Circular No.56/30/2018-GST

F. No. 354/290/2018-TRU
Government of India
Ministry of Finance
Department of Revenue
Tax Research Unit
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North Block, New Delhi
24th August, 2018

To,

The Principal Chief Commissioners/Chief Commissioners/
Principal Commissioners/ Commissioner of Central Tax (All) /
The Principal Director Generals/ Director Generals (All)

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Madam/Sir,

Subject: Clarification regarding removal of restriction of refund of accumulated ITC on fabrics - reg.

Certain doubts have been raised regarding the applicability and intent of notification No. 20/2018-Central Tax (Rate) dated 26th July, 2018 (which seeks to amend notification No. 5/2017-Central Tax (Rate) dated 28.06.2017) relating to the provision for lapsing of input tax credit accumulated on account of inverted duty structure on fabrics for the period upto the 31st July, 2018.

2. The said notification No. 5/2017-Central Tax (Rate) was issued in exercise of powers vested under section 54 of the Central Goods and Services Tax Act, 2017(CGST Act, 2017). It notifies the items on which refund of accumulated input tax credit on account of inverted duty structure is not allowed. Some of the items notified under this notification are fabrics. A total 10 categories of fabrics covered in the notification are as follows:

S. 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, 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
7.	60	Knitted or crocheted fabrics [All goods]

*Inserted in the month of Sep 17, # Inserted in the month of Nov 17.

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3. In the 28th GST Council meeting, it was decided to remove the restriction of not allowing refund of ITC accumulated on account of inverted duty structure on fabrics with prospective effect on the input supplies received after the date of issue of notification. It was also decided to simultaneously lapse the accumulated ITC, lying unutilised, for the past period, after the payment of GST for the month of July, 2018. Accordingly, to give effect to this decision, the notification No. 20/2018–Central Tax (Rate) has been issued amending notification No. 5/2017-Central Tax(Rate). To keep the accounting simple, it was decided to make these changes effective from the 1st day of August, 2018.

4. Vide the said notification No. 20/2018-Central Tax (Rate), the following proviso has been inserted in notification No. 5/2017-Central Tax (Rate).

"Provided that,-

(i) nothing contained in this notification shall apply to the input tax credit accumulated on supplies received on or after the 1st day of August, 2018, in respect of goods mentioned at serial numbers 1, 2, 3, 4, 5, 6, 6A, 6B, 6C and 7 of the Table below; and

(ii) in respect of said goods, the accumulated input tax credit lying unutilised in balance, after payment of tax for and upto the month of July, 2018, on the inward supplies received up to the 31st day of July 2018, shall lapse.".

5. The doubts raised, with reference to changes made vide notification No. 20/2018-Central Tax (Rate) are as follows:

(1) Whether this notification seeks to lapse all the input tax credit lying unutilised after payment of tax upto the month of July. 2018?

(2) Whether unutilised ITC in respect of services and capital goods shall also be disallowed?

(3) Implication to fabrics like cotton and silk where there was no inverted duty structure?

(4) Whether accumulated ITC in respect of exports shall also be made to lapse?

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6. The matter has been examined. Section 54 of the CGST Act, 2017 provides for refund of accumulated credit on inputs on account of inverted duty structure, i.e., GST rate on inputs being higher than the GST rates on finished goods. However, proviso (ii) to section 54 (3) provides that in respect of notified goods, the refund of such accumulated input tax credit shall not be allowed. Notification No. 5/2017-Central Tax (Rate) has been issued in terms of this provision and it *interalia* prescribes that refund of accumulated ITC on account of inverted duty structure shall not be allowed in respect of fabrics as mentioned in para 2. Therefore, the restriction of refund of accumulated ITC under notification No. 5/2017-Central Tax (rate) dated 28.06.2017 is applicable only in respect of refund of accumulated ITC on inputs. This notification does not put any restriction in relation to the ITC on input services and capital goods.

7. The proviso has to be read with the principal part of the notification. A comprehensive reading of amended notification makes it clear that the proviso seeks to lapse only such input tax credit which is the subject matter of principal notification, i.e. accumulated credit on account of inverted duty structure in respect of stated fabrics. The net effect of clause (ii) in the said proviso is that it provides for lapsing of input tax credit that would have been refundable in terms of section 54 of the Act, for the period prior to the 31st July, 2018, but for the restriction imposed vide said notification No. 5/2017-Central Tax (Rate) and that too to the extent of accumulated ITC lying unutilised after making payment of GST upto the month of July, 2018. In other words, in terms of amended notification, the input

tax credit on account of inverted duty structure lying in balance after payment of GST for the month of July (on purchases made on or before the 31st July, 2018) shall lapse.

8 As the notification No. 5/2017-Central Tax (Rate) does not put any restriction in respect of ITC on input services and capital goods, therefore the proviso now inserted in the said notification No. 5/2017-Central Tax (Rate) vide notification No. 20/2018 does not affect the ITC availed on input services and capital goods.

9. As regards, the legislative power of providing for lapsing of input tax credit, the same flows inherently from the power to deny refund of accumulated ITC on account of inverted structure.

10. Doubts have also been raised as regards the manner of calculating the ITC amount accumulated on account of inverted duty structure on the inputs of said fabrics that would lapse on account of above stated change. It is clarified that for determination of such amount, the formula as prescribed in rule 89 (5) of the CGST rules shall *mutatis mutandis* apply as it applies for determination of refundable amount for inverted duty structure. Such amount shall be determined for the months from July, 2017 to July 2018 [or for the relevant period for such fabrics on which refund was blocked subsequently by inserting entries in notification No. 5/2017-Central Tax (Rate)]. The accumulated input tax credit determined by each supplier using the prescribed formula lying unutilised in balance after making the payment of GST for the month of July, 2018 shall lapse.

Illustrations:

(1) A manufacture who produces only manmade fibre fabrics, had a turnover of Rs 5 crore for the period from July, 2017 to July 2018[or for the relevant period for fabrics on which refund was blocked subsequently by inserting entries in notification No. 5/2017-Central Tax (Rate)]. Tax payable thereon is Rs 25 lakh (@ 5%). Assuming the net ITC availed on inputs, during this period, was Rs 30 lakh. Applying the formula prescribed in rule 89 (5), the accumulated ITC on account of inverted duty structure comes to Rs 5 lakh. In other words, this manufacturer has accumulated Rs 5 lakh on inputs on account of inverted duty structure during the said period. If ITC balance lying unutilized with him is more than this amount, say Rs 10 lakh, the ITC equal to Rs 5 lakh will only lapse. However, if for any reason, the ITC balance

lying unutilized is less than Rs 5 lakh, say Rs 3 lakh, the ITC equal to Rs 3 lakh will lapse.

(2) A manufacture who produces, say, grey manmade fibre fabrics and cotton fabrics, had a turnover of Rs 5 crore and 2 crore respectively for manmade fabrics and cotton fabrics for the months from July, 2017 to July 2018[or for the relevant period for fabrics on which refund was blocked subsequently by inserting entries in notification No. 5/2017-Central Tax (Rate)]. Tax payable thereon is Rs 25 lakh on MMF fabrics and Rs 10 lakh on cotton fabrics. MMF fabric has inverted duty structure while cotton fabric does not have inverted duty structure. Assuming the net ITC availed on inputs, during this period, was Rs 35 lakh, ie,

= {(Turnover of inverted rated supply of goods÷ Adjusted Total Turnover) x Net ITC} – tax payable on such inverted rated supply of goods

*The accumulated ITC on account of inverted duty structure shall be equal to nil (5/7*35-25). Thus no amount shall lapse. However, assuming that in this case the ITC availed on input is Rs 42 lakh, the accumulated ITC on accounted on inverted duty structure is Rs 5 lakh (5/7*42-25)*

The manner of calculation as provided in rule 89(5) would mutatis mutandis apply.

10.1 As illustrated, the application of formula prescribed in rule 89(5) ensures that ITC relating to capital goods and input services does not lapse.

11. However, a manufacturer may have closing stock of finished goods and inputs as on 31.7.2018. A doubt has been raised as to whether input tax relating thereto shall also lapse and concern has been expressed that this would amount to double taxation. It is clarified that the proposed amendment seeks to lapse only such credit that has been accumulated on inputs on account of inverted duty structure. Therefore, in case a manufacturer, whose accumulated ITC is liable to lapse in terms of said notification, has certain stock lying in balance as on 31.7.2018, the input tax credit involved in inputs contained in such stock (including inputs lying as such) may be excluded for determination of Net ITC for the purposes of applying the said formula. For this purpose, the ITC relating to inputs contained in stock may be determined in the manner as provided in S. No. 7 of Form GST ITC-01.

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12. As regards the applicability of said proviso to cotton, silk and other natural fibre fabrics, which do not suffer inverted duty structure, this is clarified that the said condition of lapsing of ITC would apply only if input tax credit on inputs has been accumulated on account of inverted duty structure. The aforesaid formula takes care of this aspect.

13. As regards accumulated ITC in relation to exports, the refund of such ITC on exports is separately determined under rule 89 (4). Application of formula, as prescribed in rule 89(5), ensures that accumulated ITC on exports does not lapse as this formula excludes zero rated supplies. Further notification No. 5/2017-Central Tax(Rate) does not impose any restriction of refunds on zero rated supplies as was also clarified vide CGST circular no. 18/2017-Central Tax dated 16th November, 2017. Hence the proviso has no applicability to the input tax credit relating to zero rated supplies. Accordingly, accumulated ITC on zero rated supplies shall not lapse. This is ensured by application of formula.

14. **The procedure to be followed for lapsing of accumulated input tax credit:** A taxable person, whose input tax credit is liable to be lapsed in terms of said notification, shall calculate the amount of such accumulated ITC, in the manner as clarified above. This amount shall, upon self-assessment, be furnished by such person in his GSTR 3B return for the month of August, 2018. The amount shall be furnished in column 4B (2) of the return [ITC amount to be reversed for any reason (others)]. Verification of accumulated ITC amount so lapsed may be done at the time of filing of first refund (on account of inverted duty structure on fabrics) by such person. Therefore, a detailed calculation sheet in respect of accumulated ITC lapsed shall be prepared by the taxable person and furnished at the time of filing of first refund claim on account of inverted duty structure.

15. Difficulty, if any, in the implementation of this circular should be brought to the notice of the Board.

Yours faithfully,

Rgupta 24/8/18

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