

Input Tax Credit – Goods or Services or both on which no credit is available

In the following table we are discussing the goods or services or both in respect of which input tax credit shall NOT be available [contained in Section 17(5) of the CGST Act]:

Sr. No.	Description of goods or services	Exceptions and other observation
<u>1</u>	<p>Motor vehicle and other conveyances: “conveyances” has been defined to include a vessel, an aircraft and a vehicle.</p> <p>Thus credit is not available on any vehicle, vessel or an aircraft.</p>	<p>Exception: credit of motor vehicle and other conveyances is allowed if used for making following taxable supplies:</p> <ol style="list-style-type: none"> i. further supply of such vehicle or conveyances ii. transportation of passenger or goods iii. imparting training on driving, flying, navigating, such vehicle or conveyances. <p>Thus if motor vehicle or other conveyances is used for any of the above supplies then credit of motor vehicle and other conveyances would be allowed.</p> <p>In our view, this entry does not restrict credit of tax paid on any supply of goods or services provided in relation of motor vehicle or conveyance. Example – motor vehicle insurance, repair and maintenance of motor vehicle. This entry only restrict credit on motor vehicle and other conveyances per se.</p>
<u>2</u>	<p>Supply of goods or services or both, namely, food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery.</p>	<p>Exception: Credit may be allowed in respect of supply of the said goods or services (food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery) where an inward supply of such goods or services or both of a particular category is used by a registered taxable 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.</p> <p>This means that, credit may be allowed on the inward supply of a particular category if the registered person is using them:</p> <ul style="list-style-type: none"> • for providing the same category of outward supply or • as a part of a taxable composite supply or mixed supply. <p>Example. No credit is allowed on tax paid on outdoor catering in normal circumstance. However, if a banquet hall is receiving an</p>

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		outdoor catering for supplying outdoor catering or renting a banquet hall along with food to its customer, then such banquet hall may be allowed credit on the outdoor catering received by it.
<u>3</u>	Membership of a club, health and fitness center	<p>There is no exception to this restriction. Thus under no circumstance credit is allowed of tax paid on membership of club, health and fitness centre.</p> <p>The terms “<i>club</i>” and “<i>health and fitness centre</i>” are not defined which may give rise to disputes. A dispute may arise whether sports complex with facilities such as playing ground, basketball courts, tennis courts etc, like DDA sports complex, would be covered within the definition of club or health and fitness center.</p> <p>Further in terms of the said entry only “membership” of a club or health and fitness centre is dis-allowed. There may be multiple activities that are provided in club, health and fitness center, like slimming services, Yoga, Zumba etc for they charge separate fee (not related to membership). In our view, disallowance of input tax credit is limited only to the membership fee of such club, health and fitness centre; and credit may be allowed on any additional services provided.</p>
<u>4</u>	supply of rent-a-cab, life insurance, health insurance	<p>Exception: Credit may be allowed in respect of these supplies where:</p> <p>a the Government notifies these services as obligatory for an employer to provide to its employees under any law for the time being in force; or</p> <p>b such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply</p> <p>Thus, if providing rent-a-cab services to employees is obligatory for an employer under any Act, then such employer would be allowed to take the credit of tax paid on rent-a-cab services.</p>
<u>5</u>	travel benefits extended to employees on vacation such as leave or home travel concession	There is no exception to this restriction. Thus, in no case employer would be allowed credit of tax paid on said travel benefits.
<u>6</u>	works contract services when supplied for construction of immovable property	<p>Exception: Credit may be allowed on works contract service where:</p> <p>i. such works contract service is received for construction of</p>

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		<p>plant and machinery; or</p> <p>ii. it is an input service for further supply of works contract service.</p> <p>Thus, if a works contractor appoints sub-contractor then he is allowed to take credit of tax paid on the works contract service supplied by the sub-contractor.</p> <p>No credit is allowed if a person receives works contract service for construction of office, factory, godown or any other place from where he operates his business.</p> <p>One more question that may arise - Whether a developer constructing an immovable property, intended for sale, would be allowed the credit of works contract service received by him? In our view, developer shall be allowed credit of tax paid on works contract services received by it because a developer is treated as a works contractor (in the case of L&T hon'ble Supreme Court held that the developer is a works contractor for the buyers) of ultimate customer.</p>
<u>7</u>	<p>Goods or services or both received by a taxable person for construction of an immovable property on his own account, including when such goods or services or both are used in the course or furtherance of business.</p>	<p>Exception: Credit may be allowed on goods or services or both received for construction of an immovable property where</p> <p>i. such goods or services or both are used for construction of plant and machinery</p> <p>A question may arise whether credit would be allowed on the goods or services or both, used in construction of immovable property, by a developer intending to sell the immovable property under construction. In our view, such credit will be allowed because the construction of immovable property by developer would not be considered on <u>his own account</u>.</p> <p>Further, no credit of tax would be allowed on the goods or services or both, used in construction of mall, by a developer, where the mall is to be rented out.</p> <p>If a person is receiving goods or services or both for constructing office, factory, godown or any other place from where he operates his business, then he would not be allowed credit of tax paid on such goods and services.</p>

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		Further if a person is receiving goods and services for renovating office, factory, godown or any other place from where he operates his business and he is not capitalizing such construction then he would be allowed credit of tax paid on such goods and services because then such goods or services would not be considered as used for construction (in terms of definition of construction).
<p>For the purpose of above clauses 7 & 8,</p> <p>i. construction includes:</p> <p style="margin-left: 20px;">a re-construction, renovation, additions or alteration or repairs</p> <p style="margin-left: 20px;">b to the <i>extent to capitalization</i>, to the said immovable property.</p> <p>ii. “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—</p> <p style="margin-left: 20px;">a. land, building or any other civil structures;</p> <p style="margin-left: 20px;">b. telecommunication towers; and</p> <p style="margin-left: 20px;">c. pipelines laid outside the factory premises.</p>		
<u>8</u>	Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples	<p>There is no exception to this restriction.</p> <p>In terms of this exclusion, no credit is allowed on the goods that are distributed as free samples to the customers.</p> <p>If under promotion any “goods” or “pack of goods” are supplied at reduced cost to the customers then this would not be considered as free samples or a gift. Thus, where a grocery store is selling 4 packets of biscuits as a single pack with Rs.10 discount, credit of tax paid on biscuit cannot be disallowed to the grocery store as restriction is only regarding the goods which are supplied a free sample or as a gift.</p> <p>Further, meaning of gift or free samples need to be analysed.</p>
<u>9</u>	Goods or services or both on which tax has been paid under Section 10 (composition levy);	No credit would be allowed on those goods or services on which tax has been paid under composition levy. Although this entry seems to be redundant as in case of composition scheme, no tax can be collected from the recipients.
<u>10</u>	Goods or service or both used for personal consumption	<p>There is no exception to this restriction.</p> <p>Personal consumption is not defined in the act.</p> <p>In our view, if any goods or services or both are used by proprietor</p>

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		<p>or partner for personal purposes then that can be termed as personal consumption and the registered person would not be allowed credit on such goods or services or both.</p> <p>A question may arise - If any goods or services or both are used by the director of the company for his personal use (director uses the car provided by the Company for personal use), whether that would also be considered as personal consumption. In our view, this won't be a personal consumption as the Company and its directors are separate entities.</p>
<u>11</u>	Goods or services or both received by a non-resident taxable person.	Exception: credit would be allowed where goods or services or both are imported by a non-resident taxable person.
<u>12</u>	any tax paid in terms of Section 74, 129 or 130	There is no exception to this restriction.