

*Clarification to the queries of ICCMA Member on Goods & Service Tax (GST) dated 15.02.2018*

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**“We are filing an appeal on some issue on service tax, Our consultant is telling reversed an amount under protest i.e., for an amount of Rs.6,54,933/- We are having GST credit of Rs.3.50 crores. Please advise me how to reverse the amount in GST.”**

**Answer:** Please find below scenario wise transitional provisions mentioned in CGST Act 2017 dealing with appeals filed under the existing law whether before, on or after the appointed date (i.e. 1<sup>st</sup> July 2017):

- **Scenario 1: An appeal has been filed by the taxpayer towards REFUND of CENVAT Credit as per the provision of existing law (in this case it relates to Service Tax) whether before, on or after 1<sup>st</sup> July 2017** – In such scenario, where any amount is found admissible as CENVAT Credit to the claimant shall be refunded to him in cash as per the provision of the existing law subject to the condition that such CENVAT credit is not carried forward as ITC to the GST regime. – Refer Sec. 142(6) (a) of CGST Act 2017.
- **Scenario 2: An appeal has been filed by the taxpayer with reference to the RECOVERY of CENVAT Credit as per the provision of existing law (in this case it relates to Service Tax) whether before, on or after 1<sup>st</sup> July 2017** – In such scenario, where any amount of CENVAT Credit is found recoverable from the taxpayer shall be recovered from him under the existing law and in case of an arrear of tax amount to be recovered further shall be recovered under CGST Act 2017. In case where such CENVAT Credit has been carried forward as ITC to GST regime, such recoverable amount of tax shall not be admissible as ITC under CGST Act 2017 – Refer Sec. 142(6) (b) of CGST Act 2017.
- **Scenario 3: An appeal has been filed by the taxpayer with reference to any OUTPUT DUTY / TAX LIABILITY as per the provision of existing law (in this case it relates to Service Tax) whether before, on or after 1<sup>st</sup> July 2017** – In such scenario, where any amount is found recoverable as an output tax liability from the taxpayer shall be recovered from him under the existing law and in case of an arrear of tax amount to be recovered further shall be recovered under CGST Act 2017. Such amount of tax so recovered shall not be admissible as ITC under CGST Act 2017 – Refer Sec. 142(7) (a) of CGST Act 2017.

- **Scenario 4: An appeal has been filed by the taxpayer with reference to any OUTPUT DUTY / TAX LIABILITY as per the provision of existing law (in this case it relates to Service Tax) whether before, on or after 1<sup>st</sup> July 2017 – In such scenario, where any amount is found admissible to the claimant shall be refunded to him in cash under the existing law and any amount if rejected shall not be admissible to him as ITC under CGST Act 2017 – Refer Sec. 142(7)(b) of CGST Act 2017.**

#### **Findings & Conclusion:**

Based on the information provided and study of the provisions of law, we may summarise as:

If an appeal is filed towards recovery of CENVAT Credit under the existing law and the same has been carried forward as ITC to the GST regime by the claimant, such amount may either be paid in cash as CGST or equivalent amount may be reversed from available CGST ITC “under protest” on the account of appeal filed.

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