

Haryana Government
Excise and Taxation Department

Dated the 23rd January, 2025

Subject: Clarification on availability of input tax credit as per clause (b) of sub-section (2) of section 16 of the Haryana Goods and Services Tax Act, 2017 in respect of goods which have been delivered by the supplier at his place of business under Ex-Works Contract-reg.

Reference has been received from automobile sector seeking clarification on availability of input tax credit (hereinafter referred to as "ITC") as per clause (b) of sub-section (2) of section 16 of the Haryana Goods and Services Tax Act, 2017 (hereinafter referred to as "HGST Act") in respect of goods which have been delivered by the supplier at his place of business under Ex-Works Contract.

1.2 It has been stated that in automobile sector, the contract between the automobile dealers and the Original Equipment Manufacturers (OEMs) is generally an Ex-Works (EXW) contract, and as per the terms of the contract, the property in goods (i.e. vehicles) passes to the dealer at the factory gate of the OEM, when the goods are handed over to the transporter at the instance of the dealer, and the delivery on the part of the OEM is complete at his factory gate. The transport may be arranged by the OEM on behalf of the dealer and where insurance is arranged, it may also be done on behalf of the dealer. Any claim in case of loss has to be lodged by the dealer. The dealer also duly accounts for the invoice in his books of accounts on such delivery of the vehicles at the factory gate of the OEM. The dealer avails

ITC on the date the vehicles are billed to him and handed over to the transporter by the OEM at his factory gate. However, some field formations are taking a view that ITC can be availed by the dealer only after the vehicles are physically received by him at his business premises and show cause notices have been issued to a number of dealers, demanding tax for wrongful availment of ITC for contravention of provisions of clause (b) of sub-section (2) of section 16 of the HGST Act.

2. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Commissioner of State Tax, in exercise of its powers conferred by section 168 of the HGST Act, hereby clarifies the issue as below.

3. Sub-section (2) of section 16 of the HGST Act is a non-obstante clause to section 16 of

the HGST Act which enlists the conditions, failing which the registered person is not entitled to ITC in respect of supply of goods or services or both. One of the conditions as per clause (b) of the said sub-section (reproduced below) is that a registered person is not entitled to claim ITC in respect of any supply of goods or services or both unless he has “received” the said goods or services or both. The Explanation to the said clause provides for deemed receipt of goods and services in certain scenarios.

“Section 16. Eligibility and conditions for taking input tax credit.

...

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, -

...

*(b) he has **received** the goods or services or both.*

Explanation.- For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services-

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person;

...”

3.1 From a plain reading of the clause (b) of sub-section (2) of section 16 of the HGST Act, it is quite apparent that there is no reference of any particular place where goods are required to be “received” by the registered person. This is in contrast to the erstwhile Central Excise regime, where the provisions contemplated physical receipt of the goods at the factory of the manufacturer for taking CENVAT credit on the said goods. In most of the State VAT Acts, the provisions related to credit of the input tax did not have any explicit mention of physical receipt of goods at any particular place and input tax credit was allowed on purchase of goods.

3.2 Explanation to clause (b) of sub-section (2) of section 16 of the HGST Act provides that the goods would be deemed to have been “received” by the registered person for the purpose of this clause, where:

- a) the goods are delivered by the supplier to a recipient or to any other person on the direction of such registered person, whether acting as an agent or otherwise;
- b) such direction may be given before or during movement of goods; and
- c) the goods may be delivered either by way of transfer of documents of title to goods or otherwise.

3.2.1 The said Explanation provides that where goods are delivered by the supplier to any other person, whether acting as an agent or not, upon the direction of the registered person, and where such delivery occurs either through transfer of documents of title to goods or otherwise, the registered person is deemed to have “received” such goods for the purpose of the clause (b) of sub-section (2) of section 16 of HGST Act. Accordingly, in cases where goods are delivered by the supplier to the registered person, either directly or to any other person on the directions of the said registered person, the registered person shall be considered to have “received” the said goods for the purpose of clause (b) of sub-section (2) of section 16 of HGST Act.

3.3 In the instant case, as per the terms of the EXW contract between the dealer and the OEM:

- a) the goods are being handed over by the OEM to the transporter at his factory gate for onward transmission to the dealer;
- b) transport is arranged by OEM on the behalf of dealer; and
- c) if insurance is arranged, it is done on the behalf of dealer and any claim in case of loss has to be lodged by the dealer.

3.3.1 In such a scenario, the property in the said goods can be considered to have been passed on to the dealer by the OEM upon handing over of the said goods to the transporter at his factory gate, meaning thereby that the goods can be considered to have been delivered to the registered person (the dealer), through the transporter, by the supplier (the OEM) at his factory gate and the supply of the said goods can be considered to have fructified at the factory gate of the OEM, even though the goods may be physically received by the registered person (the dealer) after the transit period. Accordingly, it is clarified that as per Explanation to clause (b) of sub-section (2) of section 16 of HGST Act, the registered person (the dealer) can be

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considered to have “received” the said goods at the time of such handing over of the goods by the supplier to the transporter, at his factory gate, for their onward transmission to the said registered person (the dealer).

3.4 The same principle is applicable in respect of supply of other goods also where the contract between the supplier and recipient is an EXW contract, and as per terms of the contract, the goods are to be delivered by the supplier to the recipient, or to any other person (including a transporter) on behalf of the recipient, at his (supplier’s) place of business and the property in the goods stands transferred to the recipient at the time of such handing over. In such cases, the said goods can be construed to have been “received” by the said recipient at the time of handing over the said goods to the recipient or to the transporter, as the case may be, as per provisions of clause (b) of sub-section (2) of section 16 of HGST Act.

3.5 It is also mentioned that as per provisions of sub-section (1) of section 16 of the HGST Act, a registered person is entitled to input tax credit only in respect of supply of goods or services or both, **which is used or intended to be used in the course or furtherance of business.** Therefore, the input tax credit may be available to the registered person on such receipt of goods by the said registered person from the supplier at his (supplier’s) factory gate or business premises, subject to fulfillment of other conditions of section 16 and section 17 of HGST Act, including the condition that the said goods are used or intended to be used in the course or furtherance of business by the said registered person.

3.6 It is also to be noted that if the goods are found to have been diverted for non-business purposes at any stage, either before physically receiving the said goods at his business premises or subsequently, the registered person shall not be entitled to input tax credit on such goods in terms of sub-section (1) of section 16 of HGST Act. Further, if at any time after “receiving” the goods, such goods are lost, stolen, destroyed, written off or disposed of by way of gift or free samples, the registered person would not be entitled to the input tax credit in respect of such goods as per provisions of clause (h) of sub-section (5) of section 17 of HGST Act.

4. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Department.

Dated: 20/01/2025
Place:- Panchkula

Ashok Kumar Meena
Excise and Taxation Commissioner-cum-
Commissioner of State Tax, Haryana

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No. 99 /GST-II,
Panchkula, Dated the 23/01/2025

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23/01/25
Dy. Excise and Taxation Commissioner (GST),
Haryana, Panchkula.