

[TO BE PUBLISHED IN PART II, SECTION 3, SUB-SECTION (i) OF THE GAZETTE OF INDIA, EXTRAORDINARY]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)

Notification No. 20/2018-Central Tax (Rate)

New Delhi, the 26th July, 2018

G.S.R. (E).- In exercise of the powers conferred by clause (ii) of the proviso to sub-section (3) of section 54 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No.5/2017-Central Tax (Rate), dated the 28th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), *vide* number G.S.R. 677(E), dated the 28th June, 2017, namely:-

In the said notification, in the opening paragraph the following proviso shall be inserted, namely:-

“*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.”.

[F.No.354/ 255 /2018-TRU]

(Gunjan Kumar Verma)
Under Secretary to the Government of India

Note: - The principal notification No.5/2017-Central Tax (Rate), dated the 28th June, 2017 was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 677(E), dated the 28th June, 2017 and last amended *vide* notification No. 44/2017-Central Tax(Rate) dated the 14th November, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) *vide* number G.S.R. 1390(E), dated the 14th November, 2017.

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MINISTRY OF FINANCE
(Department of Revenue)

Notification No.5/2017-Central Tax (Rate)

New Delhi, the 28th June, 2017

G.S.R. (E).- In exercise of the powers conferred by clause (ii) of the proviso to sub-section (3) of section 54 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the goods, the description of which is specified in column (3) of the Table below and falling under the tariff item, heading, sub-heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Table, in respect of which no refund of unutilised input tax credit shall be allowed, where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on the output supplies of such goods (other than nil rated or fully exempt supplies).

TABLE

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
7.	60	Knitted or crocheted fabrics [All goods]
8.	8601	Rail locomotives powered from an external source of electricity or by electric accumulators
9.	8602	Other rail locomotives; locomotive tenders; such as Diesel-electric locomotives, Steam locomotives and tenders thereof
10.	8603	Self-propelled railway or tramway coaches, vans and trucks, other than those of heading 8604
11.	8604	Railway or tramway maintenance or service vehicles, whether or not self-propelled (for example, workshops, cranes, ballast tampers, trackliners, testing coaches and track inspection vehicles)
12.	8605	Railway or tramway passenger coaches, not self-propelled; luggage vans, post office coaches and other special purpose railway or tramway coaches, not self-propelled (excluding those of heading 8604)
13.	8606	Railway or tramway goods vans and wagons, not self-propelled

14.	8607	Parts of railway or tramway locomotives or rolling-stock; such as Bogies, bissel-bogies, axles and wheels, and parts thereof
15.	8608	Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical) signalling, safety or traffic control equipment for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields; parts of the foregoing

Explanation. –

(1) In this Table, “tariff item”, “sub-heading”, “heading” and “Chapter” shall mean respectively a tariff item, sub-heading, heading or chapter, as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

(2) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 1975, including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

2. This notification shall come into force with effect from the 1st day of July, 2017.

[F.No.354/117/2017-TRU]

(Mohit Tewari)
Under Secretary to the Government of India



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Sh. Peeyush Goyal

27-07-2018

The Hon'ble Finance Minister of India ,

Sr. Vice President
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Sir,

Vice President
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**Sub: Lapse of Credit on Inputs against outward supplies of fabric
as per Notification 20/2018-Central Tax(rate) dated 26-07-2018**

Chairman
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As per the subject notification:

".....in respect of said goods , the accumulated input tax credit

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lying unutilized 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....."

Joint Secretary
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**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:**



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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]

The industry wishes to bring to your kind notice the following

issues that have arisen from the above notification:



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1. Lapse of unutilized credit in respect of goods mentioned

in the notification shall result in making the unutilized credit the part of cost of goods, which have already been sold without making the unutilized credit the part of recovery of sale proceeds. These credits were never part of our cost of goods sold because though the refund was not being allowed on these goods, the input tax credit could be claimed. The "lapse" of credit shall result in total loss which is not recoverable from the customer.

2. More than 1 crore returns have been filed till the date of subject notification, where in the above amount has not been claimed as expenditure, though the substantial part of it was incurred in the year 2017-18. If the assesses wish to claim it in current year expenditure, it shall be prior period item and it is apprehended that expenditure shall not be allowed to the assesses. Further, the claim of



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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 multiplication of our miseries. It may here be pertinent to note that the unutilized amount in this regard is running into lakhs and crores and shall substantially affect the direct tax collections also.

3. The entire amount of unutilized credit has been promulgated to lapse in respect of goods covered by subject notification. 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. While the refund of input services is already not being allowed by virtue of section 54(3) Proviso clause(ii) read with Rule 89(5), the above



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notification shall result in lapse of credit of input services also, which was never the subject of above inverse duty rate refunds. Hence what is being withdrawn from the hands of the industry is more than what is sought to be awarded by the said notification 20/2018 dated 26-07-2018.

4. 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. The law does not require HSN wise segregation of input tax credit. But the above notification shall result in carrying out the painful and subjective task of this segregation which shall again be subject to whim and fancies of tax authorities.



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5. The above notification though takes care of all tax liabilities up to July 2018, but it may be noted that section 73/74 allow the determination of my tax liability even after 5 years. Once my credit gets lapsed under notification 20/2018 whether the proceedings at subsequent period of time shall allow me restoration of credit to allow such set off is another moot point which requires a lot of mulling.
6. Before this notification, The unutilized credit was available for meeting my liabilities resulting from other businesses also, which advantage we have completely been deprived off.
7. 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



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notify the goods or service against which refund of inverted duty rate shall not be allowed. Though the government well with in its power has rescinded the notification issued earlier on the subject, but the said section does not empower the government to decide and seal the fate of accumulated balance of unutilized credit. Hence by declaring "lapse" of unutilized credit, the executive has exceeded its delegated powers under the law.

8. The scheme of GST law no where envisages the lapse of credit once for all. Even where the goods travel to exempted category, the incidental credit after going to temporary suspension gets revived once goods come out of slumber of exemption category. Section 18 of the CGST law stands testimony to the fact.



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9. 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.

While the Industry welcomes the restoration of refund of fabric
covered by notification 5/2017 as amended by notification
20/2018, the move to declare death knell for unutilized credit is
completely unwarranted.

Thanking You

Yours faithfully,

Manish Aggarwal

Vice President

Jatinder Sharma

Joint Secretary

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Cc: Smt. Smriti Irani, Minister of Textiles

Sh. Shwait Malik, Member of Rajya Sabha

Sh. Hasmukh Adhia, Secretary Finance, Ministry of Finance