

**Input Tax Credit Refund for Textile Sector**

While introducing GST, one sector which posed one of the biggest challenges for the policy makers was the Textile sector. This sector was seldom taxed in the Indian indirect tax history considering the fact that it generates one of the highest employments in India especially in the unskilled category. However, all this had to change under GST and so it did. Majority of the items produced by textile industry was put under 5 / 12 % rates whereas raw materials and services used by them were under higher tax rates which created a situation of inverted duty structure. Section 54 (3) of the CGST Act provides for refund of excess credits but vide notification 5/2017-CTR dated 28<sup>th</sup> June 2017 refund of such excess credits were specifically debarred for products falling under following HSN codes:

<b>S. No.</b>	<b>Tariff item, heading, sub-heading or Chapter</b>	<b>Description of Goods</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>
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, of 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]

Due to this, persons producing above goods faced huge lock down of capital into credits which were neither usable nor refundable. This fact was aggravated as being a consumer item it was difficult to pass on these rising costs to the end consumer.

All associations and professional bodies represented this issue to the council and in its 28<sup>th</sup> Meeting council took some important decisions. During the press conference where the Finance Minister briefed the media on the decisions taken by the council, he categorically said that credits taken prior to 27.07.2018 would be blocked and credits taken thereafter would only be eligible for refund, he nowhere said that the credits would lapse and no more available.

Based on the decision of the council, board has issued notification 20/2018-CTR dated 26.07.2018 which provides for as under:

1. From 1<sup>st</sup> August 2018 textile units who were under inverted duty structure (as per table above) will be able to claim refund of accumulated credits. Credits taken on or after 1.08.2018 will only be eligible for these refunds.
2. All credits which are lying in balance after discharging liabilities upto 31<sup>st</sup> July 2018 shall lapse.

Step one is inline with what the industry and equity demanded but step two is completely without precedence and lacks legal backing for the reasons enumerated below.

Notification 20/2018-CTR as well as 5/2017-CTR are issued under the powers of section 54 (3) (ii) of the CGST Act. Said section reads as under:

*(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilised input tax credit at the end of any tax period:  
Provided that no refund of unutilised input tax credit shall be allowed in cases other than—*

*(i) zero rated supplies made without payment of tax;*

*(ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully*

*exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:*

*Provided further that no refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty:*

*Provided also that no refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.*

Above section empowers the GST council to recommend and the government to notify those supply of goods or services which shall not be eligible to claim refund of accumulated credits. It does not give any power to lapse legitimately taken credits. It is settled law that notifications are subservient to the provisions of the law and cannot override an Act passed by the parliament.

As per GST law, textile industry was allowed to take credits of all its inputs, input services and capital goods as there was no restriction whatsoever, hence credits taken by them from 1.07.2017 to 31.07.2018 were legally availed. They could not utilise the same as their output supply was taxed at a lower rate.

Supreme Court in the case of **CCE, Pune Vs Dai Ichi karkaria Ltd. 1999 (112) ELT 353 SC** held

*It is clear from these Rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgement thereof. It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. There is no provision in the Rules which provides for a reversal of the credit by the excise authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilised, has to be paid for. **We are here really concerned with credit that has been validly taken, and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is, therefore, infeasible.***

This landmark judgement has been relied upon in many judgements over the years and law was settled to this count.

In view of the above, notification 20/2018-CTR has gone beyond the mandate of law by providing for lapsing of credits taken by the textile industry.

### **Conclusion**

On the one hand this is a welcome move nonetheless, but we do not agree with the phenomenon of disallowance of validly taken ITC. They could have provided that refund of ITC taken on or before 31<sup>st</sup> July 2018 will not be given but making it lapse is against the GST law and its spirit and in our view will not stand judicial scrutiny.

We strongly urge the government to rethink this aspect and correct this anomaly at the earliest.

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