



Employer obligatory services eligible for GST ITC

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Effective from 1st February 2019, most of the changes proposed by CGST (Amendment) Act 2018 were given effect in CGST Act 2017. Important changes were providing of provision for payment of GST under reverse charge mechanism only on specified class of supplies by specified class of registered persons, non-requirement of treating certain activities of Schedule III as exempt supplies for reversal of credit. Certain changes were also made in the input tax credit restrictions provided in Section 17(5) of CGST Act 2017 allowing credits on inputs or services which are obligatory for employer to provide to employees under any law for the time being in force. In this article, certain categories of supplies which are obligatory have been identified and discussed.

Obligatory services allowed for ITC

In terms of Section 17(5) (b), ITC would **not** be eligible on following supply of goods or services or both-

(i) Food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, life insurance and health insurance. In case of leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) of Section 17 (5) except when used for the purposes specified therein, credit is restricted.

Proviso provides that ITC would be eligible in above cases when an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply.

(ii) Membership of a club, health and fitness centre;

(iii) Travel benefits extended to employees on vacation such as leave or home travel concession:

Proviso is provided to clarify that the input tax credit in respect of such goods or services or both would be eligible where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.



Referring the provisions, one doubt which could arise is whether the proviso added to allow credit on employer obligatory services is applicable only to (iii) above for travel benefits or for all services listed in (i) to (iii). Considering the intentions of the law makers and provision as existed before the amendment, it appears that the intention is to allow credit in case of (i) to (iii).

Prior to amendment, i.e., for the period from 1st July 2017 to 31st January 2019 ITC relating to rent-a-cab, life insurance and health insurance was allowed where it is notified by government as obligation of employers. Supplies like food and beverages were not covered earlier.

Supplies which are obligatory for employers

With effect from 1st February 2019, the tax payers need to ascertain the supplies which are mandatorily being provided to the employees based on the statutory requirement under any law in order to claim the credit. Supply of food through canteen, rent-a-cab facilities for women employees, mandatory insurance policy could be few which need to be considered.

Canteen facility

Section 46 of the Factories Act 1948 provides for making rules by State governments requiring factories with more than 250 workers to have a canteen. The High Court of Andhra Pradesh has observed in case of *Ferro Alloys Corporation Ltd. v. Government of Andhra Pradesh Labour Employment and Technical Education (Labour II) Deptt, 2003 (96) FLR 160* that the mode in which the specified establishment must set up a canteen is not provided in the factories Act. It is left to the discretion of the concerned establishment to discharge its obligation of setting up a canteen either directly or by employment of a contractor.

Therefore, factories where more than 250 workers are employed and providing canteen facility to all the workers in order to comply with the provisions of the Factories Act and rules made thereunder, should be eligible for ITC of GST paid on food and beverages. There could be establishments where canteen facilities are being provided though not mandatory under any law. In such cases, ITC may not be eligible.

There could also be cases where partial amounts recovered from the employees towards the canteen facility which requires payment of GST by the employer / registered persons. In such cases, in terms of notification no.11/2017-CT, GST rate of 5%



would be applicable and no other rate can be applied. Once 5% rate is applied, the same is subject to condition that no ITC on goods or services is claimed. Therefore, no ITC would be eligible where amounts are being recovered from the employees. Further, considering that the employer and employees are “related persons” under GST, the employer may be liable to pay GST on open market value of food supplies provided to employees, even when a nominal amount is recovered from the employees. This again depends on the terms of employment.

Tax payers could undertake cost benefit analysis considering the eligibility of credits in case of canteen recovery. If no amounts are recovered, credit of 5% would be eligible. If amounts are recovered, cost would be 10% [5% charged by caterer + 5% liability to be discharged by employer]. If amounts recovered are less than 10%, then option of not recovering any amounts from employee could be better. The canteen services provided to the employees free of cost could be included in the employment contract.

Transportation facility

Transportation facility provided to women employees could be another category of service which could be considered for credits. Many State government laws provide for women employee’s safety. The provisions of respective State government laws could be referred. In the State of Karnataka, under the Karnataka Shops and Establishment Rules 1963, there are few conditions/ restrictions for having women employees working for night shifts. Though generally they should not be working beyond 7 PM, with approval industries such as IT companies, hotels are permitted to employ women beyond this time. There is a need for providing pick and drop facility free of cost with adequate security (working beyond 8.30 PM) to such women based on Karnataka Government circular no. ITD/180/PrS/2015.

In case of IT/ITES companies, travel expenditure for women employees could be common. Segregation towards transportation facilities provided based on the circular could be maintained separately for claiming the ITC. Similarly laws of respective States need to be seen for such eligibility.

EDLI facility

Employee Deposit Linked Insurance Scheme Act 1976 (hereinafter referred to as ‘EDLI’) applies to all employees whom the provisions of EPF Act 1952 is applicable. Under the scheme the employees would be covered with claim amount of nearly 30 times of salary



in the event of death. This requires contribution only from the employer. Insurance companies like LIC provide these schemes. The GST paid on such schemes would also be eligible for the ITC.

Other insurance schemes

Schemes like accidental insurance scheme **could** also be eligible for credit though may be disputed as expenses of personal nature. If such schemes are mandatory under any law, then the credit could be taken and moreover, it is incurred in furtherance of business.

Insurance schemes for constructions workers could be made mandatory very soon which could be mandatory in construction industry such as health, accident etc. Once it is done, the construction industry would be eligible for credit of GST paid on such insurance schemes as well.

Conclusion

Benefits discussed above which are eligible for credits are only illustrative. There could be many other benefits such as providing drinking water facility is mandatory under the establishment laws of many State governments. ITC on packaged water would be eligible for credit. Professionals could guide the tax payers after understanding the industry needs and statutory provisions governing such industries. As the GST law is still in developing stage, there could be disputes on employee related credits. It would be a good idea to write to the department quoting the provisions of applicable law which mandates certain benefits to employees eligible for credit.

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