

## **INPUT TAX CREDIT UNDER GST– MEANING OF “IN THE COURSE OR FURTHERANCE OF BUSINESS:**

By

Pradeep Kumar Mittal

B.Com,LLB,FCS\*

Pkmittal171@gmail.com

Section 16 of The Central Goods & Service Tax Act, 2017 (hereinafter called “CGST Act”) permits availing of credit of Input Tax on the supply of goods or services or both which are used or intended to be used in the course of or furtherance of business. Unfortunately, Section 16 CGST Act does not talk of Input Tax paid on acquisition of “Capital Goods” - though in Section 19(4), the word “capital goods” has been used but in Section 16(1), the word “capital goods” is missing. In my view, if the word “capital goods” do not find place in Section 16, the “capital goods” cannot read in view of the following judgments.

-----

\*Past Central Council Member, The Institute of Company Secretaries of India, New Delhi.

2: In Sanjay Singh v. U.P. Public Service Commission reported in [MANU/SC/0563/2007](#) : (2007) 3 SCC 720, the Hon'ble Supreme Court held that,

"It is well settled that courts will not add words to a statute or read into the statute words not in it. Even if the courts come to the conclusion that there is any omission in the words used, it cannot make up the deficiency, where the wording as it exists is clear and unambiguous. While the courts can adopt a construction which will carry out the obvious intention of the legislative or the rule-making authority, it cannot set at naught the legislative intent clearly expressed in a statute or the rules."

2.1: On the principles of **causus omissus**, let us consider the decision of the Hon'ble Supreme Court in Unique Butyle Tube Industries Pvt. Ltd. v. U.P. Financial Corporation and Others reported in [MANU/SC/1218/2002](#) : 2003 HKC 852 : 2003 (2) SCC 455: 2003 (113) Comp Cas 374: 2003 All LJ 427: [MANU/SC/1218/2002](#) : AIR 2003 SC 2103, wherein, it was argued that the Court cannot supply the omissions by the Legislature. While interpreting a provision, the Supreme Court held that the Court only interprets the law and cannot legislate it and it is for the legislature to amend, modify or repeal it if it is deemed necessary. It is further held that by the principle of **causus omissus**, Court cannot supply the law.

3: One of the condition precedent for availment of Input Tax Credit (hereinafter called ITC) on goods or services is that such goods or services have been used "in the course of or in furtherance of business.

### **WHAT IS THE MEANING OF WORD "BUSINESS":**

4: In the decision reported as [MANU/SC/0282/1981](#) : AIR 1981 SC 1047 Barendra Prasad Ray Vs. Income Tax Officer, it was observed that the word

'business' is one of wide import and it means an activity carried on continuously and systematically by a person by the application of his labour or skill with a view to earn an income. In the case of Sethurama Menon v. Meenakshi Amma as [MANU/KE/0034/1967](#) : AIR 1967 Ker 88, it was observed that the expression 'trade or business' as we understand it, connotes a commercial activity. The expression 'profession' does not, and is virtually at the other end of the scale.

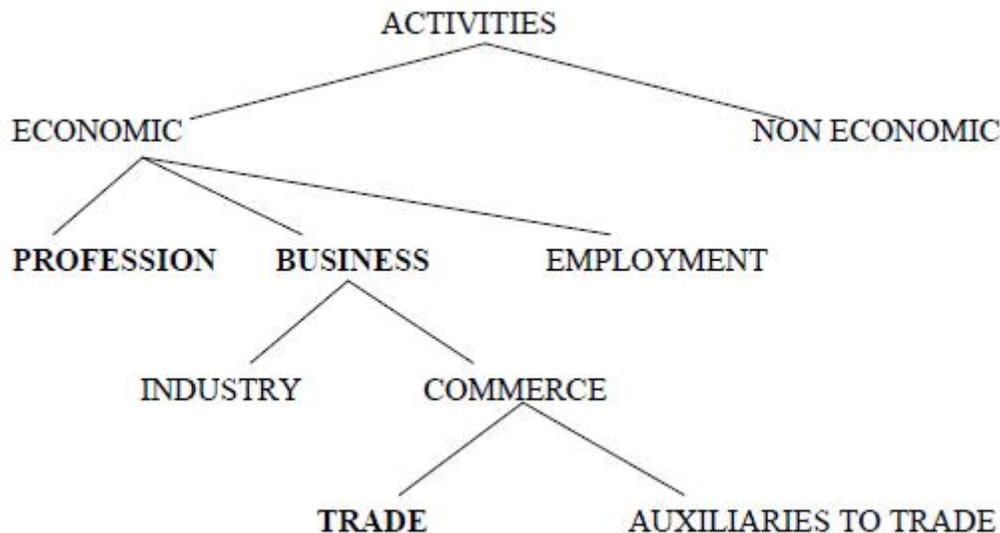
5: The Division Bench of Delhi High Court in the case of Arvinder Singh Vs. Lal Pathlabs (P) Ltd MANU/DE/0936/2015 as defined the "business" and "economic activities" as under:-

44. Business refers to those economic activities which are connected with production or purchase and sale of goods or supply or services with main object of earning profits, profession on the other hand includes those economic activities which require special knowledge and skill to be applied by individuals in their occupation.

45. Business activities may be classified into two broad categories-industry and commerce. Industry refers to economic activities which are connected with conversion of resources into useful goods and involve mechanical appliances and technical skills. Commerce covers two types of activities-trade and auxiliaries to trade. Buying and selling of goods

is termed as trade. The other activities required to facilitate this buying and selling are called services or auxiliaries to trade. For example: transport, banking, insurance, communication, advertising, packaging and warehousing. Thus, business is the genus of which trade is a specie.

46. Put in a flow chart, a graphic view of what we have penned above, would look like this:



47. To carry on economic activities, which will include a business, a trade as also auxiliary to trade, a series of different activities or functions aimed at achieving the goals of the organization have to be carried out. These interconnected and inter-dependent functions are not achieved by chance, but by following a deliberate process, which may be called 'management'. Managers perform these functions. Management is a very wide term and is used extensively for all types of activities

and mainly for taking charge of different activities in an enterprise. People in organizations perform diverse tasks but they are all working towards the same goal. Management could therefore be defined as a process of getting things done with the aim of achieving goals effectively and efficiently.

6: The Hon'ble Supreme Court in State of Karnataka v. Shreyas Paper Pvt Ltd 2006 SCC, inter alia, held as under:

“Business comprises of the regular and systematic activity with an object of earning of profits. The machinery, plant, building and the land over which they have erected or constructed are only the tools of such business. Assets and liabilities including goodwill are the necessary ingredients to constitute a business, besides the stocks and other movable and immovable items connected with the said business”.

7: In Magazon Dock Ltd. v. Commissioner of Income Tax and Excess Profits Tax [MANU/SC/0087/1958](#) : AIR 1958 SC 861 the Hon'ble Supreme Court held as follows:

14. ...The word "business" is, as has often been said, one of the wide import and in fiscal

statutes, it must be construed in a broad rather than a restricted sense.

8: The Supreme Court in the case *Narain Swadeshi Weaving Mills v. Commissioner of Excess Profits Tax* [MANU/SC/0074/1954](#) : 1955 1 SCR 952 word 'business' connotes", it was observed by this Court in "some real, substantial and systematic or organised course of activity or conduct with a set purpose. The term business" therefore, particularly in fiscal statutes is of wide import.

9: The Division Bench of the Bombay High Court in the case of *Coca Cola India (P) Ltd Vs. CCE* [MANU/MH/0784/2009](#) has observed as under:-

"Similarly, the use of the word activities in the phrase activities relating to business further signifies the wide import of the phrase "activities relating to business. The Rule making authority has not employed any qualifying words before the word activities, like main activities or essential activities etc. Therefore, it must follow that all and any activity relating to business falls within the definition of input service provided there is a relation between the manufacturer of concentrate and the activity. Therefore, the phrase "activities relating to business are words of wide import."

10: The Hon'ble Supreme Court in the case of *Barendra Prasad Ray Vs. ITO* [MANU/SC/0282/1981](#) has observed as under:-

19. The word 'business' is one of wide import and it means an activity carried on continuously and systematically by a person by the application of his labour or skill with a view to earning an income. We are of the view that in the context in which the expression 'business connection' is used in Section [9\(1\)](#) of the Act, there is no warrant for giving a restricted meaning to it excluding 'professional connections' from its scope.

11: The Hon'ble Supreme Court in the cases cited as [MANU/SC/0427/1979](#) : AIR 1979 SC 1132 S. Mohanlal Vs. R. Kondiah, [MANU/SC/0282/1981](#) : AIR 1981 SC 1047 Barendra Prasad Ray & Ors. Vs. Income Tax Officer, 'A' Ward, Foreign Section & Ors., [MANU/GJ/0041/1996](#) : (1997) 225 ITR 936 Natvarlal Ambalal Dave Vs. Commissioner of Income Tax, [MANU/KE/0242/1996](#) : (1997) 139 CTR (Ker) 518 Commissioner of Income Tax Vs. Upasana Hospital [MANU/TN/0202/1970](#) : AIR 1970 Mad 460 Dr. P. Vadamalayan Vs. The Commissioner of Income Tax Madras and [MANU/TN/0067/1980](#) : (1980) 18 CTR (Mad) 33 Commissioner of Income Tax, Tamil Nadu IV Vs. V.K. Ramachandran, has held that there is no distinction between a profession and a business.

12: Further, the Supreme Court held in the case cited as [MANU/SC/0268/2003](#) : (2003) 4 SCC 601 State of Maharashtra Vs. Dr. Praful B. Desai to say

that the principle of updating construction, to march with the time, has to be adopted by the Court while interpreting a statute, to make it relevant in its application to the time when it is being interpreted.

13: The meaning of '**furtherance**', as per Black's Law Dictionary, 6th Edition, 11th reprint, 1997, is "act of furthering, help forward, promotion, advancement or progress". **Furtherance of business will, thus mean, act of furthering business, helping forward business, promotion of business, advancement of business or progress of business.** Therefore, if a service provider is renting the property in the course of or for furtherance of business or commerce, it will amount to an activity in favour of service recipient for helping forward business, promotion of business, advancement of business and progress of business. It automatically generates value addition and comes within the meaning of 'service tax' as defined under Sec.65[105][zzzz].

14: The Bombay High Court in the case of CCE Vs. Ultratech Cements Limited MANU/MH/1408/2010 has observed as under:-

The expression 'activities in relation to business' in the inclusive part of the definition of 'input service' further widens the scope of input service so as to cover all services used in the business of manufacturing the final products and that the said definition is not restricted to the services enumerated in the definition of input service itself. The Court rejected the contention of the revenue that a service to qualify as an input service must be used in or in relation to the manufacture of the final products and held that any service used in relation to the business of

manufacturing the final product would be an eligible input service.

15: From the analysis of the above judgments, it is manifestly clear that the words “ in the course of or furtherance of business” give shade of expansion so as to cover those inputs or input services which may not otherwise be covered had the words would have been “in the manufacture of goods or supply of services”.

16: However, while discussing about eligibility of any “inputs”, “input services” of “capital goods” for the purpose of consideration of scope and ambit of “supply”, it would also be prudent to discuss the concept of “user test” as has been evolved by the Hon’ble Supreme Court, High Courts and Customs, Excise and Service Tax Appellate Tribunal in the following cases.

16.1: The Hon’ble Supreme Court in the case of J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. Sales Tax Officer, Kanpur reported in 1997 (91) E.L.T. 34 (S.C.) while interpreting the scope of the expression "used in the manufacture of " in Section 8(3)(b) of the Central Sales Tax Act, 1956, has held as under:

In our judgment if a process or activity is so integrally related to the ultimate manufacture of goods so that without that process of activity manufacture may, even if theoretically possible, be commercially in expedient, goods intended for use in the process or activity, as specified in Rule 13 will qualify for special treatment. This is not to say that every category of goods used "in connection with" manufacture or in relation to

manufacture or which facilitates the conduct of manufacture will be included within Rule 13. Attention in this connection may be invited to a judgment of this Court in which it was held that vehicles used by a company (which mined ore and turned out copper in carrying an activities as a miner and as a manufacturer) fell within Rule 13, even if the vehicles were used merely for removing ore from the mines to the factory, and finished goods from the factory to the place of storage. Spare parts and accessories required for effective operation of those vehicles were also held to fall within Rule 13, See Indian Copper Corporation Ltd. v. Commissioner of Commercial Taxes, Bihar - CA No. 1021 of 1969, dated 19-10-1964.

16.2: The Calcutta High Court in the case of Singh Alloys & Steel Ltd Vs. CCE MANU/WB/0305/1993 has held as under:-

23. The respondents then argued that steel ingots could be manufactured even without the items. That may be so, but that is immaterial. The definition of inputs is not dependent upon what ought to be used but what is in fact used. There is no dispute that the petitioner No. 1 had in fact, used and uses the items in the manufacturing of ingots. The Supreme Court has also held that manufacture would include a process which was commercially expedient in the production of goods [See : Collector of Central Excise v. [Eastend Paper Industries - MANU/SC/0107/1989](#) : 1989(43)ELT201(SC) ; Collector of Central Excise, Jaipur v. Rajasthan State Chemical Works : AIR 1991 SCC 2222]

. That the process in question is commercially expedient has not been doubted.

16.3: The Supreme Court in the case of CCE Vs. Eastend Paper India Ltd MANU/SC/0107/1989 has observed as under:-

7. To be able to be marketed or to be marketable, it appears to us, in the light of facts in the appeals, that it was an essential requirement to be goods, to be wrapped in paper. Anything required to make the goods marketable, must form part of the manufacture and any raw material or any materials used for the same would be component part for the end product. In our opinion, the Tribunal was right in the view it took. There is no ground to interfere in these appeals.

16.4: The Hon'ble Supreme Court in the case of CCE Vs. Jawahar Mills Ltd MANU/SC/0397/2001 has observed as under:-

We have no difficulty in accepting the contention of the learned Additional Solicitor General that, under these circumstances, user will determine whether an item qualifies or not the requirement of clause 1(a). However, in the present cases this aspect has no relevance. It was not the case of the revenue at any stage before the authorities that an item does not satisfy the requirement of 'Capital goods' within the meaning of the Rule on the ground of its user as it now sought to be urged by the learned counsel. The case of the revenue has all through been that the items in question per square not 'Capital goods' within the meaning

of the expression as defined in Explanation 1(a). In respect of the cables of which Mr. Rohtagi gave example, the stand of the revenue before the Tribunal was that the cables per se cannot be treated as 'Capital goods'. The stand of the revenue was not as has been projected now by Mr. Rohtagi. In this view, the question of directing remand of these matters for fresh decision by the Tribunal does not arise.

16.5: The Hon'ble Supreme Court in the case of CCE Vs. Rajasthan Spinning & Weaving Mills Ltd MANU/SC/0465/2010 has observed as under:-

13. Applying the "user test" on the facts in hand, we have no hesitation in holding that the steel plates and M.S. Channels, used in the fabrication of chimney would fall within the ambit of "capital goods" as contemplated in Rule 57Q. It is not the case of the Revenue that both these items are not required to be used in the fabrication of chimney, which is an integral part of the diesel generating set, particularly when the Pollution Control Laws make it mandatory that all plants which emit effluents should be so equipped with apparatus which can reduce or get rid of the effluent gases. Therefore, any equipment used for the said purpose has to be treated as an accessory in terms of serial No. 5 of the goods described in column (2) of the Table below Rule 57Q.

17: In view of the above discussions, in my humble view, the words "in the course of" or "furtherance of business" are words of wide amplitude and would include, within its sweep, many

items, which apparently may not appear to be eligible – but for the words used, shall be eligible.

---