

IS UNREGISTERED DEALER ENTITLED TO CARRY FORWARD CREDIT UNDER GST REGIME?

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Introduction

GST is all set to roll out in July 2017. The roll out of this major tax reform is the positive step towards simplified tax system, however, it can pose some serious challenges. One of the major concerns of the Industry is carry forward of credit from the existing indirect tax regime to the GST regime.

Arrangement of ITC under GST regime

Section 140 of GST Act, 2017 lays down the provision, as to how the amount of CENVAT Credit in respect of duty paid on inputs or service tax paid on input service is to be carried forward at the time of switching over from existing system to the GST regime.

As per sub-section (1) of Section 140 of CGST Act, the amount of CENVAT Credit in the return relating to the period ending the day immediately preceding the appointed day under the existing law (i.e. CENVAT Credit Rules, 2004) can be carried forward as input tax credit. This manner is prescribed for a registered person. In other words, the two categories of assessee entitled are registered manufacturer under Central Excise availing CENVAT credit or a registered person providing service and availing CENVAT credit.

Sub-section (3) of Section 140 of CGST Act, lays down provision for following categories of persons (except registered manufactures / service providers)

- A person not liable to be registered under central excise or service tax.
- A person engaged in manufacturing of exempted goods.
- A person engaged in providing exempted service.

- A person providing work contract service and availing abatement
- A first stage dealer
- A second stage dealer
- A registered importer
- A depot of manufacturer

The assessee as mentioned under Section 140 (3) are entitled to avail credit of:

- (a) Duty in respect of inputs held in stock.
- (b) Duty in respect of inputs contained in semi-finished goods held in stock.
- (c) Duty in respect of finished goods held in stock.

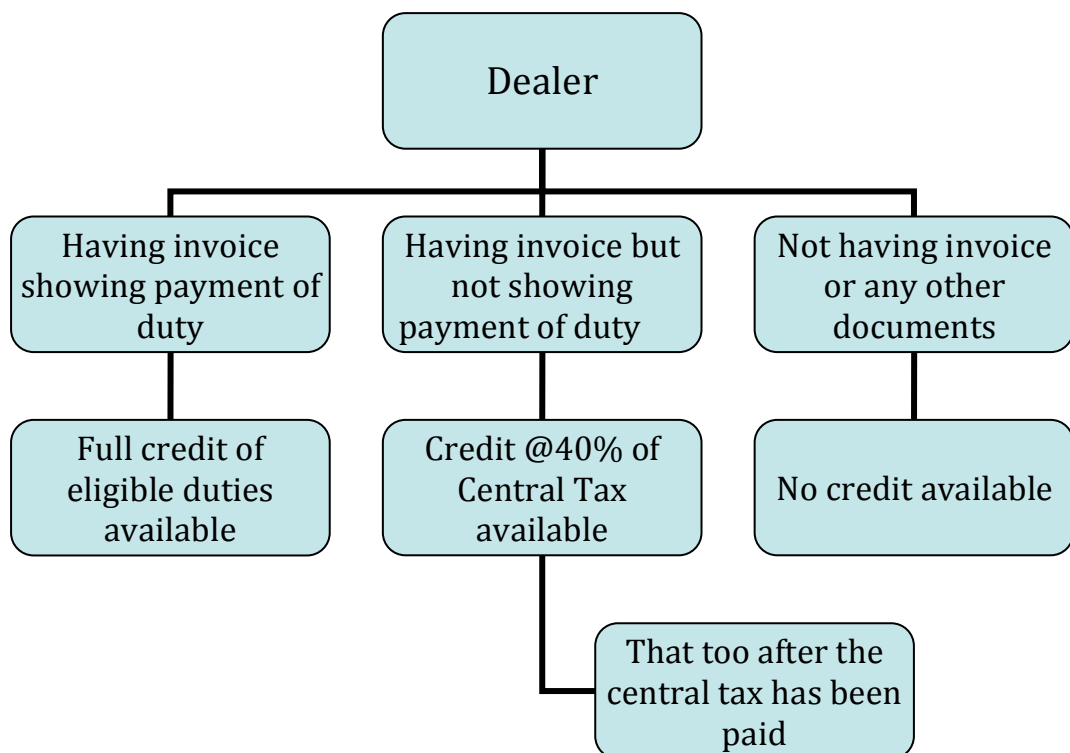
However, the above entitlement is subject to certain conditions. One of the significant conditions is that the person shall be in possession of invoice / other prescribed documents evidencing payment of duty. In other words, there should be CENVATABLE documents.

Now there may be a situation, where goods held in stock are covered by invoices or proper documents but these do not contain details of payment of excise duty. To cover up these situations, a proviso has been added in sub-section (3) of Section 140, which is to be read with Rule 3 (3) of Draft Transitional Rules. As per this, **“those persons”** who are not in possession of document evidencing payment of duty are allowed to take input credit at the rate of 40% of Central Excise applicable subject to certain conditions. The significant point is that the credit of 40% is available after the Central Tax has been paid. Also, it is important that the proviso is only applicable to categories of persons mentioned in Section 140 (3).

It is being debated as to what will be the status of dealers who are not registered as 1st Stage / 2nd Stage under the existing law i.e. central excise. The dealers are not specifically mentioned under Section 140 (3) and the transitional rules talk about a situation as prescribed in the proviso to Section 140 (3).

It may however be seen that “a person not liable to be registered under the existing law” has been specified under sub-section (3) of Section 140. A dealer falls under this category because trading of goods is covered under Section 66D of the Finance Act, 1994, in negative list and as per Section 66B, the services specified in negative list are not subject to levy of service tax. Further, as per Section 69, the person liable to pay service tax is required to be registered. Since a trader is not liable to pay service tax, they are not liable to be registered. They can safely claim to be under this category, which means the provisions of sub-section (3) of Section 140 are applicable to a dealer (including the rules framed under proviso).

Conclusion



The above availability is subject to conditions as given in section 140 of GST Act, 2017.

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