

GST on Sale, Transfer or Disposal of Capital Goods (Fixed Assets)

written by TeamKV | September 17, 2021



This article covers the following relevant points related to GST Applicability & Treatment of ITC availed on sale of Fixed Assets:- GST Applicability on Sale of Capital Goods purchased in Pre GST era, Treatment on Sale of Capital Goods purchased after implementation of GST, Liability on sale of Capital Assets on which Input Tax Credit (ITC) is not availed, How to deal with loss/damage of assets where no consideration is received? and Tax treatment on sale/disposal of capital goods in the case when ITC is availed.

Fixed assets are the assets or things purchased for a long-term purpose. In GST law, the term 'Capital Goods' is used for such fixed assets.

Meaning of Capital Goods

*The definition of capital goods is defined under Section 2(19) of the **CGST Act, 2017** which is reproduced below:*

Capital Goods means:

- **Goods**
- *The value of which is capitalized in the books of the*

accounts

- Of the person claiming the input tax credit and
- Which are used or intended to be used for the furtherance of business.

For the purpose of understanding the term capital goods, one must also refer to the definition of Goods first which is defined under section 2 (52) of the CGST Act, 2017. As per Sec 2 (52), "goods" means:

- Every kind of **movable property**
- Other than money and securities
- But includes actionable claims, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

Immovable property (other than plant and machinery), trademarks, customized software would not qualify as capital goods under this act even though these are capitalized in the books of the accounts.

An example of the calculation of GST on the sale of Fixed Assets under different conditions:

Particulars	ITC availed	ITC not availed	ITC availed	ITC not availed
Cost of Capital Goods	8,00,000.00	8,00,000.00	8,00,000.00	8,00,000.00
Input Tax Credit	1,44,000.00	0.00	1,44,000.00	0.00
Sale Amount	3,00,000.00	3,00,000.00	0.00	0.00
Used Life (in Months)	28.00	28.00	28.00	28.00
Useful Life (in Months) (Predefine in GST Act)	60.00	60.00	60.00	60.00

Remaining Life (60-28) (in Months)	32.00	32.00	32.00	32.00
A. Rs. 3,00,000.00 * 18% (Sec.15)	54,000.00	54,000.00	0.00	0.00
B. ITC of Remaining Life (Rs. 1,44,000.00/60 * 32) [Sec.18(6)]	76,800.00	0.00	76,800.00	0.00
GST Payable (A or B w.e. is higher)	76,800.00	54,000.00	76,800.00	0.00

A chart on the Applicability of GST on the sale of Fixed Assets under different conditions:

Sr. No.	Assets purchased in Pre GST / Post GST Era	ITC availed / Not availed at the time of purchase	Assets disposed of intentionally/ Unintentionally (Refer Note: 1)	Consideration received / not received on sale of Asset	GST Applicable / Not Applicable
(a)	Pre GST	Not Availed	Unintentionally	No	Not Applicable
(b)	Post GST	Not Availed	Unintentionally	No	Not Applicable
(c)	Post GST	Not Availed	Intentionally	No (Refer Note 2)	Not Applicable
(d)	Post GST	Availed	Unintentionally	No	Applicable (Refer Note 3)
(e)	Pre GST	Availed	Unintentionally	No	Applicable (Refer Note 3)
(f)	Post GST	Availed	Unintentionally	No	Applicable (Refer Note 3)

(g)	Post GST	Availed	Intentionally	Yes	Applicable
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Note 1: Unintentional disposal means loss or damage of assets due to reasons such as accident, fire, natural calamity, theft, etc, whereas sale or transfer of assets are considered as intentional disposal of Fixed Assets

Note 2: The case where no consideration is involved must be discussed in light of the amendment to the definition of Supply (Section 7 of the Act) made by the **CGST Amendment Act, 2018**. Before the amendment, if any transfer of capital assets was made under the direction of the person, (intentional transfer) the transaction was a supply under the provision of the Act, whether or not consideration was involved.

However, after the amendment, the requirement of consideration is a must. Therefore, it would be right to conclude that where no ITC has been availed, the **transfer of capital goods** without consideration shall not be a supply, and hence no GST should be chargeable.

Note 3: In case of unintentional disposal *such as Damage/Lost Assets, Theft*, ITC availed need to be reversed and will have to be paid as output tax liability.

For the sake of understanding, we will discuss the GST implication on transfer/disposal of capital goods into the following two parts:

1. When Input Tax Credit has availed whether consideration charged or not and

2. When Input Tax Credit has not availed whether consideration charged or not.

1. When the Input tax credit was not availed:

GST implications on capital goods when the input tax credit was not availed depend upon the fact whether consideration was charged for the transfer of the goods or not.

Where CONSIDERATION is involved and ITC may not be availed due to restriction u/s 17 (5) of the CGST Act, 2017, the transaction shall fall within the ambit of supply as per Section 7 (1) (a), and hence, GST shall be chargeable.

And if NO consideration is involved and the activity or transaction is neither specified in schedule I nor an import of service then the activity shall not be a supply within the four corners of the law.

2. When the Input tax credit was availed:

Where CONSIDERATION is involved then the transaction shall fall within the ambit of supply and hence, GST shall be chargeable.

And in case of NO consideration then it is important to recall that the activities mentioned in Schedule I are de-facto considered as supply even if the activities are carried out without consideration. Hence, any permanent transfer of capital assets on which ITC has been availed shall be considered as supply even if the same is carried out without any consideration.

Now we came to know that when a particular transaction or activity becomes liable to GST in both the cases, when the input tax credit is availed and the input tax credit is not availed; whether consideration is involved or not. It can be settled now that when a transaction or activity becomes supply, there is the applicability of GST. Now we will analyze how will GST be paid and is there any specific treatment related to the Input tax credit.

Value on which GST shall be paid in case of the supply of capital goods when ITC has been taken:

As per sec 18(6) of CGST Act, the taxable amount will be:- an amount equal to Input tax credit attributable to remaining useful life OR the tax on the transaction value of such

capital goods determined under section 15, whichever is higher. Provided that where refractory bricks, molds, and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods prescribed under section 15.

In CGST Rules, there are two provisions that refer to the above-mentioned Section 18(6) and prescribes the method for calculating the input tax credit for the said purpose. The first method is prescribed under Rule 40(2) of CGST Rules, 2017, ITC on credit in the case of the supply of capital goods and plant and machinery shall be reduced by the ITC at **five percentage points for every quarter or part thereof**, from the date of issue of invoice for such capital goods or plant and machinery.

Further Rule 44(6) read with Rule 44(1)(b) of the CGST Rules also prescribes the method of determining an amount for the purpose of Section 18(6), by stating that **input tax credit involved in the remaining useful life in months shall be computed on pro-rata basis, taking useful life as five years.**

These two provisions bring two different dishes on a plate. Let us understand this issue with the help of the following example.

Suppose, Mr. A sold his machinery for Rs. 1,26,000/- (inclusive of GST @18% – Rs. 19,220/-) on 11.05.2019 which he purchased on 01.07.2017 for Rs. 2,15,000/- (inclusive of Rs. 32,797/- GST @ 18%).

As per Section 18(6) of the CGST Act, Mr. A has to pay an amount equivalent to higher of the following:

- a. an amount equal to the GST levied on transaction value on supply (sale) of the machinery, that is of Rs. 19,220/-, or
- b. An amount of input tax credit as reduced by such percentage point as prescribed under the rules:

Remarks	Amount to be determined	
	As per Rule 40(2)	As per Rule 44(6)
Useful life	1 Year, 10 Months and 11 Days i.e. 8 Quarters	1 Year, 10 Months and 11 Days i.e. 23 Months
Remaining Useful life	12 Quarters (ignoring a part of the quarter)	37 Months (ignoring a part of the month)
ITC Reversal for remaining Useful life	$(32797 * 5\% * 12) = ₹19,678.00$	$(32797 * 37\%) = ₹20,225.00$
Tax as per Section 15	₹19,220.00	₹19,220.00
Sec. 18 (6): Higher of ITC Reversal or Tax Payable as per Sec. 15	₹19,678.00	₹20,225.00

From the above illustration, it can be understood that the two provisions produce two different results when the quantum of ITC reversal is computed. As per Rule 40(2), ₹19,678 shall be payable on the other hand ₹20,225 shall be payable according to Rule 44 (6). But Rule 44 (6) seems more legitimate in order to avoid any dispute in the future with the department.

However, it is desirable that appropriate clarification is issued by the CBIC in order to obviate ambiguities.

Rule 44(6) CGST Rules:

It provides that the amount of input tax credit for the purposes of subsection (6) of section 18 relating to capital goods shall be computed on a pro-rata basis, taking the useful life as five years. **The amount shall be determined separately for an input tax credit of central tax, State tax, Union territory tax, and integrated tax.**

Provided that where the **amount** so determined **is more than the tax** determined on the transaction value of the capital goods, the **amount** determined **shall form part of the output tax liability** and the same **shall be furnished in FORM GSTR-1.**

Value on which GST shall be paid when ITC has not been taken:

As discussed, in case of transfer of capital goods for consideration on which ITC has not been availed shall be considered as supply under the Act and Tax is to be paid on the transaction value itself as the amount of ITC availed is Zero.

“Sec 18 (6) of the CGST Act, 2017 triggers only there is a SUPPLY of the “capital goods” and ITC has been availed on it.”

For instance, in the case of the sale of a motor vehicle where ITC has not been taken due to a restriction u/s 17 (5) then the said section will not applicable here.

Margin Scheme for valuation of capital goods:

There is a margin scheme concept under GST which was implemented for a dealer dealing in second-hand goods, who does not claim the input tax credit on the goods purchased and who sells the goods as such or after minor processing which does not change the nature of the goods. The margin scheme was made applicable to all taxpayers on the sale of the motor vehicles held as capital assets and where input tax credit has been availed vide **Notification 8/2018- Central Tax (Rate) dated 25 January 2018.**

(i) In case of a registered person who has claimed depreciation under section 32 of the Income-Tax Act, 1961 (43 of 1961) on the said goods, the value that represents the margin of the supplier shall be the **difference between the consideration received for supply of such goods and the depreciated value of such goods on the date of supply**, and where the margin of such supply is negative, it shall be ignored; and

(ii) In any other case, the value that represents the margin of the supplier shall be, the difference between the selling price and the purchase price, and where **such margin is**

negative, it shall be ignored.

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