

Treading the GST Path - XXIX
Transitional credit for builders
(G Natarajan, Advocate, Swamy Associates)

A builder would be entitled for following types of transitional credits.

- If the builder was availing VAT credit and paying VAT, the closing balance of VAT credit as per the last VAT return would be allowed to be carried forward under Section 140 (1) of the SGST Acts.
- If the builder was availing cenvat credit of Service Tax paid on input services, the closing balance of Cenvat Credit as per the last ST 3 return would be allowed to be carried forward under section 140 (1) of the CGST Act.
- If the builder was not availing credit of VAT paid on inputs (having opted to pay VAT under compounding scheme), he would be entitled to avail credit of VAT paid on inputs lying in stock and contained in work in progress and finished goods under section 140 (3) of the SGST Acts. For a builder, the flats / building being constructed by him is not capital asset, but only stock in trade and hence credit would be admissible for the inputs contained in such constructed / semi-finished buildings, subject to other conditions.
- As the builder would not have availed cenvat credit of the Excise duty paid on inputs, he would be entitled to avail credit of Central Excise duties paid on inputs lying in stock and contained in work in progress and finished goods under section 140 (3) of the CGST Act.

Let us take a case, where a builder is constructing a residential complex comprising of 50 flats, out of which 10 are sold and the remaining are yet to be sold. For the flats already sold, amounts equal to the work completion stage have been realised prior to GST and appropriate earlier taxes have been paid. Let us assume that 25 % of the construction is complete as on 01.07.2017 and also billed. Let us assume that the builder was not taking any credit of the VAT /CE duty paid on inputs under the earlier law.

Transitional credit under Section 140 (3) is available only in respect of the inputs purchased in the last one year, i.e. on or after 01.07.2016.

Let us assume the following data with respect to one important input, viz., cement.

S.No.	Details	Quantity	Amount
1	Cement purchased from 01.07.2016 to 30.06.2017 @ Rs.40 per KG	30000 KG	Rs.12,00,000
2	Cement lying in stock as on 30.06.2017	5000 KG	RS.2,00,000
3	Total ED on purchase of 30000 KG@ 12.5 %		Rs.1,50,000
4	ED on stock of cement as on 30.06.2017 5000 KG @ 12.5 %		Rs.25,000
5	Total VAT on purchase of 30000 KG @ 14.5 % on value + ED		Rs.1,95,750
6	VAT on stock of cement as on 30.06.2017 5000 KG @ 14.5 %		Rs.32,625

It may be observed that credit of Rs.25,000 as Excise duty and Rs.32,625 as VAT pertaining to the stock of 5000 KG of cement available on 30.06.2017, can be availed as transitional credit.

Now the quantum of credit attributable to the stock of cement contained in the work in progress, supported by less than one year old invoices has to be identified. It may be observed that as on 01.07.2016 there could have been opening balance of cement, which would have also been used during the period from 01.07.2016 to 30.06.2017. The opening stock of cement as on 01.07.2016 plus purchases from 01.07.2016 to 30.06.2017 minus closing stock of cement as on 30.06.2017 would give the quantum of cement consumed during the period from 01.07.2016 to 30.06.2017 and contained in the work in progress. Out of this, there would be no transitional credit pertaining to the opening stock as on 01.07.2016, as the same would be more than one year old and hence the same can be ignored. From out of 30000 KG of cement purchased in the last one year from 01.07.2016, 25000 KG has been used and contained in the work in progress.

In respect of the 40 flats which are yet to be sold, the entire sale proceeds in future would be subjected to GST. In respect of the 10 flats already sold, for the amount to be received from the buyers on or after 01.07.2017, appropriate GST would be paid and to this extent, ITC is also entitled.

It may be noted that 25000 KG of cement has been used in the construction of 50 flats in the last one year (25 % construction complete), out of which 10 flats are sold and to the extent of completion, amounts have also been received from the customers and taxes have been paid under earlier law, where no credit was admissible. So, out of the 25000 KGs of cement, which is contained in work in progress, credit would be admissible only in respect of 40 flats,

$$25000 \text{ KGs} \times \frac{40}{50} = 20,000 \text{ Kgs}$$

$$\text{ED Attributable to 20,000 Kgs} = 20000 * \text{Rs.}40 * 12.5 \%$$

$$= \text{Rs. } 1,00,000$$

$$\text{VAT attributable to 20,000 Kgs} = (20000 * \text{Rs.}40 + \text{ED}) * 14.5 \%$$

$$= \text{Rs.}1,30,500$$

$$\text{ITC for inputs lying in stock} = \text{Rs.}25000 \text{ (ED)} + 32,625 \text{ (VAT)} = 57,625$$

$$\begin{aligned} \text{ITC for inputs contained in WIP} &= \text{Rs.}1,00,000 \text{ (ED)} + \text{Rs.}1,30,500 \text{ (VAT)} \\ &= \text{Rs.}2,30,500 \end{aligned}$$

The above method of computation of transitional credit has to be done for each and every raw material, for which credit needs to be taken. Further, in a practical situation, the level of completion of individual flats and the amount so far received from the respective buyers would also vary from case to case, making the exercise of quantifying transitional credit attributable to inputs contained in work in progress and finished goods very complex.

Another peculiar situation in the construction industry is that the builder would have sub contracted the entire work to a sub contractor and the sub contractor would procure all materials. In such case, entitlement for any transitional credit in respect of inputs in stock should be determined only in the hands of the contractor. To the extent of work completed, the sub contractor would have already claimed consideration from the builder and thus, if the work done upto 30.06.2017 has already been billed by the sub contractor, there would be no work in progress in the hands of the sub contractor. The sub contractor would be entitled to avail transitional credit only for the stock of inputs lying as such with him.

In the hands of the builder, the unsold flats would be his work in progress and in respect of the materials contained in such work in progress, to the extent of last one year purchases, though ITC is legally entitled, the same can neither be availed by the sub contractor (as it is not a work in progress for him as he had already billed for the completed work on the builder) nor by the builder (as he would not be in possession of any duty paying documents in his name as the purchases are made by the sub contractor).

(Published in www.taxindiaonline.com on 18.08.2017)