

Treatment of Destroyed /Written off goods during Lockdown- Reversal of ITC

The pandemic situation of Carona Virus creates a peculiar problem to the taxpayers specially to the taxpayers deals in drugs, medicines, ,food processing goods etc. The goods lying in stock of many taxpayers either expired or destroyed during lockdown imposed by the Central/state Government.

The registered tax payers have also paid GST on the inward supply of these goods procured for business purposes to the suppliers .

Meaning of term “destroyed/written off

Expired goods or goods unfit for consumption are also covered under the term destroyed. Due to expiry , these goods neither be used in manufacturing nor can be supplied in the open market and needs to be written off in the books of accounts of the taxpayers.

Is normal manufacturing loss covered under Goods Destroyed

In every manufacturing process, there is some manufacturing loss of inputs. No manufacturing process give 100% yield. The term “Destroyed” does not include consumption of inputs used in the manufacturing process. If the manufacturing loss is beyond the normal norms of the industry, input tax credit may be restricted. It was held in the case of **Multi Metals Ltd. vs ACCE 1992 (57) ELT 209 SC** that the manufacturing loss forms part of raw material used in the manufacture though not reflected in the final product.

It is the duty paid on input material that is relevant and not the duty referable to ultimate component of the final product. It was held in **Indian Aluminium Company Ltd. - 1995 (77) E.L.T. 268 (S.C.)** that raw material lost during manufacturing process which may or may not become wastage or ashes will be treated as used in the manufacture of finished products.

Similar judgement is given by the Honourable Raj HC in the case of **CTO vs Priti chemicals (1992) 85 STC 76 (Raj)**

Input tax credit on “Evaporation loss” is denied by the P&H HC in the case of **Bharat petroleum Corporation ltd. vs State of Punjab (2009) 19 VST 118**

The ITC availed on the inward supplies of these goods needs to be reversed as per the present law. Section 17(5) of the Central goods and service tax Act, 2017 says that:

*“ Notwithstanding anything contained in sub section (1) Of section 16 and sub section (1) of section 18, **Input tax credit shall not be available** in respect of the following, namely:-*

(h) Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples

Section 17 (5) of the CGST Act begins with the words, “Notwithstanding any thing contained in sub section 16(1) and sub section 18(1) “.

According to the section 16(1), every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged to him on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic ledger of such person.

Similarly section 18(1) of the CGST Act allows input tax credit for

- i) Inputs of stock and inputs contained in semi finished or finished goods held in stock on the date immediately preceding the date of registration for all persons applied for registration with in thirty date of becoming liable for registration.
- ii) Inputs of stock and inputs contained in semi finished or finished goods held in stock on the date immediately preceding the date of registration for all persons applied for voluntary registration/s 25(3) of the CGST Act.
- iii) Inputs of stock and inputs contained in semi finished or finished goods held in stock on the date immediately preceding the date from which he ceases to be composition taxable person. Provided that the credit on capital goods shall be reduced by such percentage points (5% per quarter or part thereof) as prescribed under rule 40 of CGST Rules 2017
- iv) In the event of an exempt supply by a taxable person becomes a taxable supply, such person shall be entitled to take credit of input tax on Inputs of stock and inputs contained in semi finished or finished

goods held in stock on the date relatable to such exempt supply and on capital goods exclusively used for for such exempt supply.

Thus, in my opinion, normal manufacturing loss will not be covered under goods destroyed.

The corona pandemic is an Act of God and the situation of lockdown is also covered under FORCE MAJURE . Relying upon the settled judicial principle of “ *lex non cogit ad impossibilia* “ means the law cannot compel to do what is impossible to do and the Honourable SC judgement in the case of **IFCI Ltd. vs Cannanore Spinning and Weaving Mills Ltd AIR 2002 SC 1841** and Honourable Gujarat HC judgement in the case of **State of Gujarat vs Himani Distributors Pvt. Ltd. 2014 7 TMI 783**, the GST council should come forward and allows one time credit of ITC on the goods destroyed or written off due to lockdown conditions which will bring great relief to the business community.

Till then as **section 17(5) contains non obstante clause and overrides Section 16(1) and 18(1)**, therefore input tax credit shall be denied on goods or services or both, even if these are used exclusively for the business.

Accounting Entries to be passed in Books of Accounts For goods written off

Goods written off	Dr.
To Inward supply (Purchases)	Cr.
To Input CGST/SGST/IGST	Cr.