Sale of Capital Goods under GST

There has been a lot of talks recently, and confusion as to whether GST has to be paid on sale of capital goods or not. I have tried to clear this by explaining the above aspect in the following scenarios.

1. Capital Goods Supplied for a consideration on which ITC has been availed.

2. Capital Goods Supplied for a consideration on which ITC has not been availed (Including assets acquired before GST Regime).

3. Capital Goods Supplied for NIL consideration on which ITC has been availed.

4. Capital Goods Supplied for NIL consideration on which ITC has not been availed (Including assets acquired before GST Regime).

Let us understand in detail about the tax implications in each scenario.

1. Capital Goods Supplied for a consideration on which ITC has been availed:–

When an capital good on which ITC has been availed is supplied, GST Shall be paid. The immediate question is how to arrive at the GST amount Payable. In this the GST amount payable is higher of the following:–

a. GST on the Transaction Value. or

b. ITC attributable to the remaining life of the asset (out of 5 years or 60 months)*.

Let us take an example to understand this with GST Rate as 18%.

Purchase Price of an Capital Good	8,00,000.00
ITC availed on the Capital Good	1,44,000.00
Used life of Capital Good	28 Months.
Remaining Life of capital Good	32 Months (60-28).
Transaction Value	3,00,000.00

So the GST Payable will be higher of GST on transaction value i.e., 54,000.00 (3,00,000*18%) or

The ITC pertaining to remaining life of asset i.e., 76,800.00 (1,44,000*32/60).

In this scenario it is evident that we have to pay an amount of ₹ 76,800 on supply of the asset.

*As per the Section 18(6) read with Rule 44(6) tax has to be paid if a capital good is supplied before the expiry of 5 years i.e. 60 months.

2. Capital Goods Supplied for a consideration on which ITC has not been availed:-

This is the scenario where all the confusion is cropping up. There are some views that GST has to be paid on supply of Capital Goods only when the ITC has been availed. The confusion is being created by drawing the definition of capital good in to picture. Let us understand the definition first.

Capital Good 2 (19):- "Capital Goods" means goods, the value of which is capitalized in the books of accounts of the person "claiming the input tax credit"…….

On plain reading of the capital good definition we can conclude that GST is payable only on the supply of capital goods on which **ITC** was availed. But let us look into the section 7 of CGST act.

Scope of Supply (Sec.7):- The extract from the definition of scope of supply is as follows

For the purpose of this Act, the expression "Supply" Includes

a. All forms of supply of goods or services or both.

As per section 7, the GST is payable on goods which includes capital goods also. As per the supply definition the relevance of Capital Good definition is not relevant. But the definition of the capital good has to be considered in the-

Schedule II CGST Act, Para 4(a):

Transfer of business assets will be treated as supply of Goods:

*a) where **goods forming part of the assets of a business** are **transferred or disposed** of **by or under the directions of the person carrying on the business** so as **no longer to form part of those assets**, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;*

For invocation of above provision three conditions to be satisfied:

⇒ Any goods forming part of business assets

⇒ transferred or disposed of so as no longer to form part of business assets

⇒ **by or under the directions** of the person carrying on the business

From the above discussion it is evident that if a capital good is supplied for consideration then GST has to payable even though ITC has not been availed on it. The amount of GST payable will be based on the transaction value only and does not depend 5 years or 60 months criteria.

Let us take an example to understand this with GST Rate as 18%.

Purchase Price of an Capital Good	8,00,000.00
ITC availed on the Capital Good	NIL
Used life of Capital Good	28 Months.
Remaining Life of capital Good	32 Months (60-28).
Transaction Value	3,00,000.00

So the GST Payable will be the GST on transaction value i.e., 54,000.00 (3,00,000*18%).

3. Capital Goods Supplied for NIL consideration on which ITC has been availed:-

This is the another scenario where the confusion is there. For understanding this scenario we will again look into the section 7 of CGST act

Scope of Supply (Sec.7):- The extract from the definition of scope of supply is as follows

For the purpose of this Act, the expression “Supply” Includes

a. All forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration……

b. ………

c. The activities specified in Schedule I, made or agreed to be made without a consideration.
As per the Section 7 (a) we may think that a supply without consideration is not a supply but in the Section 7(c) it specifically includes the Schedule I where those transactions will be treated as supply even if the consideration is not there. Let us analyze the Schedule-I.

Entry 1 of the SCHEDULE-I of CGST Act reads as follows:

Permanent Transfer or disposal of business assets where input tax credit has been availed on such assets

By reading the section 7(c) and the Schedule –I it is evident that GST has to be paid on supply of the capital goods for NIL consideration on which ITC has been availed. The next question is amount of GST payable, Let us take an example to understand this with GST Rate as 18%.

Purchase Price of an Capital Good	8,00,000.00
ITC availed on the Capital Good	1,44,000.00
Used life of Capital Good	28 Months.
Remaining Life of capital Good	32 Months (60-28).
Transaction Value	NIL

So the GST Payable will be higher of GST on transaction value i.e., NIL or the ITC pertaining to remaining life of asset i.e., 76,800.00 (1,44,000*32/60).

In this scenario it is evident that we have to pay an amount of ₹ 76,800 on supply of the capital good.

4. Capital Goods Supplied for NIL consideration on which ITC has not been availed:-

This is relatively a better scenario where no confusion is there. The cases when the Capital Good is lost, stolen, damaged in fire, obsolete, given as gift to non-related person, etc., all these cases will come under this scenario. Let us understand by analyzing the section.

Scope of Supply (Sec.7):- The extract from the definition of scope of supply is as follows

For the purpose of this Act, the expression "Supply" Includes

d. All forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration……

e. ………

f. The activities specified in Schedule I, made or agreed to be made without a consideration.
With the above section it is clear that GST is not liable to be paid on supply of capital goods
when we have not claimed the ITC and we have not received any consideration for that supply.

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