

TAX INFO

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Latest update on GST Law: Information regarding **Important Ruling that weavers are not required to lapse ITC** based on the **Judgement given by Gujarat High Court.**

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Weavers are not required to lapse ITC

Name of Petitioner	Shabnam Petrofils Pvt. Ltd
Name of Respondent	Union of India
Court	Gujarat High Court
Date of Judgement	17/07/2019
Order No.	Special Civil Application No. 16213 Of 2018

Facts of the case:

The petitioner is a company registered under the Companies Act, 1956 and is engaged in manufacturing polyester texturized yarn (HSN Code: 5402) and also manufactures polyester woven fabrics and polyester knitted fabrics from polyester partially oriented yarn / polyester texturized yarn (HSN Code: 5402).

According to the petitioners, the impugned Notification No.5/2017 (Central Tax (rate)) dated 28.6.2017 issued by the Government of India with regard to clause (ii) of the proviso to sub-section (3) of section 54 of the Central goods and Service Tax Act, 2017, no refund of unutilized 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 with regard to the goods described in Column No.(3) of the Table. The said notification came into force w.e.f. 1/7/2017.

Thereafter Government of India, Ministry of Finance (Department of Revenue issued Notification No.20/2018- central Tax (Rate) dated 26/7/2018 which extends the restriction on the utilization of unutilized input tax credit for and up to the month of July, 2018 and further states that on the inward supplies received upto 31.7.2018 shall lapse and further states that inward supplies received upto 31st day of July, 2018, shall lapse.

Contention of Petitioner:

It is contended by the learned counsel that the impugned notification is without application of mind inasmuch as the assesseees are losing huge amount of money paid towards input tax credit. It is contended that a registered person's right to claim input tax credit arises from section 16 of the CGST Act. It is contended by the learned counsel that there is no statutory provision under the CGST Act empowering the respondents to issue notifications providing for lapsing of input tax credit.

It is contended that rule can be made or notification can be issued under the guise of section 164 for lapsing input tax credit. It is also contended that power under section 54(3)(ii) of the CGST Act is limited to notify the supplies not entitled to refund of input tax credit accumulated on account of the inverted rate structure. It is contended that the the impugned notifications have exceeded powers delegated under section 54(3)(ii) of

the CGST Act. It is contended that the impugned notification to the extent providing for the lapsing of input tax credit are discriminatory. It is vehemently contended that the input tax credit is as good as tax paid by the assessee and a valid claim of input tax credit under the GST Act creates an indefeasible right in favour of the taxable person.

Reply of Respondent:

It is contended that to reduce the accumulation of ITC with fabrics weavers, the GST council, in its meeting held on 6th October 2017 recommended reduction in GST rate on man-made fiber yarns from 18% to 12% which was notified vide notification No. 35/2017-Central Tax (Rate) dated 13th October 2017. This gave significant relief to the sector and accumulation of ITC got reduced. Subsequently, requests were received from textile industry to relax the said condition to allow refund of accumulated credit. While in the 28th meeting the request to remove restriction on refund of accumulated input tax credit was agreed to by the GST Council. this change was made with prospective effect and a conscious decision was taken by the Council that the input tax credit lying in balance on the date of the notification implementing the new provision, shall lapse. This lapsing of accumulated input tax credit was in the spirit of earlier rate structure which envisaged that refund of accumulated credit was not to be allowed.

He further contended that in terms of the GST Council decision, Notification No. 5/2017-Central Tax (Rate) dated 28th June, 2017 was amended vide Notification No. 20/2018-Central Tax (Rate) dated 26th July, 2018 to allow refund or no on purchases made alter 1st August, 2018 and to lapse the input tax credit on account of inverted duty structure lying in balance after payment of GST for the month of July, 2018 (on purchases made on or before the 31' July, 2018). The power to lapse the input tax credit flows inherently from the power deny refund of accumulated input tax credit on account of inverted duty structure. It is contended that the petitioners even prior to the date of coming into force of the notification were not able to take the benefit of this credit as refund on account of inverted duty structure was blocked. It is contended that allowing the utilization of the credit would have led to allowance of the blocked credit and thus in a way would negate the earlier position of blockage of input tax credit refund. Attention of this Court is invited to circular No. 56/30/2018-GST dated 24.08.2018, wherein all the issues raised by the textile industry were clarified after due consultation with the trade

Judgement:

The impugned Notification dated 26.07.2018 bearing No.20/2018 and Circular dated 24.08.2018 bearing Circular No.56/30/2018-GST to the extent it provides that the input tax credit lying unutilized in balance, after payment of tax for and upto the month of July, 2018, on the inward supplies received upto the 31st day of July, 2018, shall lapse, are hereby quashed and set aside and are hereby declared as ultra vires and beyond the scope of section 54(3)(ii) of the CGST Act, as section 54(3)(ii) of the CGST Act does not empower to issue such notifications and consequently, it is held that the petitioners and members of the petitioners are entitled for the credit and it be granted to them.

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