

Northern India Textile Mills' Association

PHD House, Sector 31 A, Chandigarh-160 031

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The Hon'ble Finance Minister of India
New Delhi – 110001

Date: 31.07.2018

Subject: Lapse of Credit on Inputs against outward supplies of fabric as per Notification 20/2018-Central Tax (rate) dated 26.07.2018.

Respected Sir,

The Northern India Textile Mills' Association, popularly known as NITMA is an apex association of North India serving the interest of textile units. All the large textile mills in the Northern part of India are associated with NITMA and the combined turnover of its members is approx 50,000 crores (USD 8 Billion). It was formed in 1958 and represents industry for all policy matters and disseminates information apart from conducting conferences, exhibitions, seminars & workshops.

Above mentioned notification implies that in respect of said goods, the accumulated input tax credit lying unutilized in balance, after payment of tax for and up to the month of July, 2018, on the inward supplies received up to the 31st day of July 2018, shall lapse.

Notified Goods where refund under Inverted Duty Rate was not allowed vide Notification No. 5/2017-Central Tax (Rate) dated 28-06-2017 and Notification No. 44/2017-Central Tax (Rate) dated 14-11-2017 and for which refund shall henceforth be allowed are as under:

Sr. No.	Tariff Item, heading, Sub-heading or Chapter	Description of Goods
(1)	(2)	(3)
1.	5007	Woven fabrics of silk or of silk waste
2.	5111 to 5113	Woven fabrics of wool or of animal hair
3.	5208 to 5212	Woven fabrics of cotton
4.	5309 to 5311	Woven fabrics of other vegetable textile fibres, paper yarn
5.	5407, 5408	Woven fabrics of manmade textile materials
6.	5512 to 5516	Woven fabrics of manmade staple fibres
6A.	5608	Knotted netting of twine, cordage or rope; made up fishing nets and other made up nets, or textile materials
6B.	5801	Corduroy fabrics
6C.	5806	Narrow woven fabrics, other than goods of heading 5807; narrow fabrics consisting of warp without weft assembled by means of an adhesive (bolducs)
7.	60	Knitted or crocheted fabrics (All goods)

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Following implications in this regard need to be comprehended by the trade and Industry:

1. This is going to be a setback for textile sector as this provision is different than the basic settled principle that the right validly earned needs to be maintained. Provision in Section 54(3) of CGST Act as well as in State GST Act to lapse the credit is missing.
2. Unutilized credit will form a part of cost of goods due to lapse of unutilized credit in respect of goods mentioned in the notification as the goods have already been sold minus the unutilized credit the part of recovery of sale proceeds. This credit has not been a part of cost of goods sold as refund was not allowed on these goods but input tax credit was available. Now, with lapse of credit, it will result in total loss which is not recoverable from the customer.
3. It may be worth noticing that returns to the tune of 1 crore (approx) have been filed the date of subject notification, where in the amount has not been claimed as expenditure, though the sizeable part of expenditure was incurred in the year 2017-18. It can be claimed as prior period item in the current year by the assessee and it is apprehended that expenditure shall not be allowed to the assesses. Further, the claim of entire amount as expenditure in current year shall result in complete imbalance in the financials to be reported to the banks and income tax department, resulting in more problems for assessee. The unutilized amount in this regard is running into lakhs and crores and shall substantially affect the direct tax collections also.
4. It may be noted that what has been notified under the notification 5/2017 as amended by 20/2018 is the fabric, the unutilized credit in respect where of includes both the credit of inputs as well as input services. The refund of input services is already not allowed by virtue of section 54(3) Proviso clause (ii) read with Rule 89(5), the above notification shall result in lapse of credit of input services also, which was never the subject of above inverse duty rate refunds. Consequently, industry is going to lose more than it will gain by the said notification 20/2018 dated 26-07-2018.
5. A number of persons are dealing in multiple items which cover not only the items covered by notifications 5/2017 and 20/2018, but also items covered by other HSNs. At present it is not mandatory to segregate HSN wise input tax credit. But the above notification shall result in carrying out the cumbersome process of this segregation which might bring in certain ambiguities on the part of tax authorities.
6. The above notification covers tax liabilities up to July 2018, but it may be noted that section 73/74 allow the determination of tax liability even after 5 years. Once credit gets lapsed under notification 20/2018, whether the subsequent proceedings shall allow restoration of credit and to allow such set off is another debatable point.
7. Prior to above notification, the unutilized credit was available for meeting liabilities of other businesses also, which will no longer be available, with this notification in effect.
8. It may further be noted that notification has been issued in exercise of powers conferred under clause (ii) of the proviso to sub-section (3) of section 54 of the Central Goods and Services Tax Act, 2017, which only allows to notify the goods or service against which

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refund of inverted duty rate shall not be allowed. Though the government well within its power has rescinded the notification issued earlier on the subject, but the said section does not empower the government to decide on accumulated balance of unutilized credit. Hence, by declaring "lapse" of unutilized credit, the executive needs to review this under the law. In this regard, it is worth observing that the Hon'ble Apex Court in the case of **EICHER MOTORS LTD. VERSUS UNION OF INDIA [1999 (106) E.L.T. 3 (S.C.)]** has held that the right validly accrued to the assessee cannot be extinguished by the revenue authorities. Similarly, it was concluded by the Hon'ble Rajasthan High Court in the case of **SHANKESHWAR FABRICS PRIVATE LTD. VERSUS UNION OF INDIA [2002 (142) E.L.T. 42 (RAJ.)] & [2009 (248) E.L.T. 106 (RAJ)]** that the right accrued to the assessee on the date he paid tax on raw materials or inputs and that right would continue until the facility thereto gets worked out. Therefore, in light of the above referred decisions, it has been pronounced by the Courts that right legitimately earned by the assessee cannot be lapsed merely by making an amendment in the law. Consequently, the validity of this provision is under doubt as the government cannot take away right earned by an assessee.

9. There is no mention of one time lapse of credit in GST act. Even in case of goods travelling to exempted category, the incidental credit ,after going to temporary suspension gets revived, once goods come out of slumber of exemption category as per section 18 of the CGST act.
10. Lapse of unutilized balance of credit shall also result in unsold stock existing on 31-07-2018, being charged to tax without corresponding availability of input tax credit.

In view of the above, we humbly request you to kindly consider the above mentioned points and address the same.

Thank You.

With kind regards

Rajiv Garg
President

Copy to:

1. Smt. Smriti Irani, Minister of Textiles
2. Shri. Shwait Malik, Member of Rajya Sabha
3. Shri. Hasmukh Adhia, Secretary Finance, Minister of Finance.