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Commissioner of State Tax (GST),  
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Bhavan, Mazgaon, Mumbai-400 010.

**INTERNAL CIRCULAR**  
**(RESTRICTED CIRCULAR FOR OFFICE USE ONLY)**

No. JC/HQ-I/GST/TRAN-1/01/2017-18/ADM-8 Mumbai, Date: 01/09/2018

**Internal Circular No. 23A of 2018.**

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**Subject : Verification of Transitional Credit (TRAN-1)  
claimed under GST in Electronic Credit Ledger.**

**Ref. : Internal Circular No. 1A of 2018 dated 1st January  
2018**

**1. Background:**

- 1.1. An Internal Circular cited at Ref. above was issued to explain briefly the methodology to be followed to verify the transitional credit under existing laws taken to GST Electronic Credit Ledger, as per the provisions of section 140 and 142 of the Maharashtra Goods and Services Tax Act, 2017 (hereinafter referred to as “MGST Act”). The rule 117 and 118 of the Maharashtra Goods and Services Tax Rules, 2017 (hereinafter referred to as “MGST Rules”) provides for the manner in which the Transitional Credit is to be taken under the GST law.
- 1.2. For verification of the Transitional Credit taken to the Electronic Credit Ledger, Economic Intelligence Unit (EIU) has already shared the data with the respective Joint Commissioner of State Tax who in-turn must have shared this data with the respective Nodal Officer(s). The instructions issued earlier clearly stated that the verification of the TRAN-1 credit is to taken in a time bound manner and to be taken to the logical end. This exercise should have been completed at earliest. However, no feedback is received from

concerned Joint Commissioner(s) about the outcome of the verification of the TRAN-1 credit so undertaken.

- 1.3. It is hereby clarified that the MGSTD (State Tax) authorities should only verify the Transitional Credit in respect of MVAT and Entry Tax. In other words, the State Tax Authorities should not undertake the verification of the CENVAT credit pertaining to the Central Excise Act or, as the case may be, the Service Tax Act.
- 1.4. As you all are aware that the date for submission or revision of FORM-GST-TRAN-1 at GSTN portal was finally extended to the 27<sup>th</sup> December 2017. Thus, the tax payers who have taken transitional credit into Electronic Credit Ledger that was pertaining to the MVAT Act or the Entry Tax Act, may have already filed the TRAN-1 and may have adjusted the said credit towards the output liability or may have claimed refund of the same on account of export of goods/services against the payment of Integrated Tax. Therefore, all the Nodal Officer shall forthwith undertake the analysis to identify such tax payers on the basis of the details furnished in FORM-GST-TRAN-1 and collate the same with the information of TRAN-1 credit provided by the Economic Intelligence Unit.
- 1.5. In case, the verification of TRAN-1 credit has remained incomplete, the same shall be completed on or **before 25<sup>th</sup> September 2018.** **The report in this behalf shall be submitted on or before 10<sup>th</sup> November 2018.**
- 1.6. On this backdrop and in order to streamline the process of verification of the TRAN-1 credit the guidelines given hereinafter shall be followed:

**2. Claim of Transitional Credit:** The Transitional Credit under the GST law can be taken under different contingencies given in section 140 and 142 and in the manner given in rules 117 and 118 of the MGST Rules. Each of the contingency given in aforesaid sections is discussed below:

**3. Sub-section (1) of section 140- Credit carried forward in the return:**

- 3.1. The provisions of this sub-section is applicable to all registered taxable persons under GST other than those who have opted for

composition scheme. The said registered taxable person shall be entitled to take in the Electronic Credit Ledger the Input Tax Credit pertaining to the existing law, under following circumstances:

- (a) that the amount of credit so claimed is admissible as input tax credit under MGST Act;
- (b) that the said tax payer has furnished all the returns for the period from January-2017 to June-2017 under existing laws i.e. VAT, Entry Tax, Sugarcane purchase Tax etc.;**
- (c) that the units under PSI Scheme have not claimed the set-off or, as the case may be, refund under rule 79 of the Maharashtra Value Added Tax Rules, 2005.

3.2. The registered taxable person may take into Electronic Credit Ledger under GST, the amount of excess credit carried forward in the return filed for the period ending June-2017. The Input Tax Credit, taken to the Electronic Credit Ledger, under this contingency shall not exceed the amount of excess credit carried forward shown in the return filed for the period ending June-2017.

3.3. Further, the input tax credit as attributed to the inter-State sales, Branch Transfer/Consignment Transfer, or deemed export, sales to Special Economic Zone and where declarations or certificates i.e. Form-C, Form-F, Form-H, and Form-I as provided under the Central Sales Tax Act, 1956 has not been received then to such extent, the tax payer is not entitled to take credit of ITC into Electronic Credit Ledger. This can be explained with the help of the Example given below:

**Example-A**

*(1) Say tax payer "A" has filed the return for the period ending June-2017 and disclosed the excess credit carried forward at Rs. 10,00,000/-. The said tax payer is entitled to take credit into Electronic Credit Ledger upto Rs. 10,00,000/-. It should be kept in mind that in no circumstances the said tax payer could claim such credit in the Electronic Credit Ledger in excess of Rs.10,00,000/-.*

- (2) Needless to state that such credit is further subject to the reduction on account of non-receipt of declarations or Certificates under CST Act, 1956 Viz. Form-C, Form-F, Form-H and Form-I etc. In case the aforesaid forms are partly received and for part amount these declarations/certificates have not been received then the tax payer shall not be entitled to claim the input tax credit as is attributable to such declarations or certificates that have not been received.
- (3) In other words, the example given below, the combined effect would be that the tax payer would be entitled to take the credit of such excess set-off claimed in return for the period ending June-2017 to the extent of Rs. 3,50,000/- and not at Rs. 10,00,000/- i.e. as credit disclosed in the said return would be reduced by Rs. 6,50,000/- on account of non-receipt of the declarations/certificates against which the transactions are subjected to reduced rate or the NIL rate of tax.
- (4) The details of value of transactions and Form-type and amount of **ITC attributable to such sales is given in the TABLE-1 below:**

**TABLE-1**

<b>Sr. No.</b>	<b>Category of Sales where Forms are not received (Rs.)</b>	<b>Form Type</b>	<b>Amount of ITC attributable to such sales Amt. in Rs.</b>
<b>(a)</b>	<b>(b)</b>	<b>(c)</b>	<b>(d)</b>
1.	10,00,000	Inter-State Sales -Form-C	1,00,000
2.	15,00,000	Branch Transfer /Consignment Transfer Form-F	1,50,000
3.	5,00,000	Penultimate export Form-H	1,00,000
4.	10,00,000	In-transit sales	1,50,000
5.	10,00,000	Inter-State sales to unit located in the SEZ.	1,50,000
<b>Total amount of ITC attributable to non-receipt of declarations or certificates.</b>			<b>6,50,000</b>

- 3.4. Thus, it may be seen from the above example that the tax payer is not entitled to take the aforesaid Input Tax Credit (in the Electronic Credit Ledger under GST) of Rs. 6,50,000/- as shown in column (d) above which is attributable to the transactions where the declarations/ certificates are not available with the tax payer as on the date of submission of FORM-GST-TRAN-1.
- 3.5. The Nodal Officer concerned shall verify the details in the return filed for the period ending June-2017 or, as the case may be, for the period 2015-16 and 2016-17 filed under MVAT Act and CST Act (or Audit Report wherever available) i.e. Sales u/s 8(1) i.e. Inter-state sales, deemed Exports and value of Branch Transfers/ Consignment Transfers sent outside the State.
- 3.6. The Input Tax Credit under this category is claimed in the FORM-TRAN-1 TABLE as shown below:
- **5(a)**-Amount of credit carried forward to Electronic Credit Ledger as State tax (Section 140(1) and 140(4)(a));
  - **5(b)**-Details of statutory forms received for which credit is being carried forward. (It may be kept in mind that the information in respect of Statutory forms and declarations is to be given starting from 1<sup>st</sup> April 2015 and ending on 30<sup>th</sup> June 2017.
  - **5(c)**- Amount of credit carried forward to Electronic Credit Ledger as State tax. The details with regards to turn-over of sales/transfer etc. vis-à-vis form pending is given in this Table. This information is also required to be given starting from 1<sup>st</sup> April 2015 to 30<sup>th</sup> June 2017.
- 3.7. In case, after verification of the details as aforesaid or from the data communicated by EIU, the Nodal Officer has noticed that the tax payer has claimed excess credit in the Electronic Credit Ledger vis-à-vis amount in the return for period ending June-2017, then the Nodal Officer, shall call for the information about the credit taken under each Table of TRAN-1. For this Nodal Officer shall issue the notice in FORM-603 and ask the tax payer to submit the requisite details in support of the claim made in the TRAN-1.

- 3.8. The Nodal Officer shall also verify as to whether the said tax payer has taken the ITC in the Electronic Credit Ledger in breach of aforesaid discussion.
- 3.9. On verification, in case, it is observed that the credit is claimed in contravention of the aforesaid provisions, then the credit so attributable to the non-receipt of declarations/certificates, need to be reversed. The said tax payer may be advised to reverse the input tax credit so claimed (TRAN-1 credit) from the MGST credit that may be claimed in the return in FORM-GSTR-3B, to be filed for the subsequent month.
- 3.10. The Nodal Officer will also be required to verify as to whether the said tax payer has filed the application for refund of the MVAT Credit shown excess in the return filed for the period ending June-2017. In case it is noticed so then the refund application need to be rejected. It may be case that the refund is processed and disbursed to the said tax payer, then such tax payer shall be advised to reverse the TRAN-1 credit so claimed, in the return GSTR-3B for the subsequent period.

**4. Sub-section (2) of section 140- Unavailed Input Tax Credit in respect of Capital Goods:**

- 4.1. This sub-section provides that the tax payer may take into Electronic Credit Ledger the un-availed credit in respect of Capital Assets. You may recall that under the provisions of Central Excise Act the CENVAT credit relating to the capital goods was allowed in staggered manner.
- 4.2. However, these provisions are not applicable to MVAT Act as the full set-off/input tax credit in respect of Capital Goods was allowed to be claimed in the month in which such purchases are effected.
- 4.3. Therefore, under this sub-section the tax payer would not be entitled to take any MVAT credit into Electronic Credit Ledger under GST.

**5. Sub-section (3) of section 140- Different contingencies where Input Tax Credit may be claimed in the Electronic Credit Ledger:**

5.1. A registered taxable person as per the provisions of section 140 (3), will be entitled to take into Electronic Credit Ledger, the credit under MVAT Act, in respect of the inputs held in the stock and inputs contained in the semi-finished or finished goods held in the stock as on the 1<sup>st</sup> July 2017, under the following circumstances:

- (1) that registered person was not liable to be registered under the MVAT Act or;
- (2) was engaged in the sales of exempted goods or tax free goods or;
- (3) the goods which have suffered tax at the first point of their sale in the State and the subsequent sales of which are not subject to tax in the State under existing law but which are liable to tax under this Act or
- (4) where the person was entitled to take credit of input tax at the time of sale of goods (Eg. Set-off u/r 52A and 52B of the MVAT Rules, 2005) provided that no set-off in this situation is claimed by the tax payer albeit contrary to the provisions of aforesaid rules.

**5.2. Entitlement of such credit to be taken into Electronic Credit Ledger is subject to the following conditions:**

- (1) such inputs or goods are used or intended to be used for making taxable supplies under this Act;
- (2) the said registered person is eligible for input tax credit on such inputs under this Act;
- (3) the said registered person is in possession of invoice or other prescribed documents evidencing payment of tax under the existing law in respect of such inputs; and
- (4) such invoices or other prescribed documents were issued not earlier than **twelve months immediately preceding the 1<sup>st</sup> July 2017 i.e.** the tax Invoices relied upon this purpose pertains to period between the period July-16 and June-17.

- 5.3. The Input Tax Credit eligible to be taken to Electronic Credit Ledger is mentioned in the Table-7(a) and 7(c) of the FROM-TRAN-1.
- 5.4. The credit under this sub-section can be availed by the tax payers who were effecting the purchases from mega units or units availing the benefits under PSI Scheme and where the set-off is claimed under rule 52A or rule 52B of the MVAT Rules, 2005 provided that in no case the such tax payer has claimed the set-off under said rule which he was not entitled.
- 5.5. In all such cases where the set-off is claimed under aforesaid rules the Nodal Officer shall verify the correctness of the credit taken into Electronic Credit Ledger. In case the credit found to be inadmissible or taken in breach of the conditions given as above, then such credit need to be reversed. The information in this respect may be called by issuance of the notice under MVAT Act in FORM-603. The tax payer may be asked to produce the relevant details in respect of the claim of Transitional Credit taken in the TRAN-1. In case, on verification and scrutiny it is noticed that the tax payer has calmed wrong or excess credit of VAT then the tax payer may be advised to reverse the excess credit so claimed, in the return FORM-GSTR-3B filed for the subsequent month.

**6. Sub-section (4) of section 140- Registered person engaged in the sale of taxable goods as well as exempted goods or tax free goods but these goods are liable to tax under the MGST Act shall be entitled to tax credit claimed in the Electronic Credit Ledger:**

- 6.1. The sub-section (4) of section 140 is divided into 2 parts i.e. clause (a) and clause (b).

**(1) Clause (a):** The tax payer is entitled to take the credit that is shown as excess credit carried forward in the return filed for the period ending June-2017. This aspect has already been explained in the preceding para's pertaining to credit claim under section 140(1) of the MGST Act. The Tax payer can claim said credit under Column 5(a) of the Table of FORM-GST-TRAN-1



**(2) Clause (b):**

- (a) The entitlement of credit under this clause is applicable to the tax payer who was engaged in the sales of taxable as well as exempted (tax free) goods. Such tax payer was entitled to claim the input tax credit under rule 52 of the MVAT Rules, as reduced by the provisions of rule 53 of MVAT Rules.
- (b) Under MVAT Act barring few exceptions, the set-off was allowed to be claimed, in the month in which the purchases are made, and the set-off was reduced in the month in which the tax free sales or exempted sales takes place. In other words, under MVAT Act, there is no prohibition to claim set-off in the month in which purchases are made.
- (c) Hence, under MVAT Act, the tax payer is entitled to claim set-off in respect of the inputs held in the stock or the inputs contained in the semi-finished or finished goods held in the stock in the return filed for the month of June-2017 except in the cases where the inputs contained in semi-finished or finished goods are covered under the immovable property. .
- (d) It may be kept in mind that goods that are held in the stock, the sales of which would take place on or after 1<sup>st</sup> July 2017 and therefore, in respect of the aforesaid goods held in the stock, and there would be no reversal [as required under rule 53(8) of MVAT Rules] of the credit in the subsequent months as the supply of such goods would take place under GST era.
- (e) Under GST, in FORM-GST-TRAN-1, the tax payer can claim the credit of the said input tax, if any, in the Electronic Credit Ledger.
- (f) The Nodal Officer is required to verify as to whether the tax payer has taken the credit into Electronic Credit

Ledger and ask the tax payer to submit the details in this respect.

- 6.2. On this backdrop, the tax payer shall be entitled to take credit of VAT and Entry Tax in respect of inputs held in the stock and inputs contained in semi-finished or finished goods held in the stock (not being immovable property) provided that it meet the necessary conditions given hereinabove as also the provisions of sub-section (3) of section 140 as discussed above. The details of such credit is to be mentioned in the Table-7(a) and 7(c) of the FORM-GST-TRAN-1.

**7. Sub-section (5) of section 140- Credit of VAT and Entry Tax in respect of the inputs received on or after the 1<sup>st</sup> July 2017 but the tax in that respect has been paid by the supplier:**

- 7.1. Sub-section (5) of section 140 provides that a registered person shall be entitled to take, in his electronic credit ledger, credit of VAT in respect of inputs received on or after the 1<sup>st</sup> July 2017 and where the tax in respect of such inputs has been paid by the supplier under the MVAT Act.
- 7.2. The credit of VAT may be taken in the Electronic Credit Ledger provided that the invoice relating to such goods is recorded in the books of account of such person within a period of thirty days from the appointed day i.e. on or before the 30<sup>th</sup> August 2017 or within the period extended by the Commissioner of State Tax. The power to extend the said date is delegated to the Joint Commissioner of ST.
- 7.3. It may be noted that the Nodal Officer need to verify the TRAN-1 details provided in Table 7(b) of FORM-TRAN-1 vis-à-vis invoices on the basis of which such credit is taken and the date of entry of such invoices into books of account. The Nodal officer need to ascertain as to whether the said goods are received within the time limit i.e. on or before 30<sup>th</sup> August 2017 or within such period as may be extended by the Commissioner of State Tax.
- 7.4. Any deviation or excess claim of credit which is taken in breach of aforesaid provisions need to be reversed. It may also be confirmed from the office of the concerned Joint Commissioner as to whether

an extension is given. The details about such extension, if any, given by the Joint Commissioner, shall be kept on record.

7.5. In the event, the tax payer has claimed the said credit in breach of aforesaid provisions then the tax payer may be advised to reverse the said ITC through the return in FORM-GSTR-3B of the subsequent month for which the return is pending.

**8. This part of the Internal Circular explains the credit entitlement of a Builder and Developer under GST: Sub-sections (1) and (6) of section 140-**

**The Transitional Credit Entitlement of a Builder and Developer is explained below:**

8.1. The provisions of this sub-section are applicable to a registered taxable person who was paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under MVAT Act. Thus, tax payers paying taxes under composition scheme @ 1% as per provisions of section 42(3A) of MVAT Act, will be entitled to take the credit of VAT in respect of inputs held in stock as on 30<sup>th</sup> June 2017.

8.2. The tax payer shall be entitled to take into his Electronic Credit Ledger the credit of VAT in respect of inputs held in stock as on 30<sup>th</sup> June 2017, subject to the following conditions:

- (1) such inputs or goods are used or intended to be used for making taxable supplies under GST Act;
- (2) the said registered person is not paying tax under composition scheme (*section 10 of MGST Act*);
- (3) the said registered person is in possession of invoice or other prescribed documents evidencing payment of tax under the existing law in respect of such inputs; and
- (4) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the 1st July 2017 i.e. the tax Invoices relied upon this purpose pertains to period between the period July-16 and June-17.

8.3. The tax payer is required to state the details regarding the inputs held in stock and VAT thereon in Column 7(c) of the Table of FORM-

GST-TRAN-1 indicating therein the value of the goods, VAT/Entry Tax paid, total input tax claimed under earlier law.

8.4. It may be noted that the builders who have opted for composition scheme for payment of VAT under the existing law i.e. either under section 42(3A) of MVAT Act, in such case, was not entitled to take input tax credit including the input tax credit relating to capital goods. Therefore, the builder paying tax under composition scheme, is not entitled to claim transitional credit as per the provisions of sub-sections (1) and (2) of section 140 of the MGST Act, instead such tax payer is eligible to take credit of VAT paid in respect of inputs held in the stock [see section 140(6)], or, as the case may be, the proportionate VAT paid to the extent of the supply made on or after the 1<sup>st</sup> July 2017 determined as per the provisions of section and 142(11)(c) of the MGST Act. On this background, transitional credit that the builder and developer is eligible to take into Electronic Credit Ledger as per the provisions of various sections is discussed below:

**8.5. Claim of Credit Under section 140(1) of MGTS Act:**

- (1) In case a builder was paying taxes as per the provisions of rule 58 i.e. at a normal rate then such builder, shall be entitled to take to GST Electronic Credit Ledger, the credit of VAT shown as excess credit in the return for the period ending June-2017, subject to the fulfilment of conditions provided in the MGST Act.
- (2) In other words, under the circumstances given in Para-(1) above, excess VAT credit shown as per the last VAT return i.e. for period ending June-2017 would be allowed to be taken into Electronic Credit Ledger as per the provisions of section 140(1) of the MGST Act.

**8.6. Claim of Credit under section 140(6) of MGTS Act:**

- (a) In case a builder was not paying the taxes as per rule 58 and instead had opted to pay fixed amount in lieu of VAT i.e. under Composition Scheme [Section 42(3A)] then, such builder would

be entitled to take credit of VAT into Electronic Credit Ledger, in respect of inputs held in stock.

(b) In order to determine the credit of VAT availability to the said Builder and Developer in respect of the inputs contained in semi-finished goods i.e. contained in work in progress; and inputs contained in finished goods, it is necessary to examine the provisions relating to the “Inputs”, “Goods” and section 140(6) of the MVAT Act.

(c) Thus, the provisions of section 140(6) of the MGST Act reads as under:

“(6) A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in **semi-finished or finished goods** held in stock on the appointed day subject to the following conditions, namely:—

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is not paying tax under section 10;

(iii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iv) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of inputs; and

(v) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day

(d) From the above provisions it is clear that the Builder and Developer is entitled to take the credit of VAT into Electronic Credit Ledger in respect of the inputs held in the stock. However, to ascertain the availability of VAT credit in respect of

inputs contained in semi-finished or finished goods one has to examine the definitions of the “inputs” and “goods”.

8.7. For better understanding these terminologies are examined below:

8.7.1. The section 2(59) of the MGST Act defines the term “inputs” meaning thereby any goods other than capital goods used or intended to be used by a supplier in course or furtherance of business.

8.7.2. The section 2(52) of the MGST Act defines the term “Goods” to mean every kind of movable property other than money and securities but includes actionable claim, 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.

8.7.3. The section 140(6) of the MGST Act refers the entitlement of credit of VAT in respect of the **inputs contained in semi-finished or finished goods. Thus, as explained above the term the “inputs” means any goods other than the capital assets. Hence, it is crystal clear that the term “inputs” will not include the capital goods and therefore, the Builder and Developer shall not be entitled to claim the credit of VAT in respect of the capital goods that are held in the stock as on the 1<sup>st</sup> July 2017.**

8.7.4. **Further, it is seen that the term “Goods” does not include a** building under construction being permanently attached to earth i.e. immovable property. The building whether semi-finished or finished and which remains unsold as on 30<sup>th</sup> June 2017 cannot be treated as “goods” being the immovable property to the extent inputs contained in semi-finished or finished goods as on 1<sup>st</sup> July 2017.

8.7.5. The section 2(6) of the Registration Act, 1908 defines the term "immovable property" which includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached

to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass.

8.7.6. **Thus from the above definition the things permanently attached to earth shall mean the immoveable property and hence Building or the work in progress i.e. the inputs contained in semi-finished or finished goods, will not get covered under the term “goods” as defined under the MGST Act and therefore, inputs that are in the nature of work-in progress i.e. contained in semi-finished and finished goods are not “goods” within the meaning and scope of the MGST Act. Due to the aforesaid reasons the tax payer shall not be entitled to claim the VAT credit in that respect.**

8.7.7. To explain this, the provisions contained in SCHEDULE-II Paragraph-5(b) are reproduced below. It reads as under:

**5. Supply of services** The following shall be treated as supply of services, namely:—

(a) -----;

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

8.7.8. Aforesaid aspects if examined in the light of the provisions contained in Paragraph -5(b) of the SCHEDULE-II of the MGST Act it is no doubt clear that the supply of the flats or commercial complex etc. falls under the “construction service” and therefore, the said supply is deemed supply of service and is liable to GST. However, the said Builder and Developer, for the reasons stated hereinabove, shall not be entitled to take the credit of VAT into Electronic Credit Ledger

under GST. In other words, in the case of building construction, the transitional credit of inputs already used in construction and contained in WIP as on 30.06.2017 is not admissible under the GST.

**Example: -**

**(A) Credit entitlement in respect of inputs held in stock**

- (1) Say builder 'ABC' has undertaken construction of a residential complex comprising of 50 flats (Costing at about Rs. 50 Cr.), out of which 10 flats are sold to the prospective buyers and as on 1<sup>st</sup> July 2017 and the balance 40 flats have remained unsold.
- (2) The said builder has received the amount of Rs. 12.5 Cr. towards the sale of 10 flats. The bill in respect of an amount of Rs. 12.5 Cr. has also been issued prior to GST i.e. on or before the 30<sup>th</sup> June 2017. The amount of Rs. 12.5 Cr. received prior to the commencement of GST is liable to VAT. Thus, the Builder has also paid appropriate taxes under MVAT Act @ 1% under the Composition Scheme.
- (3) For better understanding, extent of the credit pertaining VAT available or not available in respect of inputs held in stock and inputs contained in semi-finished goods or finished goods, that may be taken into Electronic Credit Ledger is explained with the help of example given below:

**Table-2**

<b>Sr. No.</b>	<b>Details</b>	<b>Qty. in Bags</b>	<b>Amount in Rs.</b>	<b>VAT @ 13.5%</b>
(1)	Opening Stock of Cement as on 01.07.2016 having cost Rs.300 per Bag	2000	6,00,000	81,000
(2)	Cement purchase during the period 01.07.2016 to 30.06.2017 having cost Rs.300 per Bag	6000	18,00,000	2,43,000
(3)	Cement lying in stock as on 30.06.2017 having cost Rs.300 per Bag.	3000	9,00,000	1,21,500



- (4) It may be seen from the above TABLE that credit of Rs. 1,21,500/- of VAT pertaining to the inputs i.e. 3000 Bags of cement held in the stock as on 30<sup>th</sup> June 2017, may be availed as transitional credit and may be taken into Electronic Credit Ledger i.e. TRAN-1. Provided that the said cement is purchased between the periods starting from the 1<sup>st</sup> July 2016 to 30<sup>th</sup> June 2017 i.e. the invoices are not older than a year.

**(B) Credit entitlement in respect of inputs contained in semi-finished goods or finished goods held in stock**

- (1) As explained in the Para-A above, in order to take the credit of VAT pertaining to inputs contained in semi-finished or finished goods held in stock as on 1<sup>st</sup> July 2017, into Electronic Credit Ledger, it shall be necessary that said credit of VAT pertains to the goods and as such the inputs contained in semi-finished or finished goods are work in progress and therefore are immovable property.
- (2) It is necessary to determine the value that is attributable to inputs contained in semi-finished or finished goods where the VAT credit is not available for taking into Electronic Credit Ledger including the purchases of goods that is contained in work in progress, and the said goods are purchased within one year from the 1<sup>st</sup> July 2017 i.e. on or after 30<sup>th</sup> June 2016.
- (3) For the reasons stated in preceding Para's the Builder and Developer shall not be entitled to claim the credit of VAT pertaining the semi-finished and finished buildings treated as Work-in-progress.
- (4)Aforesaid aspects may be explained with the example. It may be also be kept in mind that as on 1<sup>st</sup> July 2016 there could have been opening stock of cement which could have been used during the period from 01.07.2016 to

30.06.2017. Therefore, to determine the consumption one has to consider the following factors:

- ✓ the opening stock of cement as on 01.07.2016
- ✓ **Add:**
  - (A) the purchases made during the period 01.07.2016 to 30.06.2017.
- ✓ **Less:**
  - (B) the value of stock of cement held as on 30.06.2017.
- ✓ **Consumption:** This would give the value/quantity of the cement consumed during the period 01.07.2016 to 30.06.2017 and contained in the work in progress.
- ✓ **On this basis, the figures in the TABLE above can be illustrated as below:**

**Table-3**

<b>Sr. No.</b>	<b>Details</b>	<b>Qty. in Bags</b>	<b>Amount (Rs.)</b>	<b>VAT @ 13.5% (Rs.)</b>
<b>(a)</b>	<b>(b)</b>	<b>©</b>	<b>(d)</b>	<b>(e)</b>
(1)	Opening Stock of Cement as on 1 <sup>st</sup> July 2017 Rs. 300 per Bag	2000	6,00,000	81,000
(2)	<b>ADD:</b> Cement purchase during the period 01.07.2016 to 30.06.2017 Rs. 300 per Bag	6000	18,00,000	2,43,000
(3)	<b>LESS:</b> Cement lying in stock as on 30.06.2017 @ Rs.300 per Bag.	3000	9,00,000	1,21,500
(4)	Proportionate value of cement contained in Work in Progress for 40 flats. 5000*40/50=4000. Cement pertaining to within one year and beyond one year.	4000	12,00,000	1,62,000
(5)	Cement contained in semi-finished goods or	2000	6,00,000	81,500

Sr. No.	Details	Qty. in Bags	Amount (Rs.)	VAT @ 13.5% (Rs.)
	finished goods in the under construction of 40 flats [2-3] (Where invoice date is within one year period i.e. after 1 <sup>st</sup> June 2016)			
(6)	<b>Cement lying in stock as on 30.06.2017 @ Rs.300 per Bag.</b>	<b>3000</b>	<b>9,00,000</b>	<b>1,21,500</b>

(5) It is seen from the above Table that the transitional credit in respect of the opening stock of cement i.e. 2000 Bags held as on 01.07.2016 and which is contained in work in progress i.e. contained in the semi-finished goods or finished goods, shall not be available, as the invoices for the same would have been more than one-year-old. [Please see condition of section 140(6)(v)]. In other words, the transitional credit as shown in above Table from serial number (1) to (5) **shall not** be available as it pertains to the inputs held in semi-finished or finished goods which are immovable property.

**8.7.9. To conclude that the tax payer that is Builder and Developer shall be entitled to claim the transitional Credit as per the provisions of section 140(6) of the MGST Act, only in respect of the inputs held in the stock and shall not be entitled to take credit of VAT into Electronic Credit Ledger under GST in respect of the inputs contained in the semi-finished or finished goods held in the stock i.e. work in progress.**

8.7.10. Therefore, the transitional Credit that may be taken into Electronic Credit Ledger under GST era in respect of the other inputs held in the stock, such as Steel, Bricks etc., it is necessary to apply aforesaid method in respect of each of

inputs. Needless to say, the credit so determined would vary from case to case.

**8.8. Works Contract activity under GST and liability to pay tax in respect of contracts that are continued on or after 1<sup>st</sup> July 2017:**

**8.8.1. Meaning and scope of term “Works contract” under MGST Act:**

(1) Before touching the subject of the credit entitlement under section 142(11)(c) of the MGST Act, it would be useful to examine the definition of term “works contract” as defined under section 2(119) of the MGST Act. For better understanding the said definition is reproduced below:

*2(119) “works contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract*

(2) It is clear from the aforesaid definition that unlike the MVAT law the “works contract” relates to only the contracts relating to the immovable property and therefore will not cover the contract for undertaking works in relation to moveable property.

(3) As discussed above, under GST law, a contract for construction of flats, commercial complex, building, civil structure etc. is considered as “supply of service”. Please see MGST Act [Schedule II, para 5 clause (b)].

(4) Under MGST Act, the aforesaid “works contract” undertaken by a developer would be a supply of services and the developers liability to pay tax under GST would normally arise at the “time of supply [Sec. 13 of MGST Act] which is earliest of the date of issue of

invoice or the date of receipt of payment, or the date of provision of service etc.

- (5) Examined in the light of the aforesaid provisions, the issue of taxation in relation to the “works contract” under GST would arise in respect of the contracts that are continued even after the date of commencement of MGST Act i.e. on or after 1<sup>st</sup> July 2017. Please see the Chapter XX of the MGST Act [*Transitional Provisions*], provides for different contingencies and the treatment with regards to the claim of transitional input tax credit.

**8.8.2. Credit entitlement as per the provisions of section 142(11)(c) of the MGST Act:**

- (1) It would be worth to examine the provisions of section 142(11)(c) of the MGST Act vis-à-vis liability to pay tax and credit entitlement under GST in respect of construction contracts that are continued on or after 1<sup>st</sup> July 2017.

- (2) The section 142(11)(c) reads as under:-

*“where tax was paid on any supply, both under the Maharashtra Value Added Tax Act, 2002 and under Chapter V of the Finance Act, 1994, tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed”.*

- (3) Thus aforesaid section provides that where the tax was paid on any supply both under the MVAT Act and under Chapter V of the Finance Act, 1994 then the tax is leviable under MGST Act, in respect of the supply of services that takes place on or after the 1<sup>st</sup> July 2017

and therefore, the works contracts which are continued on or after the 1<sup>st</sup> July 2017 i.e. after the commencement of MGST Act, the said supplier would be liable to pay tax (GST) irrespective of the fact that the said Developer has discharged the liability under MVAT Act, on the value stated in the registered agreement or has paid the tax in respect of the advances received or on billed amount, on or before the 30<sup>th</sup> June 2017.

- (4) It may also be necessary to refer to the provisions of section 42(3A) of the MVAT Act where the developer was given an option to pay the composition amount of 1% of the value specified in the registered agreement or value fixed for payment of Stamp Duty.
- (5) Subsequently, with effect from 1<sup>st</sup> June 2017, Composition the Scheme was amended and accordingly, the developer, was liable to pay 1% of the payment received whether advance or otherwise and whether or not the agreement for sale is registered or not.
- (6) For more clarity, you are requested to go through Notification No. Finance Department Notification No. VAT-1517/C.R.-57/Taxation-1 dated 26<sup>th</sup> May 2017 and the Trade Circular No. 18T of 2017 dated 31<sup>st</sup> May 2017. The Gist of the aforesaid notification and Trade Circular is given below:
- (a) the developer was required to compute the 1% composition amount in case of agreement for sale has not been registered till 31<sup>st</sup> May 2017 but the developer has received the advance. In such scenario the developer was given an option to pay the 1% of the Advance amount received on or

before 31<sup>st</sup> May 2017. This payment was required to be made on or before 30<sup>th</sup> June 2017.

(b) with effect from 1<sup>st</sup> June 2017 to 30<sup>th</sup> June 2017, the developer was required to pay 1% of the Advance Amount received irrespective whether the agreement is registered or not on or after 1<sup>st</sup> June 2017. This amount was required to be paid on or before 21<sup>st</sup> July 2017.

(7) The section 42(3B) of MVAT Act was also amended so as to provide credit of the amount paid earlier i.e. on or before the 30<sup>th</sup> June 2017 vis-à-vis supply that is made on or after the 1<sup>st</sup> July 2017 i.e. during the GST period. In other words, the Developer would be liable to pay GST to the extent of the supply made on or after 1<sup>st</sup> July 2017 and take the credit in proportion to such supply after 1<sup>st</sup> July 2017.

(8) The rule 118 of the MGST Rules provides for the entitlement of a Developer for the proportionate credit in respect of aforesaid contingencies to be taken by the tax payer into his Electronic Credit Ledger. The rule 118 of MVAT Rules reads as under:

***“118. Declaration to be made under clause (c) of sub-section (11) of section 142.- Every person to whom the provision of clause (c) of sub-section (11) of section 142 applies, shall within a period of ninety days from the appointed day, submit a declaration electronically in **FORM GST TRAN-1** furnishing the amount of Value Added Tax that has been paid before the appointed day, on such supplies to which this provision is applicable and the amount of Tax Credit admissible thereon, which is to be carried forward.***

***Explanation-*** The amount of tax credit admissible shall be the amount calculated under sub-clause (ii) of clause (b) of sub-section (3B) of

*section 42 of the Maharashtra Value Added Tax Act, 2002.”*

8.8.3. In the light of the discussion aforesaid, in case of a developer where the contracts are continued on or after the 1<sup>st</sup> July 2017 and such developer desires to take the transitional credit in that respect, the developer was required to file FORM-GST-TRAN-1 on or before the due date i.e. 27<sup>th</sup> December 2017 and give the details in the column 7(c) of the TRAN-1.

8.8.4. **Verification of the TRAN-1 Credit taken into Electronic Credit Ledger by the Developer:**

(1) For verification of the TRAN-1 credit that pertains to scenario where the construction activity is continued after the GST and the payment of tax under Composition Scheme of 1% is paid, it is necessary that the Nodal Officer shall first ascertain as to whether the Developer has filed TRAN-1 and has claimed the credit in column 7(c) of the TRAN-1.

(2) The credit taken by the Developer into Electronic Credit ledger and entitlement for the same may be determined in the light of the aforesaid discussion. To better explain it an example is given below:

Example:

- ❖ Transactions on or before 31<sup>st</sup> May 2017 and where the agreement for sale is registered.

**Table-4**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount in Rs.</b>
1.	Value of the flat and where the agreement is registered.	3,00,00,000
2.	Amount received to Developer	2,00,00,000



<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount in Rs.</b>
3.	Amount on which Service tax is paid under Finance Act, 1994 (Billed amount).	2,00,00,000
4.	VAT paid 1% of the on value stated in the agreement.	3,00,000
5.	Supply made on or after 1 <sup>st</sup> July 2017	1,00,00,000
6.	Liability under GST 1,00,000,000*12%	12,00,000
7.	<b>Less:</b> Input tax credit available (in respect of inward taxable supply (with tax invoice) made on or after 1 <sup>st</sup> July 2017.	4,00,000
8.	Balance GST payable	8,00,000
9.	Credit that may be taken into Electronic Credit Ledger (33% of 3 Lakh i.e. the supply taking place under GST)	99,000
<b>10.</b>	<b>GST payable</b>	<b>7,01,000</b>

❖ Transactions on or after 1<sup>st</sup> June 2017 and where the agreement for sale is not registered or not.

Table-5

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount in Rs.</b>
(1)	Value of the flat (whether registered or not)	1,00,00,000
(2)	Amount received to Developer	50,00,000
(3)	Bill issued by the Developer	60,00,000
(4)	VAT paid 1% on the advances received till 30 <sup>th</sup> June 2017.	50,000
(5)	Value of supply of construction service made on or after 1 <sup>st</sup> July 2017	40,00,000
(6)	Liability to pay GST 40,00,000*12%	4,80,000

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount in Rs.</b>
(7)	Less: Input tax credit available in respect of inward supplies received on or after the 1 <sup>st</sup> July 2017	1,00,000
(8)	Less: Credit of VAT in respect of inputs held in stock.	1,00,000
(9)	Balance GST payable	2,80,000
(10)	Credit that may be taken into Electronic Credit Ledger	0
<b>(11)</b>	<b>GST payable</b>	<b>2,80,000</b>

**9. Statutory actions to be initiated for verification of TRAN-1 credit found in admissible:**

9.1. The Nodal Officer shall undertake the verification of the credit of VAT/Entry Tax taken to the Electronic Credit Ledger under the GST law. The Nodal Officer, shall collate the data received from the EIU and shall verify the VAT Credit taken into Electronics Credit Ledger in the first phase in the cases where the such VAT credit is Rs. 1 Lakh or more.

9.2. In all such cases following shall be verified,-

- (1) The Nodal officer shall first ascertain the VAT credit claim vis-à-vis sections i.e. 140 or 142 of the MVAT Act.
- (2) Accordingly the return filed for the month of period ending June-2017 and amount of VAT credit carried forward in the said return and that of claimed in the Electronic Credit Ledger. In case the said credit found to be in excess of the credit carried forward in the period ending June-2017, a notice in Form-603 shall be issued stating the discrepancy. The tax payer may be asked to explain the said mis-match. (Where the credit is taken based on the excess credit claimed in return filed for period ending June-2017).
- (3) The Nodal Officer shall verify as to whether the tax payer has revised the return and increased the VAT credit amount carried forward. In such cases, the tax payer is entitled to claim the VAT credit that is carried forward in the Original

return, In case such credit is as per the revised return then then the excess credit so taken under GST need to be reversed. The Nodal Officer for this purpose may issue notice in FOMR-603 under MVAT Act and ascertain the aforesaid factual aspects.

- (4) On the basis of the data provided by the EIU and that is available on the SAP portal under BI Launch pad under various reports, the Nodal officer shall take into account the available information and in case there is a mis-match then issue the notice in FORM-603 and call for the information in this respect. On receipt of the information, in case the excess credit is noticed then in the cases other than the claim of credit on account non-receipt of declaration, for recovery of the such excess VAT credit taken into Electronic Credit Ledger under GST, the process of Demand and Recovery as given in section 73 or 74 of the MGST Act need to be undertaken. After providing the opportunity of being heard and the show-cause notice for the same in FORM-GST-DRC-01, the Nodal Officer shall undertake the recovery action and pass appropriate order under the MGST Act.
- (5) In case the mis-match in the VAT Credit taken into Electronic Credit Ledger is due to the non-receipt of the declaration then all such cases shall be brought to the notice of the concerned Joint Commissioner, who in turn through Zonal Additional Commissioner present the cases before the Commissioner and take the permission for assessment in terms of the Notification issued under MVAT Act on 23<sup>rd</sup> February 2018 empowering the Commissioner to select a particular case for assessment. On assessment in respect of the excess VAT Credit taken to the Electronic Credit Ledger the recovery action shall be initiated.

10. The Economic Intelligence Unit has already forwarded the data pertaining to the Transitional Credit claimed by the tax payer in TRAN-1. On aforesaid

background, the Nodal Officer, shall undertake the verification of TRAN-1 credit claimed by the tax payer. For verification of the TRAN-1 credit, instruction given in Internal Circular 1A of 2018 dated 1<sup>st</sup> January 2018, more specifically in Para-2.4.3, need to be followed.

11. All the Additional Commissioner of State Tax and concerned Joint Commissioner of State Tax shall ensure that the verification of TRAN-1 credit is monitored effectively. It shall also be ensured that the assigned cases for verification of TRAN-1 credit shall in no case remain un-attended. Additional CST shall take weekly review of the said exercise.
12. Difficulty, if any, in the implementation of this Internal Circular may please be brought to the notice of the office of the undersigned.

  
(RAJIV JALOTA)

Commissioner of State Tax,  
Maharashtra State, Mumbai.

No. JC/HQ-I/GST/TRAN-1/01/2017-18

Mumbai, Date 01/09/2018

**Internal Circular No. 23 A of 2018.**

Copy forwarded for information to,

- (1) The Joint Commissioner of State Tax, (MAHAVIKAS) with a request to upload this Internal Circular on MGSTD web-site.
- (2) Deputy Secretary, Finance Department, Mantralaya, Mumbai.
- (3) Accounts Officer, Sales Tax Revenue Audit, Mumbai and Nagpur.

  
(Shrikanth H. Umale)

Joint Commissioner of State Tax,  
(HQ)-1, Maharashtra State, Mumbai.