue of invoice 	<ul style="list-style-type: none"> - Date of receipt of payment in convertible foreign exchange - Date of issue of invoice



Refund of unutilized / accumulated ITC

➤ Relevant date for refund:



Provision	Particulars	Relevant date
Exp. 2(d) to sec 48	As a consequence of judgement, decree, order or direction of Appellate Authority, Appellate Tribunal or any court	Date of communication of such judgement, decree, order or direction
Exp. 2(e) to sec 48	Refund of Unutilised ITC due to inverted duty rate structure	End of the financial year in which such claim for refund arises
Exp. 2(f) to sec 48	Tax is paid provisionally under this Act or the Rules made thereunder	Date of adjustment of tax after the final assessment
Exp. 2(g) to sec 48	In case of a person other than the supplier	Date of receipt of goods or service
Exp. 2(h) to sec 48	In any other case	Date of Payment of Tax

Cenvat credit
vs
ITC in GST
- Major Distinctions




Major Distinction - Cenvat Credit Scheme and ITC under GST

Particulars	Pre-GST	Post-GST	Impact
Pre-registration period credit	<ul style="list-style-type: none"> • Cenvat credit of pre-registration period was available • Jurisprudence: <ul style="list-style-type: none"> ○ I Knowledge Factory v. CCE (2011) 30 STT 177 (CESTAT SMB) ○ Imagination Technologies v. CCE (2011) 32 STT 227 (Mag) ○ Well Known Polyesters v. CCE (2011) 267 ELT 221 (CESTAT) 	<ul style="list-style-type: none"> • Not available, if failure to take registration within 30 days • Existing jurisprudence on availability of pre-registration period credit will no longer be valid in GST regime 	
Allowance of Input tax credit when supplier does not discharge his liability	<ul style="list-style-type: none"> • Cenvat credit was allowed to buyer even when supplier did not discharge the liability • Jurisprudence: Supreme Court in CCE v. Kay Kay Industries (2013) 42 GST 50 (SC) 	<ul style="list-style-type: none"> • One of the conditions for availing ITC is that tax is to be paid by supplier • SC decision will lose its validity in GST regime 	


Major Distinction - Cenvat Credit Scheme and ITC under GST

Particulars	Pre-GST	Post-GST	Impact
Matching of Invoice	<ul style="list-style-type: none"> No such provision under Cenvat Credit Rules In CCE v Tata Motors [(2014) 43 GST 555 (Jr HC DB)] has held that it would be unreasonable / unrealistic to expect buyer to verify accounts of supplier to find out whether duty has been paid or not 	<ul style="list-style-type: none"> ITC will be allowed to buyer only when the outward return of supplier matches with inward return of buyer HC decision in Tata Motors no longer valid in GST regime 	
Cenvat credit is indefeasible right of assessee	<ul style="list-style-type: none"> Supreme Court in case of Dai Ichi Karkaria Ltd [112 ELT 353 (SC)] held that: <ul style="list-style-type: none"> Cenvat credit validly availed cannot be reversed by tax authorities Benefit of credit is available without any limitation and scheme is indefeasible 	<ul style="list-style-type: none"> SC decision will lose its validity in GST regime as there will be reversal of valid ITC if: <ul style="list-style-type: none"> supplier does not discharge his liability Mismatch in invoice 	

Major Distinction - Cenvat Credit Scheme and ITC under GST

Particulars	Pre-GST	Post-GST	Impact
Reversal of common credit pertaining to capital goods	<ul style="list-style-type: none"> Common cenvat credit in respect of capital goods need not be reversed 	<ul style="list-style-type: none"> Proportionate reversal of common ITC in respect of capital goods (Q 8 of Chp 10 of FAQs dtd 21.09.2016) 	
Availment of credit in respect of capital goods	<ul style="list-style-type: none"> Cenvat credit up to 50% was available in first year and balance in subsequent year 	<ul style="list-style-type: none"> Entire ITC in respect of capital goods can be availed in first year itself except for pipelines and communication tower (Q4 of Chp 10 of FAQs dtd 21.09.2016) 	
Refund of accumulated Cenvat credit February 18, 2017	<ul style="list-style-type: none"> Generally not allowed except for export of goods / services 	<ul style="list-style-type: none"> Allowed only in cases for exporters and where there is inverted duty structure 	

Major Distinction - Cenvat Credit Scheme and ITC under GST

Particulars	Pre-GST	Post-GST	Impact
Allowability of Input and input services used in course or furtherance of business	<ul style="list-style-type: none">Narrow meaning given to term 'inputs' and 'input services' by deleting the word 'in relation to business' from relevant definitions	<ul style="list-style-type: none">Wider meaning is given to terms 'inputs' and 'input services' by using the words 'in course or furtherance of business'Decision of Bombay HC in case of Coca Cola India Pvt Ltd [2009-TIOL-449-HC-MUM-ST]	



Transitional Provisions

Standalone registration - Unutilised input tax credit under earlier law [Section 167]

- **Unutilised input tax credit balance as on the day immediately preceding the appointed day shall be carried forwards as under :**
 - Cenvat credit balance will be admissible ITC u/s 167(1) of CGST law and can be credited in electronic credit ledger
 - VAT and Entry tax credit balance will be admissible ITC u/s 167(1) of SGST law and can be credited in electronic credit ledger **not later then 90 days** from the appointed day
- Amount of unutilised ITC credit under earlier law should be carried forward in the return relating to period ending with day immediately preceding the appointed day
- Taxable person shall be allowed to take such credit provided it is admissible credit under GST
- Person opting for composition scheme u/s 9 will not be entitled to carry forward any unutilised input tax credit as admissible ITC under GST
- Unsubstantiated credit attributable to Section 3, 5(3) , 6 or 6A under Central Sales Tax Act (as calculated in prescribed manner) is not eligible for carry forward

Standalone registration - Unutilised input tax credit under earlier law [Section 167 & 197]

- Service provider will be entitled to reclaim the Input tax credit in respect of :
 - Cenvat credit on input services reversed by him
 - During period prior to appointed day
 - on account of non payment for service consideration within a period of 3 months from invoice date
 - Provided he makes the payment for consideration for such supply of services within a period of 3 months from appointed day

Centralised registration- Unutilised Cenvat balance under earlier law [Section 191]

- Unutilised Cenvat credit balance as on the day immediately preceding the appointed day can be transferred to **any other registered taxable person (branch or units)** having the same PAN for which centralised registration was obtained in earlier laws
- Amount of unutilised ITC credit under earlier law should be carried forward in the return relating to period ending with day immediately preceding the appointed day
- If taxable person files above return **within 3 months** from appointed day, amount of credit allowed will be **lower of unutilised credit balance as per;**
 - Original return ; or
 - Revised return
- Taxable person shall be allowed to take such credit provided it is admissible credit under GST
- **The condition of filing the return within 3 months from the appointed day is only for the purpose of transferring the credit. Where the return is filed after 3 months, the credit can still be claimed by the head office.**

Unavailed Cenvat credit on capital goods (Section 168)

- Registered taxable person (other than a person opting for composition scheme) is entitled to take credit of unavailed Cenvat credit of capital goods
- He is entitled to take such credit even if it is not carried forward in the return furnished under earlier law
- Registered taxable person shall not be allowed to take such credit **unless**:
 - Said credit was admissible under earlier law ; and
 - It is also admissible as input tax credit under GST
- Capital goods shall have the same meaning as defined under section 2(19) of CGST /SGST Act
- Unavailed input tax credit means the amount that remains after subtracting the amount of input tax credit already availed in respect of capital goods by the taxable person under the earlier law from the aggregate amount of input tax credit to which such person was entitled in respect of capital goods under earlier law

Persons eligible for credit in respect of inputs held in stock (section 169)

➤ **A registered taxable person under GST who was:**

- not liable to be registered under earlier laws; or
- manufacturing exempted goods or providing exempted services under earlier laws; or
- Providing works contract service and availing the benefit of Notification No. 26/2012- ST- dated 20.06.2012 under earlier laws
- A first stage or second stage dealer
- Registered importer
- Sale of exempted goods under earlier law

is entitled to take credit in his electronic ledger of eligible duties/ taxes, VAT and Entry tax in respect of:

- Inputs held in stock on appointed day;
- Inputs contained semi-finished goods on appointed day;
- Inputs contained in finished goods on appointed day

Persons eligible for credit in respect of inputs held in stock (section 169)

➤ **Conditions for availing such credit in electronic ledger:**

- Such inputs / goods Intended are used/ intended to be used for making taxable supplies under GST
- Such taxable person passes on the benefit of such credit by way of reduced prices to the recipient
- Such person is eligible for ITC under GST law
- He is in possession of invoice and/or other prescribed documents evidencing payment of tax / duty under earlier law in respect of inputs held in stock, semi-finished or finished goods
- Such invoices / prescribed documents are issued within **12 months** preceding appointed day
- Supplier of services is not eligible for any abatement under GST law
- Credits of Inputs were allowed in earlier law (SGST)

Amount of above credit to be calculated in the manner to be prescribed

Persons eligible for credit in respect of inputs held in stock (section 169)

➤ **Proviso to section 169(1):**

- Where a registered taxable person, **other than a manufacturer or supplier of service**
- Does not possess invoice or any duty paid evidencing document in respect of inputs
- He shall be allowed to take credit at the rate and in the manner prescribed subject to such conditions, limitations and safeguards as may be prescribed.

➤ **“eligible duties and taxes” for the purpose of section 169, section 170, section 171 and section 172:**

- Duty of excise in the First Schedule and Second Schedule to the Central Excise Tariff Act, 1985
- Additional duty of excise u/s 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978
- Additional duty of excise u/s 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957
- NCCD u/s 136 of Finance Act, 2001
- Additional duty u/s 3(1) and u/s 3(5) of Customs Tariff Act, 1975
- Service tax u/s 66B of the Finance Act, 1994

Persons eligible for credit in respect of inputs held in stock (Section 170)

- Registered taxable person engaged in the manufacture of :
 - Non-exempted as well as exempted goods under the Central Excise Act, 1944 (1 of 1944) ; or
 - Provision of non-exempted as well as exempted services under Chapter V of Finance Act, 1994 (32 of 1994)

Shall be entitled to take, in electronic credit ledger an amount of

- Cenvat credit (as on day immediately preceding appointed day) carried forward in a return furnished under earlier law as specified u/s 167 ; and
- Cenvat credit (as on day immediately preceding appointed day) 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 exempted goods or services as specified u/s 169

Transitional provision for switching over from composition scheme [Section 172]

Registered taxable person was taxable under composition levy (presumptive scheme) under earlier law



Who is taxable under normal scheme in GST



Shall be entitled to take in his electronic credit ledger

- Credit of eligible duties
- In respect of inputs held in stocks and inputs contained in semi finished or finished goods held in stock on the appointed date

➤ **Conditions :**

- Inputs / goods are used or intended to be used for making taxable supplies under GST
- Taxable person is not opting for composition scheme under GST
- Taxable person is eligible for ITC on such inputs under GST
- Taxable person is in possession of invoice and/or duty paying documents evidencing payment of duty in respect of inputs under earlier law; and
- Such invoices or duty paying document are **not old more than 12 months**

➤ **The amount of ITC to be claimed will be calculated in a manner to be prescribed**

Persons eligible for credit of eligible duties and taxes in respect of inputs or input services during transit (Section 171)

Registered taxable person entitled to take input credit of



Excise duty, other eligible duty, service tax, VAT, Entry Tax paid **before appointed day**



On input and input services received **on or after appointed day**

➤ **Conditions** for claiming ITC in respect goods and services in transit :

- Invoice/duty paying document of same is recorded in books of account of claimant **within 30 days** from appointed day
- On sufficient cause being shown, aforesaid period of 30 days may be extended by competent authority for a further period not exceeding 30 days
- Claimant should furnish statement of credit in the manner to be prescribed

Tax paid on goods and capital goods lying with agents (Section 192 & 193)

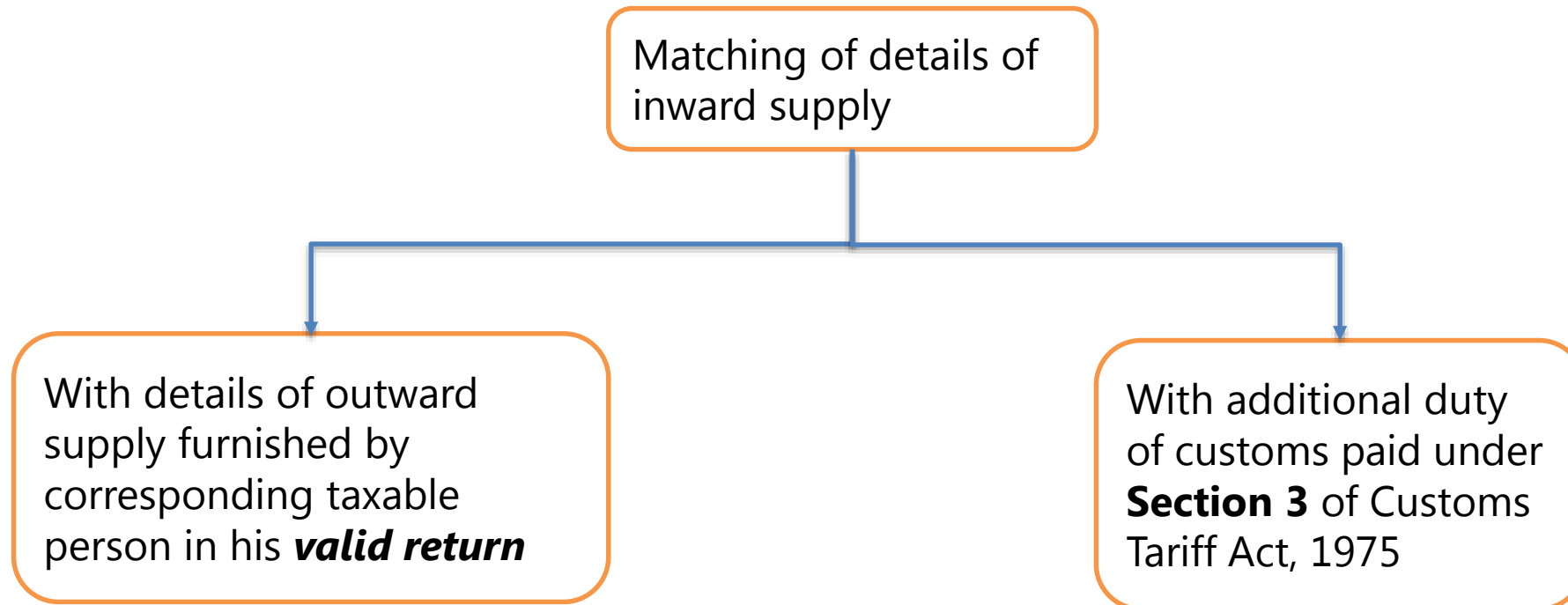
- Agent will be entitled to credit of VAT and/or Entry tax paid on goods and/or capital goods (belonging to principal) lying in his premises as on appointed day
- Stipulated Conditions :
 - Agent is a registered taxable person under GST
 - Principal and the agent has declared the details of stock of goods/capital goods lying with agent on the date immediately preceding the appointed day in such form, manner, and time as may be prescribed
 - Invoices for goods/capital goods has been issued not older than 12 months immediately preceding the appointed day
 - Principal has either reversed or not availed input tax credit in respect of goods/capital goods

Reversal of input tax credit for branch transfer(Section 194)

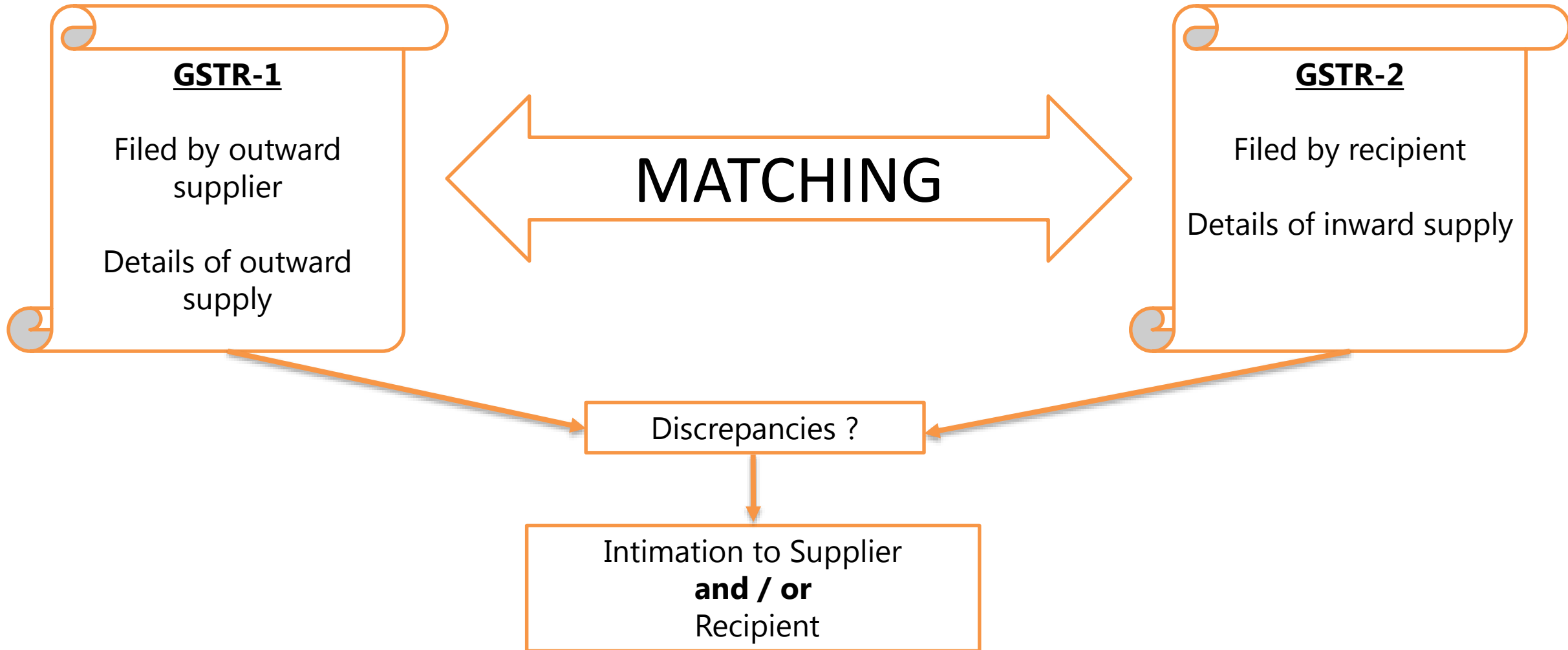
- VAT laws of many states provide as under:
 - Avail ITC at 1st stage when the goods are purchased by dealer
 - When the branch transfer is done, stipulated % of value of branch transfer is to be proportionately reduced (reversed) from ITC
- Assessee will not be entitled to claim ITC (VAT) which is reversed prior to appointed day on for branch transfer
- This may amount to double taxation

Matching, reversal and reclaim of Input Tax Credit

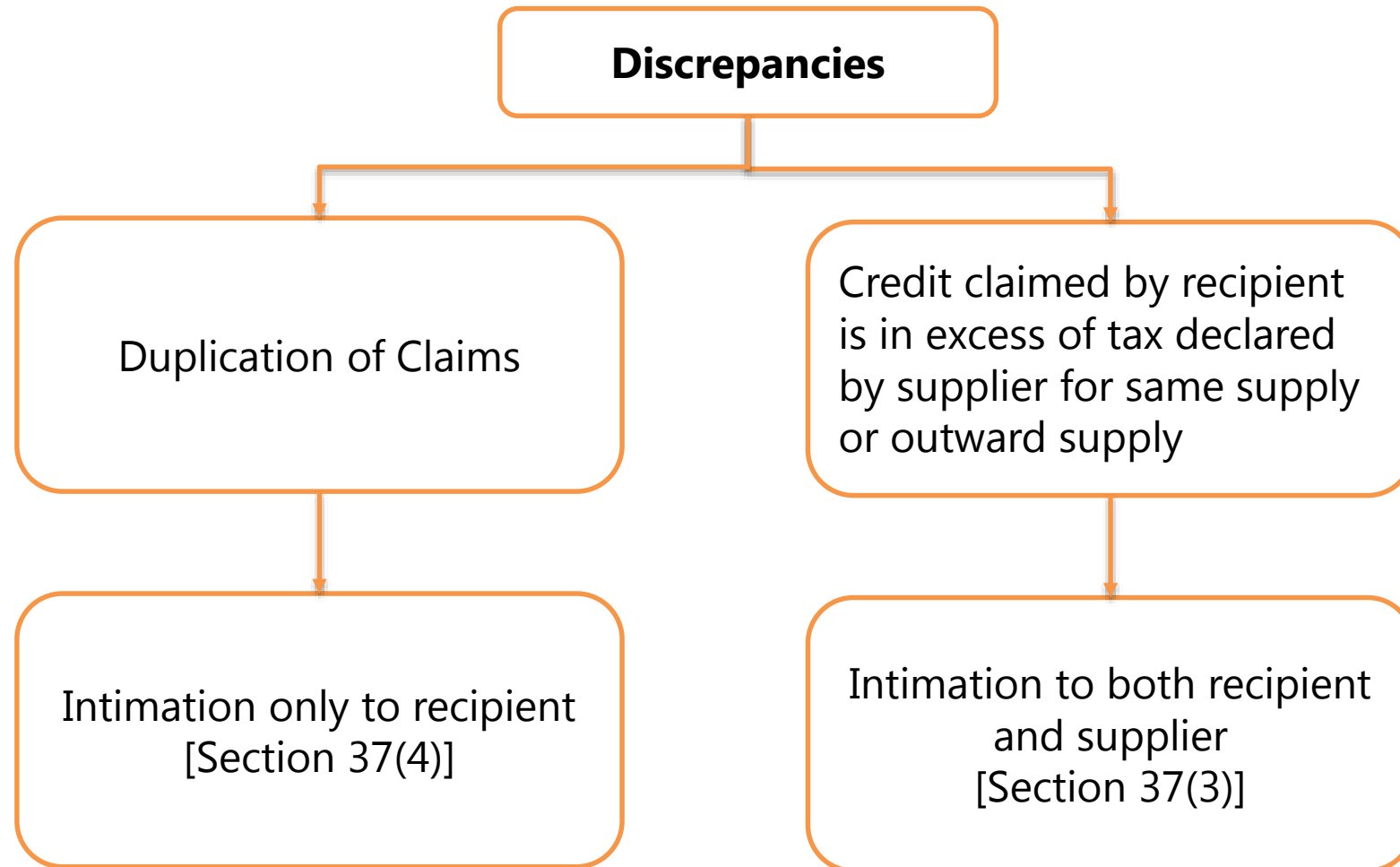
Matching of input tax credit [Section 37]



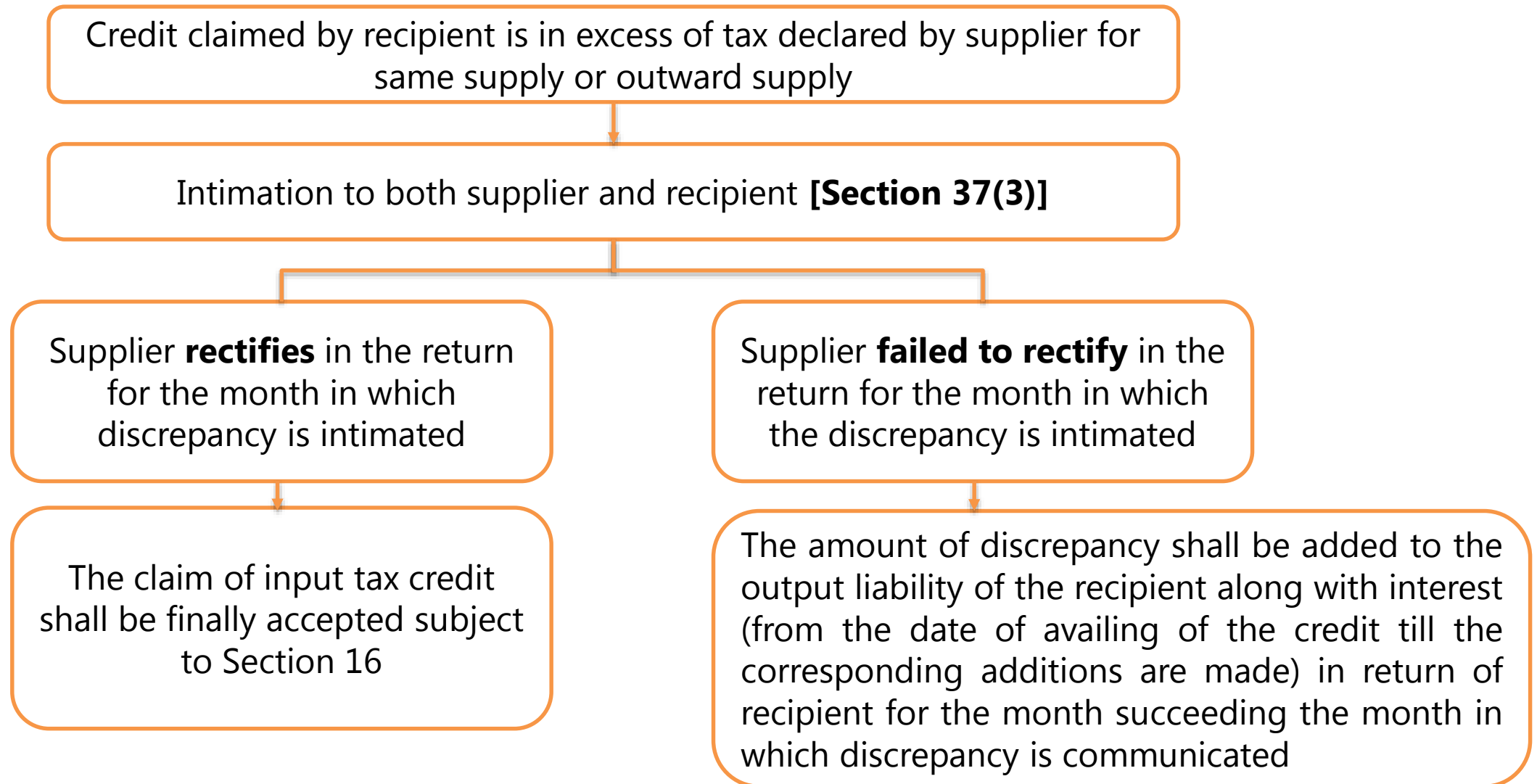
Matching of input tax credit – Process Flow



Intimation of discrepancies



Reversal of ITC under section 37(3) [Section 37(5)]



Reversal of ITC under section 37(4) [Section 37(6)]

Amount of ITC found access on account of **duplication of claims**

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graph TD; A[Amount of ITC found access on account of duplication of claims] --> B[Amount of discrepancy shall be added to the output tax liability of recipient in the month in which duplication is communicated]; B --> C[Interest Levy: Recipient shall be liable to pay interest from the date of availing of credit till the corresponding additions];
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Amount of **discrepancy shall be added to the output tax liability** of recipient in the month in which duplication is communicated

Interest Levy:

Recipient shall be liable to pay interest from the date of availing of credit till the corresponding additions

Reclaim of ITC [Section 37(7)]

Amount added for excess claim u/s 37(5)

Subsequently, the supplier declares the details of invoice / debit note in his valid return **within the time specified u/s 34(9)****

The amount **that was previously added u/s 37(5)** shall be **allowed to be deducted from the output tax liability**

Any **interest** that was **previously levied u/s 37(8)** on the above mentioned amount **shall be refunded** by **crediting** the amount in **electronic cash ledger provided supplier pays the interest**

****Time limit u/s 34(9):**

Earlier of :

Due date of filing of return for the month of September or second quarter following the end of the financial year, or


the actual date of filing of relevant annual return

Contravention of Section 37(7) [Section 37(10)]

Amount reduced from output liability **in contravention of section 37(7)**



Amount shall be **added to the output tax liability** of the recipient in his return for the **month in which such contravention takes place**



Interest Levy:

Recipient shall be liable to pay interest u/s 45(3)

Words of Caution

- Views expressed are the personal views of faculty based on his interpretation of model draft law
- Presentation is based on draft law (Revised Model GST Law)
- Presentation needs to be revised and revisited on enactment of GST Law
- This educational meeting is arranged with a clear understanding that neither the Faculties nor Branch will be responsible for any error, omission, commission and result of any action taken by a member or anyone on the basis of this presentation.



THANK YOU

naresh.sheth@nashah.com