वर्ष 48 अंक 8
31 अगस्त 2018

मेवाड़ चेम्बर पत्रिका

(मेवाड़ चेम्बर ऑफ कामर्स एण्ड इण्डस्ट्री का मासिक पत्र)

उदयपुर, चित्तौड़गढ़, डूँगरपुर, बाँसवाड़ा, प्रतापगढ़
राजसमन्द एवं भीलवाड़ा का सम्भागीय चेम्बर

मेवाड़ चेम्बर ऑफ कामर्स एण्ड इण्डस्ट्री
मेवाड़ चेम्बर भवन, नागौरी गार्डन, भीलवाड़ा (राज.) 311 001 फोन : 01482-220908, 238948
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2 अगस्त 2018 को राजस्थान लघु उद्योग निगम के अध्यक्ष श्री मेघराज लोहिया का स्वागत करते हुए पूर्वाध्यक्ष श्री एस एन मोदानी।

श्री मेघराज लोहिया का स्वागत करते हुए मानद महासचिव श्री आर के जैन।

विशिष्ठ अतिथि भाजपा जिलाध्यक्ष श्री दामोदर अग्रवाल का स्वागत करते हुए वरिष्ठ उपाध्यक्ष श्री जे के बागडोदिया।

कार्यक्रम में उपस्थित चेम्बर के सदस्यगण।

31 अगस्त 2018 को नितिन स्पिनर्स लि द्वारा सीएसआर के तहत निर्मित गर्ल्स हॉस्टल का उद्घाटन करते हुए माननीय सांसद श्री सुभाष बहेडिया एवं पूर्वाध्यक्ष आर एल नौलखा।

माननीय सांसद श्री सुभाष बहेडिया का उद्घाटन कार्यक्रम में स्वागत ।

MEWAR CHAMBER OF COMMERCE & INDUSTRY

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AFFILIATION

AT THE INTERNATIONAL LEVEL

International Chamber of Commerce, Paris (France)

AT THE NATIONAL LEVEL

Federation of Indian Chamber of Commerce & Industry, (FICCI) New Delhi
Indian Council of Arbitration, New Delhi
National Institute for Entrepreneurship and Small Business Development (NIESBUD), New Delhi.
Confederation of All India Traders, New Delhi

AT THE STATE LEVEL

Rajasthan Chamber of Commerce & Industry, Jaipur.
The Employers Association of Rajasthan, Jaipur.
Rajasthan Textile Mills Association, Jaipur

REPRESENTATION IN NATIONAL & STATE LEVEL COMMITTEES

- All India Power loom Board, Ministry of Textile, Govt. of India, New Delhi
- National Coal Consumer Council, Coal India Ltd., Kolkata
- State Level Tax Advisory Committee, Govt. of Rajasthan, Jaipur
- State Level Industrial Advisory Committee, Govt. of Rajasthan, Jaipur
- Regional Advisory Committee, Central Excise, Jaipur
- Foreign Trade Advisory Committee, Public Grievance, Customs, Jaipur
- DRUCC/ZRUCC of North Western Railways

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जीएसटी की एमएसएमई सेक्टर से सम्बन्धित समस्याओं पर संगोष्ठी

दिनांक 1 अगस्त 2018 को राज्य के उद्योग मंत्री माननीय श्री राजपाल सिंह जी शेखावत की अध्यक्षता में जयपुर में जीएसटी की एमएसएमई सेक्टर से संबंधित समस्याओं पर विचार विमर्श के लिए एक उच्च स्तरीय बैठक का आयोजन हुआ। मेवाड चेम्बर की ओर से मानद महासचिव श्री आर के जैन ने इसमें भाग लेकर लघु एवं मध्यम उद्योगों से संबंधित विषयों को प्रस्तुत किया। उल्लेखनीय है कि जीएसटी कॉन्सिल की आगामी मासिक बैठक केवल एमएसएमई सेक्टर से संबंधित जीएसटी विषय पर ही होगी। इसकी तैयारी में राज्य सरकार की ओर से यह विशेष बैठक आयोजित की गई।

बैठक के अतिरिक्त माननीय उद्योग मंत्री ने श्री आर के जैन से अलग से चर्चा कर इन सभी समस्याओं के बारे में विस्तार से जानकारी ली। अपने प्रस्तुतिकरण में श्री आर के जैन ने सरकार का टेक्सटाइल सेक्टर को एक्यूमलेटेड इनपुट टेक्स क्रेडिट का रिफण्ड देने के निर्णय का आभार व्यक्त करते हुए कहाकि टेक्सटाइल फेब्रिक्स के रिफण्ड के लिए जारी Notification No. 20/2018 Cetral Tax (rate) dated 26th July, 2018 से यह अनिश्चितता बनी हुई है कि 31 जुलाई को शेष रहे स्टॉक के टेक्स का भुगतान इस अवधि में शेष रही इनपुट टेक्स क्रेडिट से होगा या नही। माननीय मंत्री महोदय ने इस विषय में तत्काल ही जीएसटी कॉन्सिल एवं चेयरमेन सेन्ट्रल बोर्ड ऑफ इनडायरेक्ट टेक्स से फोन पर चर्चा की एवं आश्वासन दिया कि शीघ्र ही समाधान के लिए स्पष्टीकरण जारी कर दिया जाएगा।

मंत्री महोदय का ध्यान टेक्सटाइल उद्योग में आईटीसी–04 रिटर्न की अनिवार्यता समाप्त करने के लिए आग्रह किया। उन्होंने मंत्री महोदय को इसकी तकनीकी समस्याओं के बारे में विस्तार से बताया। उद्योग मंत्री ने कहाकि राजस्थान सरकार की ओर से यह विषय पहले भी जीएसटी कॉन्सिल की बैठक में रखा गया है एवं आगामी बैठक में भी इस विषय को पूरे तकनीकी रुप से रखा जाएगा।

14 जुलाई को राज्य सरकार की ओर से आयोजित बैठक में यह आश्वासन दिया गया था कि टेक्सटाइल उद्योग एवं अन्य उत्पाद के लिए इन्ट्रा स्टेट परिवहन में ई–वे बिल की अनिवार्यता को समाप्त किया जाएगा। लेकिन काफी समय निकल जाने के बाद भी संबंधित नोटिफिकेशन जारी नही हुआ है। मंत्री महोदय ने इस विषय में शीघ्र ही कार्यवाही का आश्वासन दिया। जैन ने बताया कि इस विषय पर विशेष रुप से राज्य के वाणिज्यकर आयुक्त श्री आलोक गुप्ता से भी चर्चा की गई एवं श्री गुप्ता ने भी इसका शीघ्र समाधान का आश्वासन दिया। छोटे एवं मध्यम उद्यमियों को निर्यात पर रिफण्ड विलम्ब से मिलने की ओर भी ध्यान आकर्षित किया एवं रिफण्ड के प्रकरण में सभी बिलों की प्रतिलिपियों की अनिवार्यता को समाप्त करने का आग्रह किया। मंत्री महोदय को बताया कि इतनी प्रतिलिपियां अनावश्यक रुप से पर्यावरण पर भी बोझ है। जीएसटी के तहत वर्तमान में ऑडिट की सीमा दो करोड है, जिसे बढाकर 10 करोड करने का, इनवर्टेड ड्यूटी स्ट्रक्चर में Input Services and Capital Goods का रिफण्ड का भी अनुरोध किया।

जीएसटी के तहत ईपीसीजी के तहत आयात होने वाली मशीनरी पर बिना आईजीएसटी भुगतान के आयात की सुविधा 30 सितम्बर 2018 तक ही प्रदान की गई है, मंत्री महोदय को बताया कि कोई भी मशीनरी का आयात लम्बी प्लानिंग करके ही हो सकता है। 30 सितम्बर की सीमा से टेक्सटाइल एवं अन्य उद्योगों में निवेश अवरुद्ध हो रहा है। केपीटल गुड्स आयात के लिए ईपीसीजी के तहत यह छुट कम से कम 2 वर्ष की अवधि के लिए घोषित होनी चाहिए। मंत्री महोदय ने तुरन्त ही संबंधित अधिकारियों को इस विषय में विस्तृत नोट बनाकर देने के निर्देश दिये।

जीएसटी के तहत इनपुट टेक्स क्रेडिट को रिवर्स करने पर 24 प्रतिशत ब्याज लिया जा रहा है, जबकि पुराने एक्साइज प्रावधानों में केवल उपयोग मे ली गई क्रेडिट पर ही ब्याज लिया जाता था। साथ ही जीएसटी कॉन्सिल ने मार्च माह में यह निर्णय लिया था कि निर्यात के टेक्स रिफण्ड के संबंधित आवेदन एक माह के बजाय तिमाही भी भरे जा सकते है, लेकिन अभी तक जीएसटी की वेबसाइट पर इसे अपलोड नही किया गया है। मंत्री महोदय ने श्री जैन के विस्तृत प्रतिवेदन एवं विषय की गहराई की समझ की प्रशंसा करते हुए इन सभी विषयों को जीएसटी की बैठक में रखने या आवश्यकता अनुसार संबंधित अधिकारियों से बात करने का आश्वासन दिया।

राजस्थान लघु उद्योग निगम के अध्यक्ष के साथ बैठक

2 अगस्त 2018 को राजस्थान लघु उद्योग निगम के अध्यक्ष श्री मेघराज लोहिया एक दिवसीय यात्रा पर भीलवाडा पधारे। मेवाड चेम्बर की ओर से उनके सम्मान में समारोह आयोजित किया गया। सम्मान समारोह के विशिष्ठ अतिथि भाजपा जिलाध्यक्ष श्री दामोदर अग्रवाल थे। समारोह के प्रारम्भ में चेम्बर के पूर्वाध्यक्ष श्री एस एन मोदानी ने पगडी पहनाकर एवं वरिष्ठ उपाध्यक्ष श्री जे के बागडोदिया, मानद महासचिव श्री आर के जैन ने माल्यार्पण कर स्वागत किया। बैठक में चर्चा के दौरान श्री लोहिया ने कहाकि उच्चतम न्यायालय द्वारा एनसीआर राज्यों में पेटकॉक का उपयोग बन्द करने (सीमेन्ट एवं लाइम उद्योग के अलावा) से राज्य के टेक्सटाइल, ग्लास आदि उद्योग अन्य राज्यों जैसे गुजरात, महाराष्ट्र आदि के मुकाबले प्रतिस्पर्द्धा में पिछड गये है। राज्य के टेक्सटाइल को इसके लिए कानून सम्मत एवं तकनीकी आधार लेकर उच्चतम न्यायालय में अपना पक्ष रखना चाहिए। राज्य सरकार

उद्योगों के उचित हित के लिए सदैव सहयोग करने के लिए तैयार है। उन्होंने कहा कि उच्चतम न्यायालय ने इस आधार पर पेट कॉक पर प्रतिबन्ध लगाया है कि इसके जलने से सल्फर निकलता है, जो कि पर्यावरण के लिए हानिकारक है। सीमेन्ट एवं लाइम उद्योग में लाइम सल्फर को सौंख लेता है एवं इसी वजह से उसे छुट दी हुई है, टेक्सटाइल उद्योग को भी अपने बॉयलर आदि में सल्फर को सौंखने के संयन्त्र लगाकर इस आधार पर अपना पक्ष रखना चाहिए। प्रदुषण नियन्त्रण बोर्ड का भी यह मत है कि अगर उद्योगों के पास ऐसी तकनीक है, जिससे पर्यावरण को नुकसान नही हो तो विचार किया जा सकता है।

आरटीएमए के चेयरमेन एवं चेम्बर के पूर्वाध्यक्ष श्री एस एन मोदानी ने बताया कि प्रोसेस हाउसों में भी पेट कॉक के साथ लाइम स्टोन को जलाया जाता है साथ ही अब तो प्रदुषण नियन्त्रण बोर्ड उद्योगों से निकले हुए धुंआ/एमीशन की ऑनलाइन एवं तिमाही मॉनिटरिंग होती है, साथ ही राजस्थान में कोल या अन्य फ्यूल उपलब्ध नही है एवं राज्य सरकार ने पेट कॉक को राज्य के फ्यूल के रुप में भी घोषित किया हुआ है। भीलवाडा, बांसवाडा, पाली जैसे टेक्सटाइल केन्द्र दिल्ली से बहुत दूर है एवं यहां का धुंआ दिल्ली तक नही जाता है। पूरे विश्व के आंकडे देखे तो चीन, रुस आदि देशों में पेट कॉक का उपयोग भारत से ज्यादा हो रहा है। चेम्बर के मानद महासचिव श्री आर के जैन ने कहाकि राज्य सरकार रिफाइनरी प्रोजेक्ट ला रही है एवं पेट कॉक इसका बाई–प्रोडक्ट होगा। पेट कॉक का उपयोग प्रतिबन्धित होने से रिफाइनरी प्रोजेक्ट ही संकट में आ जाएगा।

जुलाई 2018 तक की इनपुट क्रेडिट नही होगी लैप्स

केन्द्रीय वित्त मंत्रालय की ओर से बीते दिनों आईटीसी रिफण्ड को लेकर जारी की गई अधिसूचना में 31 जुलाई 2018 तक के प्राप्त माल के टेक्स पर किसी भी प्रकार का रिफण्ड नही देने के संदर्भ में 3 अगस्त 2018 को केन्द्रीय वित्त मंत्री माननीय श्री पीयूष गोयल ने औद्योगिक संगठनों के साथ आयोजित विडियों कांफ्रेसिंग में इस मुद्दे को लेकर स्पष्ट किया कि टेक्सटाइल क्षेत्र में 31 जुलाई 2018 तक एकत्रित क्रेडिट लेप्स नही होगी। केवल इसका रिफण्ड उपलब्ध नहीं होगा। उद्यमी एकत्रित क्रेडिट को आगे के टेक्स भुगतान में काम में ले सकेगा।

मेवाड चेम्बर की ओर से इस विषय में केन्द्रीय वित्त मंत्री एवं राजस्व सचिव के स्तर पर लगातार इस विषय को उठाया जाता रहा है। केन्द्र सरकार की ओर से इस विषय में 24.08.2018 को स्पष्टीकरण जारी कर दिया गया है।

मेवाड चेम्बर के प्रयास रंग लाये–जोबवर्क में 50 किमी तक की दूरी में ई–वे बिल से मुक्ति

6 अगस्त 2018 को राज्य सरकार ने नोटिफिकेशन जारी कर जोब के लिए भेजे जाने वाले माल, एक जोबवर्कर से दूसरे जोबवर्कर को भेजने एवं जोबवर्क के बाद वापस भेजने वाले माल को 50 किमी तक की दूरी में ई–वे बिल से मुक्त कर दिया है। इसमें टेक्सटाइल के अतिरिक्त सभी तरह के उत्पाद शामिल है एवं किसी भी मूल्य तक के जोब वर्क के माल को मुक्त किया गया है।

मेवाड चेम्बर की ओर से मानद महासचिव श्री आर के जैन ने बताया कि पूरे राज्य में टेक्सटाइल उत्पाद को इन्ट्रा स्टेट परिवहन में ई–वे बिल से मुक्त करने के लिए पिछले कई समय से प्रयासरत रहा है। 1 अगस्त 2018 को जयपुर में राज्य के उद्योग मंत्री माननीय श्री राजपाल सिंह शेखावत एवं वाणिज्यकर आयुक्त श्री आलोक गुप्ता के साथ हुई बैठक में माननीय मंत्री महोदय ने इस पर गम्भीरता से विचार कर शीघ्र ही नोटिफिकेशन जारी करने का आश्वासन दिया था। मेवाड चेम्बर ने जारी नोटिफिकेशन के लिए माननीया मुख्यमंत्री श्रीमति वसुन्धरा राजे, उद्योगमंत्री माननीय श्री राजपाल सिंह शेखावत, राजस्व सचिव श्री प्रवीण गुप्ता, वाणिज्यकर आयुक्त श्री आलोक गुप्ता, वित्त विभाग में विशेषाधिकारी श्रीमति मीनल भौंसले के प्रति आभार व्यक्त करते हुए कहाकि मध्यप्रदेश, गुजरात, महाराष्ट्र, पश्चिम बंगाल, तमिलनाडू, बिहार राज्यों की तरह टेक्सटाइल उद्योग को पूरे राज्य में परिवहन के लिए ई–वे बिल से मुक्त किया जाना चाहिए।

मेवाड चेम्बर के प्रतिनिधिमण्डल की व्यक्तिगत मुलाकात

दिनांक 21 अगस्त 2018 को मेवाड चेम्बर के प्रतिनिधिमण्डल ने जयपुर जाकर उद्योगमंत्री माननीय श्री राजपाल सिंह शेखावत, राजस्व सचिव श्री प्रवीण गुप्ता, वाणिज्यकर आयुक्त श्री आलोक गुप्ता, वित्त विभाग में विशेषाधिकारी श्रीमति मीनल भौंसले से व्यक्तिगत मुलाकात की एवं ई–वे बिल के संबंध में राज्य सरकार के सहयोग एवं जारी नोटिफिकेशन के प्रति उद्योग जगत की ओर से आभार व्यक्त किया। प्रतिनिधिमण्डल में पूर्वाध्यक्ष श्री आर एल नौलखा, श्री जे सी लढ्ढा, वरिष्ठ उपाध्यक्ष श्री जे के बागडोदिया एवं मानद महासचिव श्री आर के जैन सम्मिलित थे।

जॉब फेयर पर कम्पनी इंटरएक्शन मीट

30 अगस्त 2018 को अपरान्ह में, सूचना प्रौद्योगिक और संचार विभाग राजस्थान सरकार एवं मेवाड चेम्बर ऑफ कॉमर्स एण्ड इण्डस्ट्री के संयुक्त तत्वावधान में कोटा में 7–8 सितम्बर को आयोजित होने वाले जॉब फेयर पर कम्पनी इन्टरएक्शन मीट का आयोजन हुआ। राजस्थान सरकार की ओर से मार्च 2018 से अभी तक जयपुर, सीकर, उदयपुर, बीकानेर, अलवर में 5 जॉब फेयर आयोजित किये गये है, जिनमें 400 से अधिक कम्पनियों ने भाग लिए एवं 1.27 लाख युवाओं ने रजिस्ट्रेशन करवाये गये।

राज्य के सूचना प्रौद्योगिक और संचार विभाग के अधिकारी श्री निशान्त ने बताया कि राजस्थान सरकार ने अब युवाओं को रोजगार हेतु ऑनलाइन रजिस्ट्रेशन की व्यवस्था लागू कर दी है, इससे युवा मीट में विभिन्न कम्पनियों के स्टॉलों पर उद्योगों में उपलब्ध रोजगार के बारे में जानकारी प्राप्त कर साक्षात्कार दे सकते है। जॉब फेयर में केरियर गाइडलाइन्स, लेक्चर, कॉउन्सिलिंग की भी व्यवस्था की गई है। राजस्थान प्रदूषण नियन्त्रण बोर्ड के क्षेत्रीय प्रबंधक श्री राकेश गुप्ता ने भी सम्भागियों को सम्बोधित किया। आरकेसीएल के श्री सज्जन सिंह ने धन्यवाद ज्ञापित किया।

WORKSHOP ON BUSINESS REFORM ACTION PLAN 2018

30 अगस्त 2018 को कारखाना एवं बॉयलर्स निरीक्षण विभाग, राजस्थान एवं मेवाड चेम्बर ऑफ कॉमर्स एण्ड इण्डस्ट्री के संयुक्त तत्वावधान में बिजनेस रिफोर्म एक्शन प्लान 2018 एवं ईज ऑफ डूईंग बिजनेस पर एक कार्यशाला का आयोजन हुआ।

कार्यशाला को सम्बोधित करते हुए, कारखाना एवं बॉयलर्स निरीक्षण विभाग जयपुर के मुख्य निरीक्षक श्री मुकेश जैन ने बताया कि राजस्थान सरकार की पहल पर राज्य में फैक्ट्री एक्ट 1948 में 2014 के बाद ईज ऑफ डूईंग बिजनेस के अनुसार कई महत्वपूर्ण परिवर्तन किये गये है। विद्युत संचालित कारखानों में फैक्ट्री एक्ट लागू होने की सीमा 10 कर्मचारियों से बढाकर 20 कर्मचारी की गई है। इससे लघु एवं मध्यम श्रेणी के कई उद्योगों को राहत मिली है एवं 2829 उद्योग फैक्ट्री एक्ट के दायरे से बाहर किये गये है। साथ ही फैक्ट्री एक्ट कानून के तहत प्रथम मामूली गलतियों पर मुकदमा दायर नही किया जाकर कम्पाउडिंग के प्रावधान किये गये है ताकि उद्योगों को बेवजह परेशान नही होना पडे।

विभाग के वरिष्ठ निरीक्षक श्री हरीश गुप्ता ने कारखाना पुरस्कार योजना के बारे में जानकारी देते हुए कहाकि इस हेतु अंक प्रणाली के आधार पर कारखाना प्रबंधन स्वयं स्वप्रमाणिकरण एवं स्वविवेक के अनुसार ऑनलाइन प्रपत्र भर सकता है। स्टेट रेंकिंग में फिडबैक के महत्व के बारे में बताते हुए उन्होंने उद्यमियों से ज्यादा से ज्यादा ऑनलाइन फिडबैक भरने का अनुरोध किया। उन्होंने बताया कि राजस्थान प्रदेश कई मायनों में देश में अग्रणीय है एवं रिफोर्म क्रियान्वयन में देश में नौवें स्थान पर रहा है। कार्यक्रम के प्रारम्भ चेम्बर के मानद महासचिव श्री आर के जैन ने कारखाना एवं बॉयलर्स निरीक्षण विभाग का औद्योगिक सुरक्षा में महत्वपूर्ण योगदान बताते हुए अतिथियों का माल्यार्पण कर स्वागत किया। वरिष्ठ श्री उपाध्यक्ष जे के बागडोदिया ने स्मृति चिन्ह भैंट किये। कार्यशाला में विभाग के स्थानीय अधिकारी श्री बी पी सारण एवं स्थानीय उद्योगों के फैक्ट्री प्रबंधकों एवं सुरक्षा अधिकारियों ने भाग लिया।

(To be published in Part I Section 1 of the Gazette of India)
Government of India
Ministry of Textiles

REVISED RESOLUTION

New Delhi, the 2nd August, 2018

In supersession with the Government Resolutin of even number dated 29th February 2016

No.6/5/2015-TUFS; The Amended Technology Upgradation Fund Scheme (ATUFS) has been notified by the Ministry of Textiles vide Resolution of even number dated 13.01.2016. In accordance to the said Resolution, the Guidelines of ATUFS i.e. financial and operational parameters and implementation mechanism for ATUFS during its implementation period from 13.01.2016 to 31.03.2022 are laid down as under;

1. Objective:

1.1 In order to promote ease of doing business in the country and achieve the vision of generating employment and promoting exports through "Make in India" with "Zero effect and Zero defect" in manufacturing, it has been decided that the Government would provide **credit linked Capital investment Subsidy (CIS)** under Amended Technology Upgradation Fund Scheme (ATUFS).

1.2. The scheme would facilitate augmenting of investment, productivity, quality, employment, exports along with import substitution in the textile industry. It will also indirectly promote investment in textile machinery (having benchmarked technology) manufacturing.

2. Definitions under the Scheme

2.1 Technology Upqradation means induction of new machinery by an entity engaged in the textile industry with state-of-the-art technology as specified annually by the Technical Advisory-cum-Monitoring Committee (TAMC). Technology lower than the specified one will not be treated as Technology Upgradation.

2.2 Capital Investment Subsidy (CIS) means the subsidy at prescribed rate on credit linked Capital Investment to an entity engaged in textile sector on technology upgradation which will be determined on the basic cost of the specified machinery after its installation and commissioning.

2.3 Basic cost means cost of machinery excluding taxes, duties and any other charges,

2.4 Entity means the following engaged in manufacturing of textiles products:

i. Companies registered under the Companies Act, 1956 as amended from time to time or
ii. Limited Liability Partnership Firms registered under LLP Act 2008 as amended from time to time or
iii. Medium and Small Enterprises registered under MSME Act as amended from time to time or
iv. Companies having Industrial Entrepreneur Memorandum (IEM) with the Department of Industrial Policy and Promotion or
v. The Entities registered with the concerned Directorates of the State Government

2.5 Lending Agency includes all Public Sector Banks, State Financial Corporation's (SFCs), State Industrial Development Corporations (SIDCs), Scheduled Banks, Cooperative Banks and NBFCs registered with RBI and notified by the TAMC,

2.6 Garment/Apparel/Made-ups means wearable or non-wearable stitched fabrics at least two sides of which are stitched using sewing machinery.

2.7 Technical Textiles means textile materials and products used primarily for their technical performance and functional properties and it includes Agrotex Meditex, Mobiltex, Packtex, Sportex, Buildtex, Clothtex, Hometex, Protex, Geotex, Oekotex and Indutex etc

2.8 Unique identification number (DIP) means provisional approval for estimated Capital investment Subsidy (CIS) based on the tentative estimates of specified machineries for technology upgradation.

3. Eligibility for Capital Investment Subsidy

3.1 Capital Investment Subsidy (CIS) will be available only to the entities for investment on technology upgradation in the following segments:

(a) Weaving, Weaving Preparatory and Knitting
(b) Processing of fibres, yarns, fabrics, garments and made-ups
(c) Technical textiles
(d) Garment / made-up manufacturing
(e) Handloom Sector
(f) Silk Sector
(g) Jute Sector

3.2 Specifications of technology for the machinery for all the above segments would be **prescribed annually in advance by the TAMC effective from 1st April of the year,**

3.3 Machinery purchased directly from the machine manufacturers or their authorized agents/suppliers will be eligible for capital subsidy under the scheme.

3.4 For the convenience of the industry, the TAMC shall also get an indicative list of manufacturers of machineries conforming to the specifications of technology prescribed under Para 3.2 with the assistance of a Technical Committee comprising of the members from the industry and experts and headed by the senior most technical officer in the O/o the Textile Commissioner, Textile Commissioner will constitute this Committee. The indicative list will be kept on the website for access by general public and offering comments/suggestion which will be finally approved by the TAMC. This Committee will meet on monthly basis to update the list of such machineries and manufacturers.

3.5 Machinery with technology levels lower than those specified in para 3.2 above will not be eligible for subsidy under the scheme. However, the list of manufacturers and machinery prepared under para 3.3 above will only be suggestive and shall not be treated as exhaustive or complete. Industry will be at liberty to purchase machinery of their choice conforming to the specified technology parameters. In such cases, the Technical Committee mentioned in para 3.4 above will verify those manufacturers and machinery and if found suitable, propose their inclusion in the indicative list of manufacturers by the TAMC,

3.6 The JIT application would be processed on matching the technology specifications as prescribed under para 3.2 but the subsidy disbursement would be done on the basis of inclusion of the manufacturer and machinery in the indicative list prepared and updated under 3.3 and 3.4.

3.7 **Second hand Machinery will not be eligible for subsidy under the scheme.**

3.8 Accessories / attachments / sample machines / spares received along with the machinery or procured from other manufacturers enlisted in the indicative list upto a value of 20% of the basic cost of the machinery will also be eligible for subsidy.

3.9 Machinery eligible for one segment is eligible for other segment(s)/ activity (ies) also unless its eligibility is specifically restricted for a particular segment/ activity.

3.10 Except in case of merger, acquisition, amalgamation or takeover of the entity, the plant & machinery purchased with the subsidy under TUFS shall not be disposed off before 10 years of date of purchase without prior approval of Textile Commissioner.

4. Norms for subsidy:

4.1 Every eligible individual entity (not the unit) will be entitled for reimbursement of Capital Investment Subsidy (CIS) under this scheme, as per the following rates:

Sr.	Segment	Rate of Capital Investment Subsidy (CIS)
1	Garmenting, Technical Textiles	15% subject to an upper limit of Rs 30 crores
2	Weaving for brand new Shuttle-less Looms (including weaving preparatory and knitting), Processing, Jute, Silk and Handloom.10% subject to an upper limit of Rs 20 crores	15% subject to an upper limit of Rs 20 crores
3(a)	Composite unit /Multiple Segments-If the eligible capital investment in respect of Garmenting and Technical Textiles category is more than 50% of the eligible project cost.	15% subject to an upper limit of Rs 30 crores
3(b)	Composite unit/ Multiple Segments-If the eligible capital investment in respect of Garmenting and Technical Textiles category is less than 50% of the eligible project cost	15% subject to an upper limit of Rs 20 crores

4.2 In case the entity had availed subsidy earlier under RRTUFS, it will be eligible to the extent of balance subsidy for new or existing units within the overall ceiling fixed for an individual entity.

4.3 The scheme is credit linked, The capital investment subsidy (CIS) shall be available to the entity on availing term loan from a notified lending agency with minimum 50% of the total eligible machinery cost under the project,

4.4 In order to ensure that the availment of subsidy remains within the prescribed ceiling, the entity will be required to furnish a declaration of the subsidy availed by it under the RRTUFS and the ATUFS.

4.5 CIS will be released to the entity in full in one go on eligible investment after satisfactory installation/commissioning and commencement of production.

5 Norms for the term loan for availing CIS:

5.1 Term loan shall be sanctioned by a notified lending Agency. The lending agencies covered under RRTUFS as per Resolution No. 6/19/2013-TUFS dated 04.10,2013 are automatically covered under this scheme and new lending agency (ies) would require to submit their application in the prescribed format as per Annexure-A to the Textile Commissioner, Mumbai through i-TUFS software in order to notify the lending agency under ATUFS.

5.2 The scheme is credit Jinked. The capital investment subsidy (CIS) shall be available to the entity on availing term loan from a notified lending agency with minimum 50% of the total eligible machinery cost under the project.

5.3 No multiple finance for a project is allowed under this scheme. The beneficiary will be required to give an undertaking in this regard in the prescribed format Annexure B.

5.4 The minimum repayment period of the term loan sanctioned for availing the ' benefit of the scheme shall not be for less than three years including moratorium period for MSME units and not less than 5 years for other categories.

5.5 Unit for which loan has been taken shall function atleast during the repayment period of term loan specified above.

5.6 Foreign Currency Loan: Foreign Currency Loan availed from overseas branch of the Indian Bank/ foreign bank having Indian branch will be eligible for benefits under this scheme. However, the loan account should be operational from the

Indian branch also so as to make it possible to transfer the subsidy amount in Indian Rupee into the account of the applicant in the Indian branch. Conversion of Rupee Term Loan (RTL) into Foreign Currency Loan (FCL) and vice-versa is permitted.

5.7 The outstanding principal loan amount can be transferred from one lending agency to another lending agency subject to the condition that portfolio remains unchanged.

6. Sanction date:

6.1 The sanction date shall be the date of the letter of the lending agency through which sanction of the loan was communicated to the entity.

6.2 In case the term loan is sanctioned by a lending agency and thereafter the lending agency distributes / down-sells the term loan to other lending agency (ies) or has sanctioned term loan under consortium finance, the date of sanction of the term loan shall be as under;

(i) In case of down-sailing the term loan, the date of loan sanction letter of the first lending agency, which has sanctioned the term loan initially, shall be relevant date

(ii) In case of consortium finance, date of loan sanction letter of the fast lending agency in the consortium shall be the relevant date.

6.3 In each of the above cases CIS will be disbursed in the account of the entity maintained with each lending agency on pro-rata basis.

6.4 The applicants who applied for UID under RRTUfS in i-TUFS software before the cutoff date i.e. 12 January 2016 but UIDs could not be issued to, them for non availability of funds, will be given one time opportunity to apply for subsidy under ATUFS. They will be able to exercise this option on line within one month of receipt of communication to this effect from the Textile Commissioner.

7 Coverage of investment prior to sanction of the loan:

7.1 Advance payment up to the limit of his own share in the machine cost can be made by the applicant prior to the date of sanction of the term loan.

7.2 Machines purchased on or after the date of sanction of the term loan only shall be eligible for subsidy.

7.3 Purchase date shall be the date when full and final payment is made by the entity for machinery as evidenced by the bank transaction statement or the date of commercial invoice whichever is later.

8 Benefit under other schemes admissible:

Textile units are permitted to avail of benefits of State Government's Schemes, in addition to the benefit provided under this scheme.

9 Merger/ take-over of management of the entity:

In case of merger of the entities or take-over of an entity by another, the new entity will be entitled to get the subsidy, if due, under the scheme subject to the condition that the merger/ take over is either permitted by the Registrar of the Companies or by an order of the Court and the new entity has taken over all the liabilities and assets of the merged/ taken over entity and the respective bank has also transferred the term loan of the earlier entity in the name of the existing entity which has taken over, in such cases, the new entity shall submit a request in the prescribed format as per Annexure-C with all the supporting documents to the Textile Commissioner for changing the profile of the merged entity in i-TUFS software.

10 Implementation mechanism:

The scheme would be implemented by the Textile Commissioner through robust web based software called i-TUFS. Steps involved in implementation of the scheme are indicated below;

10.1 **UID generation process:**

10.1.1 The entity will register in i-TUFS software with the email, mobile number and PAN details through his authorized applicant

10.1.2 The applicant will fill up the information as required in the system and apply for the term loan from the lending agency notified under the ATUFS.

10.1.3 List of notified lending agencies will be given in the information page of i-TUFS and will also be available in the

dropdown menu in the application page of i-TUFS portal. The following shall be ensured while applying for the loan:

i. Tenure of the loan shall be a minimum of three years including moratorium period for MSME units and 5 years for other categories of entities,

ii. Loan shall be minimum 50% of the total eligible machinery cost. List of eligible prescribed specification of technology for all segments will be available in drop down menu of the i-TUFS portal. Besides, the indicative list of the manufacturers will also be available in drop down menu along with the provision of others to accommodate the machinery purchase from outside the indicative list.

iii. As this list is dynamic, the TAMC will update it every month and this list will be dynamic, the software team will keep on updating the list every month in sync with the TAMC decisions.

10.1.4 The application shall be signed off with the digital signature/ Aadhaar based e- sign of the applicant An ATUFS Reference number will be generated for the application and communicated on the mobile number and email,

10.1.5 The application will be received in the INBOX of the fending agency with an SMS and email trigger, Lending Agency will scrutinize the proposal as per their norms, and if, found the project viable, sanction the term loan keeping In view the financial norms under ATUFS as stipulated in Para 5 of the guidelines.

10.1.6 Lending agency will fill in the details of the term loan information in i-TUFS and upload the copy of the final sanction letter with the digital signature of the authorized signatory of the lending agency, An SMS and email will go to the entity about sanction of term loan.

10.1.7 After sanction of the loan the application will reach INBOX of Textile Commissioner and DID will be generated automatically. The entity will be informed about the DID on their registered email and mobile number,

10.1.1 In case of rejection of loan application, information will be sent to the entity on their registered communication details. Any grievance at this stage may be taken up with the lending agency directly. Textile Commissioner will not be responsible for the grievances concerning with lending agencies.

10.1.9 Lending agency will endeavour to complete the process of sanction of term loan within 4 months of receipt of the application. Fortnightly email and SMS reminders will be sent to the lending agency,

10.1.10 Application can also be filed after sanction of term loan by the notified fending agency, (n such case, the applicant shall directly apply for UID in i-TUFS maximum within six months of sanction of the term loan,

10.1.11 Applicant will register in i-TUFS software with his email, mobile number and PAN details. He will fill up the information as required in the system and sign off with his digital signature/ aadhaar based e-sign.

10.1.12 The application will go to the concerned lending agency for verification of the project and loan details. Lending agency will verify the application against the loan documents available with them; upload copy of the final loan sanction order and sign off the verification with the digital signature of the authorized official of the lending agency, The Lending Agency will endeavour to complete the exercise within 2 months of receipt of the application.

10.1.13 In case any discrepancy is observed in the information given by the applicant and the lending agency, the same will be resolved by the O/o Textile Commissioner by taking relevant evidence from the applicant and will intimate the Lending Agency if needed.

10.1.14 Applications successfully verified by the lending agency will reach inbox of Textile Commissioner and DID will be generated automatically. The entity will be informed about the UID on their registered email and mobile number.

10.1.15 UID will be a provisional approval for estimated subsidy. Actual subsidy will be decided on the outcome of Joint Inspection for which procedure is detailed in subsequent paras.

10.1.16 Applications which fail verification test at lending agency level or during data quality check will be rejected. The entity will have the option to apply afresh. Any grievance at this stage may be taken up with the Textile Commissioner in the grievance module created in the i-TUFS, Textile Commissioner will dispose off the grievance within 30 days of receipt of the same.

10.1.17 To ensure that data error shall not creep in the system, i-TUFS software will provide a strong maker-checker, character control and other internal controls in software. However applicant will have to ensure that the data is error free and all requisite documents are uploaded correctly. Error in the applications will lead to rejection of the application.

10.2 **Installation of machinery:**

10.2.1 Subsidy will be available only to the machinery meeting the technology parameters as specified under the scheme.

10.2.2 Only new machinery shall be installed. Second hand machinery will not be permitted under the scheme. Machine shall be purchased directly from the Original Equipment Manufacturer (OEM) or his authorized agent / supplier, in the latter case, a document showing that the Agent / Supplier is authorized by the manufacturer shall be required with the invoice.

10.2.3 Machine name and serial number should be expressly written on the Commercial Invoice/Bill of Lading/Airways Bill/Bill of Entry.

10.2.4 Model number and serial number of machinery shall be clearly indicated on the machine.

10.2.5 Installation and commissioning of the machinery covered under DID shall be done within one year from the date of sanction of term loan. Extension beyond one year may be permitted only on production of documentary proof that the order for machinery was placed within the prescribed timeline i.e one year from the date of sanction of term loan.

10.2.6 Request for JIT will be entertained if the machinery meets the technology specification but the manufacturer is not included in the indicative list. In such case, alert will be generated for the Textile Commissioner office to examine the eligibility of machinery to get included in the list and get it enlisted or rejected in the next monthly meeting of the Technical Committee. This exercise along with the approval of the TAMC should get completed within 45 days,

10.2.7 Fortnightly reminder mails and SMS will go to the entity to file JIT in time. If JIT request is not filed within the prescribed timelines or no request is made for extension, a system generated warning mail and SMS will go to entity 20 days before expiry of timeline that the DID will be cancelled if JIT application is not filed within the deadline, DID will be automatically cancelled if request for Joint Inspection is not filed within the timeline and no further representation in this regard will be entertained.

10.3. Process to file application for Joint Inspection of the entity:

10.3.1 After installation of machinery entity will file online application for joint inspection.

10.3.2 The system will fetch all necessary information from UID of the entity. The applicant will provide following information against each of the machinery at the time of application for JIT;

I. Make and model of the machinery
II. SL. No of the machinery
III. Basic cost of the machinery
IV. Basic cost of Accessories
V. Custom duty paid on machinery
VI. Date of purchase
VII. Proof of purchase (upload Payment receipt/ final invoice)
VIII. Country of origin (In case of imported machines)
IX. Exporting country
X. Date of Bill of lading (Upload Bill of lading)
XI. Date of Bill of entry (Upload Bill of entry)
XII. Date of commissioning of machinery
XIII. Investment made in the project
XIV. Number of persons employed in project
XV. Bank statement showing the payment details

10.3.3 Addition or deletion of machinery data will be permitted at the time of JIT application.

10.3.4 Entity will also provide relevant information for Public Financial Management System (PFMS}registration at this stage for transfer of funds to the unit after JIT is approved.

10.3.5 Software will generate an MIC code for each machine as soon as the above information is provided in the system. MIC code shall be inscribed on the machines and to be verified by the Joint inspection Team during physical inspection.

10.3.6 Through the MIC, details regarding segment, country of origin of machine, state/province code where machinery is installed, manufacturer code, authorized agent code, commercial invoice number bill of entry, bill of lading, machine serial number etc can be deduced,

10.3.7 The applicant will sign off JIT application with his digital signature. The request will go to the concerned Regional Office (RO) of Textile Commissioner. The Textile Commissioner will constitute Joint Inspection Teams (JIT) under ROs of the Textile Commissioner having members from the lending agencies, Industry and from the Textile Research Association to physically verify installation and commissioning of the machineries and recommend eligible subsidy amount to the entity. JIT has to complete physical inspection within 88 days of application for Joint Inspection.

10.4 Submission of JIT report

10.4.1 RO will provide report of Joint Inspection Team the same day or maximum the next day with geo-tagged and time stamped photographs in i-TUFS software. RO will also upload final copy of the invoice duly attested by him and sign off the verification with his digital signature.

10.4.2 The entity will have a view of their JIT report. The unit can represent to Textile Commissioner in case of disagreement with JIT report in the module created in i-TUFS within 15 days. Textile Commissioner will dispose off the representation within 30 days.

10.4.3 The Office of the Textile Commissioner will approve the subsidy claim maximum within 25 working days of filing of JIT report online by RO. For approving the subsidy, the enlistment of the manufacturer or his authorized agent/supplier will be essential.

10.5 Release of the eligible subsidy to the entity's account:

10.5.1 After approval by Textile Commissioner automatic challan will be generated in i-TUFS.

10.5.2 Textile Commissioner will send the challan to the Ministry and Ministry will release the subsidy into the account of the entity within 15 working days of receipt of the Challan in the Ministry.

10.5.3 Full amount will be released in case the applicant has taken loan from one lending agency under ATUFS. In case the applicant has availed down-selling of term loan or consortium financing, the subsidy amount will be credited into the account of the loanee on pro-rata basis.

11 Monitoring mechanism:

The scheme will be administered with a two stage monitoring mechanism i.e. by Technical Advisory-cum-Monitoring Committee (TAMC) and Inter-Ministerial Steering Committee (IMSC).

11.1 Technical Advisory-cum-Monitoring Committee (TAMC):

A Technical Advisory-cum-Monitoring Committee (TAMC) under the Chairpersonship of Textile Commissioner will be constituted with technical experts and the industry covering different segments. The composition and functions of TAMC are given at Annexure-D,

11.2 The TAMC will also monitor the progress of the scheme and apprise and advice the IMSC on all aspects of implementation of the Scheme,

11.3 Sample check of machinery shall be performed by the O/o the Textile Commissioner and the Ministry during the currency of project (Minimum specified duration is 3 years for MSME and 5 years for non MSME units) on regular basis. Depending on the work load, a third party Engineering Consultants) may also be engaged with the approval of the Ministry for this purpose.

11.4 Inter-Ministerial Steering Committee (IMSC)

An IMSC will be constituted under the Chairpersonship of the Minister of Textiles with representatives from relevant Ministries, NITI Aayog, lending agencies, Textile industry Associations etc, IMSC would be responsible for monitoring and formulation of guidelines for effective implementation of the scheme in accordance with the Cabinet Committee on Economic Affairs (CCEA)'s approval The composition and functions of IMSC are given at Annexure-E.

11.5 The IMSC will review the progress of the scheme on half yearly basis and ensure its effective implementation.

12. Provisions for cancellation of UID:

12.1 UID issued under the scheme shall be cancelled in cases where the applicant fails to submit intimation of installation of the machinery within one year from the date of sanction of term loan for undertaking physical verification by a Joint Inspection Team (JIT) unless he is permitted for extension beyond one year by Textile Commissioner on the basis of sufficient documentary proof that the order for machinery was placed within time however installation and commission could not be completed due to circumstances beyond the control of the entrepreneur.

12.2 If the entity decides not to avail the subsidy under the scheme for any reason, it may request for cancellation of the UID in i-TUFS software.

13. Grievance Redress Mechanism:

13.1 i-TUFS has a grievance redress module. Grievances arising due to implementation of the scheme will be redressed by Textile Commissioner in 30 days.

14. Amendment of guidelines:

Any amendment of these guidelines involving financial issues may be done with the prior approval of the Expenditure Finance Committee (EFC). Amendment involving issues other than financial may be made with the approval of the IMSC and in case of urgency it can be amended with the approval of the Chairperson subject to ratification in the next meeting of the IMSC.

15. The resolution issued vide the order of even No dated the 29th February, 2016 on ATUFS will be superseded by this revised resolution.

(Sanjay Sharan)
Joint Secretary to the Government of India
Date: 02.08.2018

"SMT. BHANWARI DEVI NOLAKHA MEMORIAL GIRLS HOSTEL" UNDER CSR PROJECT OF NITIN SPINNERS LTD.

Nitin Spinners Ltd., a leading Textile Manufacturer of Cotton Yarn in India based at Bhilwara, Rajasthan, which exports its products in various countries all over the world.

Its promoters belong to Bhilwara, Rajasthan built a well equipped Girls Hostel at Patel Nagar, Vistar, Bhilwara of approx Rs.4.00 Crores in the name of "Smt. Bhanwari Devi Nolakha Memorial Girls Hostel" under CSR Project of Nitin Spinners Ltd., which was inaugurated on 31st August 2018 by Hon'ble Member of Parliament, Bhilwara - Shri Subhash Bahedia Ji.

Chairman - Shri Ratan Lal Nolkha of Nitin Spinners Ltd. is well known Industrialist and active member of various social and industrial forums, has taken initiative under philanthropic activities to build this Girls Hostel.

The soul moto of the promoters to construct this hostel is for the charity and empowerment of women in the society and to encourage them for higher education.

There are 44 Rooms for the stay of 80 Girls with all ultra modern facilities like Hygienic Food, 24 Hours Lighting, CCTV, Generator, Lady Warden, Excellent Security etc.

Shri V.K.Mansingka, Hon'y Treasurer of Mewar Chamber has been nominated as a member of Zonal Railway Users Consultative Committee (ZRUCC) of North Western Railways by the Ministry of Railways for the period 01.09.2018 to 31.08.2020.

Government of Rajasthan
Commercial Taxes Department
NOTIFICATION

Jaipur, Dated: 06 August, 2018

In exercise of the powers conferred by clause (d) of sub-rule (14) of rule 138 of the Rajasthan Goods and Services Tax Rules, 2017, hereinafter referred to as the "said Rules", I, Alok Gupta, Commissioner of State Tax, Rajasthan, after consultation with the Chief Commissioner of Central Tax, Jaipur Zone, hereby notify that no e-way bill shall be required to be generated for the intra-state movement of goods in the State of Rajasthan, in respect of goods mentioned in column (3) of the Table below, when the movement of said goods commences and terminates within the area and for the purpose stated in column (2) of the said table for the consignment value mentioned in column (4) of the said Table:

Sr.	Area and Purpose	Description of Goods	Consignment Value of the Goods
	Where the goods described in column (3) are transported for a distance of upto fifty kilometers within the State of Rajasthan for the purpose of job work as defined in sub-section (68) of section 2 of the Rajasthan Goods and Services Tax Act, 2017 or, as the case may be, sub-section (68) of section 2 of the Central Goods and Services Tax Act, 2017 or are being sent from one job- worker to another job-worker or are being returned to the principal after such job work and where such transportation is not for final delivery of the finished goods.	Any Goods	Any value

[No. F17(131)ACCT/GST/2017/3743 dated 06/08/2018

(Alok Gupta)
Commissioner of State Tax,
Rajasthan, Jaipur.

Circular No 56/30/2018-GST
F. No. 354/290/2018-TRU
Government of India
Ministry of Finance
Department of Revenue, Tax Research Unit

North Block, New Delhi
24th August, 2018

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

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-CentraI 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-CentraI 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

Sr.	Tariff item, heading sub-heading or Chapter	Description of Goods
1.	5007	Woven fabrics of silk or silk waste
2.	5111 to 5113	Woven fabrics of wool or of animal hair

Sr.	Tariff item, heading sub-heading or Chapter	Description of Goods
3.	5208 to 5212	Woven fabrics of cotton
4.	5309 to 5311	Woven fabrics of other vegetable textile fibers, paper yarn
5.	5407, 5408	Woven fabrics of manmade textile materials
6.	5512 to 5516	Woven fabrics of manmade staple fibers
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.

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, 2038. 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;

(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, 20 IS, 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?

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 Mo. 5/2017-Central Tax (Rate) has been issued in. terms of this provision and it *inleralia* 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 31 st 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. Jn 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 31 st July, 2018) shall lapse.

8 As the notification No. 5/2017-Ccntral 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 COST 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 entiles 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), /he accumulated ITC on account of inverted duly 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 FTC 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 mil lapse.

(2) A manufacture -who produces, say, grey manmade fibre fabrics and cotton fabrics, had a turnover ofRs 5 crore and 2 crore respectively for mamnade fabrics and cotton fabrics for the months from July, 2017 to July 20 IS [or for Ihe 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.

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 COST circular no. 18/2017-Central Tax dated 161 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,
Rahil Gupta
Technical Officer (TRU)
Email: rahil.gupta@gov.in

SCRUTINY ASSESSMENT ONLY THROUGH 'E-PROCEEDING' FACILITY SUBJECT TO 7 EXCEPTIONS

CBDT has vide Instruction No. 03 dated 20th August 2018 directs that in all cases (subject to exceptions provided), where assessment is required to be framed under section 143(3) of the Act during the year 2018-19, assessment proceedings shall be conducted electronically through the *'E-Proceeding'* facility.

Instruction No. 03/2018

Government of India
Ministry of Finance
Department of Revenue (CBDT)

North Block, Now Delhi, the 20th of August, 2012

Subject: Conduct of assessment proceedings through E-*Proceedings* facility during 2018-19-regd.-

It has been a constant endeavor of the Central Board of Direct Taxes (the Board) to reduce human interface in scrutiny assessment proceedings through use of Information Technology. In 2015, on a voluntary basis, a pilot project for purposes of conduct of scrutiny assessment proceedings In five metros through the 'email based assessment' was introduced, which was extended to two more metros in 2016 In addition, in 2016, while issuing notices in scrutiny cases under section 143(2) of the Income-tax Act, 1961 (Act), an option for conduct of assessment proceedings through the 'e-mall based assessment' was given to all assessees of these seven metros

2. In a significant step, In 2017, Income-tax Department developed an Integrated platform i.e. Income Tax Business Application (ITBA) for electronic conduct of various functions/proceedings including assessments. This is integrated with the 'E-filing' portal which Is used by the assessee to electronically communicate with the Income tax Department. During the course of assessment proceeding, Assessing Officer is required to send communications through the 'Assessment Module' of RBA which is delivered in the 'E-filing' account of concerned assessee Upon receipt of departmental communication, assessee is able to submit the response along with attachments by uploading the same through his 'E-filing' account on the 'E-filing' portal (www.incometaxindiaefiling.gov.in). The response submitted by the assesse is viewed by the Assessing Officer electronically in ITBA. This communication of data and documents between the Income-tax Department and assessee through electronic mode is termed 'E-Proceeding'.

3. Consequently, vide **Instruction No. 8/2017 dated 29.09.2017**, on an optional basis for the assessees, besides the scrutiny cases at seven metro charges already under 'e-mail based assessment', scope of E-Assessment through 'E-Proceeding' was further extended to pending time-barring limited scrutiny cases at those stations where Principal Commissioner of Income-tax were headquartered. Further, In 2017, while issuing notices for scrutiny under section 143(2) of the Act, it was provided that assessment proceeding would be conducted electronically through the 'E-Proceeding' facility. Thereafter, vide **Instruction No. 1/2018 dated 12.02.2018**. Board has further widened scope of 'E-Proceeding' for conduct of assessment proceedings.

4. In partial modification of **Instruction No. 1/2018 dated 12.02.2018** and In accordance with provision of section 2(23C) of the Act, the Board hereby directs that In all cases (subject to exceptions in para below), *where* assessment is required to be framed under section 143(3) of the Act during the year 2018-19, assessment proceedings shall be conducted electronically through the *'E-Proceeding'* facility. Consequentially. assessees would now be required to produce/cause to produce their response/evidence to any notice/communication/show-cause issued by the Assessing Officer electronically (unless specified otherwise) through their 'E-filing' account on the 'E-filing' portal. For smooth conduct of assessment proceedings through E-

Proceeding', it is imperative that requisition of information In cases under *'E-Proceeding'* should be concise and sought with due-diligence after a careful scrutiny of case records.

5. In following cases where assessment Is required to be framed during the year 2018-19, 'E-Proceeding' shall not be mandatory:

i. where assessment is to be framed under sections) 153A, 153C, 147 and 144 of the Act;
ii. In set-aside assessments;
iii. assessments being framed in non-PAN Cases;
iv. cases where income-tax return was flied In paper mode and the concerned assessee does not yet have an E-filing' account;
v. in all cases at stations connected through the VSAT or with limited capacity of bandwidth (list of such stations shall be specified by the Pr. DGIT (System));
vi. In cases under para 4 above, where substantial hearing had already taken place In the conventional mode prior to Issue of **instruction No. 1/2018 dated 12.02.2018**. Assessing Officer may complete such cases with prior administrative approval of the concerned Pr. CIT/CIT;
vii. in cases covered under para 4 above where the jurisdictional Pr CIT/CIT, in exceptional circumstances such as complexities of the case or administrative difficulties In conduct of assessment through 'E-Proceeding', has permitted conduct of assessment proceedings through the conventional mode.

However, in these cases, as far as feasible, Assessing Officer should generate all departmental communications and notices through the ITBA. Further, in these cases, the earlier existing mode of service of notice should be utilized by the Assessing Officer only when it Is not possible to serve the communication electronically in the 'E-filing' account of the concerned assessee.

6. In cases where assessment proceedings being carried out through the 'E-Proceeding' as per para 4 above, personal hearing/attendance may take place in following situation(s):

i. where books of accounts have to be examined;
ii. where Assessing Officer Invokes provisions of section 131 of the Act;
iii. where examination of witness is required to be made by the concerned assessee or the Department;
iv. where show-cause notice contemplating any adverse view is issued by the Assessing Officer and assessee requests through their 'E-filing' account for personal hearing to explain t he matter.

However, details have to be uploaded on ITBA subsequently.

7. This may be brought to the notice of all concerned for immediate compliance.

8. Hindi version to follow.

(Rohot Garg)
Director (ITA.II), CBDT

(F. No. 2.25/249/2018-ITA.II)

MANUAL INCOME TAX SCRUTINY CRITERIA FOR FINANCIAL-YEAR 2018-2019

CBDT has released parameters for manual selection of Income Tax Returns for Complete Income Tax Scrutiny during financial year 2018-19 vide **Instruction No. 04/2018 Dated: 20th August 2018.**

Instruction No. 04/2018

Government of India
Ministry of Finance
Department of Revenue
Central Hoard of Direct Taxes (ITA-II division)

North Block New Delhi the 20th August 2018

To

All Pr. Chief-Commissioners of Income-tax/Chief-Commissioner of Income-Tax
All Pr. Directors-General of Income tax/Directors-General of Income-tax

Sir/Madam

Subject: Guidelines for manual selection of returns for Complete Scrutiny during the financial-year 2018-2019-regd.

1. The parameters for manual selection of returns for Complete Scrutiny during financial year 2018-19 *are* as under.-

(i) Cases involving addition In an earlier assessment year(s) on a recurring issue of law or fact-

a. exceeding Rs. 25 lakhs in eight metro charges at Ahmedabad. Hengaluni, Chennai, Delhi. Hyderabad. Kolkata. Mumbai and Pune, while at other charges, quantum of add non should exceed Rs. 10 lakhs;

b. It exceeding Rs. 10 crore In transfer pricing cases and where such an addition-

1. has become final as no further appeal was/has been filed; or
2. has been confirmed at any stage of appellate process In favour of revenue and assessee has not filed further appeal, or
3. has born confirmed at the 1st stage of appeal in favour of revenue or subsequently and further appeal of assessee is pending

(ii) Cases pertaining to Survey under section 133A of the Income-tax Act. 1961 ('Act') excluding those cases where books of accounts. documents etc. were not impounded and returned income (excluding any disclosure made during the Survey) is not less than returned Income of preceding assessment year. However, where assessee has retracted from disclosure made during *the* Survey, such cases will nut be covered by this exclusion.

(iii) Assessments In search and seizure cases to be made under section(s) 153A. 153C, 158B, 158BC & 158BD read with section 143(3) of the Act and also for return filed for assessment year relevant to previous year in which authorization for search and seizure was executed under section 132 or 132A of the Act.

(iv) Returns filed in response to notice under section 148 of the Act

(v) Cases *where* registration/approval under various sections of *the Act* such *as* 12A, 35(1)(ii)/(iii), 10(23C) *etc.* have not *been* granted or have been cancelled/withdrawn by the, Competent Authority, yet the assessee has been found to be claiming tax-exemption/deduction in the return. However, where such orders of withdrawal of registration/approval have been reversed/set-aside In appellate proceedings, those cases will not be selected *under* this clause

(vi) Cases In respect of which information pointing out specific tax-evasion for the relevant year is given by any Government Department/Authority/Agency/Regulatory Body. However, before selecting a return for scrutiny under this criterion, Assessing Officer shall take prior administrative approval from concerned jurisdictional Pr. CIT/Pr.DIT/CIT/DIT.

2. Through Computer Aided Scrutiny Selection (CASS), cases are being selected in two categories viz. Limited Scrutiny & Complete Scrutiny in a centralized manner under CASS-2018. CASS is a system based method for scrutiny selection which identifies the cases through data-analytic and three-hundred sixty degree data profiling of taxpayers and In a non-discretionary manner. The list of these cases is being/has been separately Intimated by the Principal DCIT (Systems) to the concerned Jurisdictional authorities for further necessary action.

3. This may be brought to the notice of all concerned for necessary compliance.

4. Hindi version to follow.

(Rohit Garg)
Director-ITA.II, CBDT

F.No. 225/282/2010/ITA.II

To be published in the Gazette of lndia, Extraordinary, Part ll, Section 3, Sub-Section (i)]

Government of India

MINISTRY OF CORPORATE AFFAIRS

Notification

New Delhi, dated 21st August, 2018

G.S.R. .....(E),—In exercise of the powers conferred by section 396, 398,399,403 and 404 read with sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Registration Offices and Fees) Rules, 2014, namely:—

1. (1) These rules may be called the Companies (Registration Offices and Fees) Fourth Amendment Rules, 20418.

(2) They shall come into force from the date of their publication in the Official Gazette.

2. In the Companies (Registration Offices and Fees) Rules, 2014, in the Annexure, under the head VII, for note below Fee for filing e-form DIR-3 KYC, the following note shall be substituted, namely;-

"for the current financial (2018-2019), no fee shall be chargeable till the 15th September, 2018 and fee of Rs. 5000 shall be payable on or after the 16th September, 2018".

[F.No.01/16/2013 CL-V(Pt-I)]
K.V.R.Murty, Joint Secretary

Note : The principal rules were published in the Gazette of India, Extra ordinary, Section 3, sub-section (i) vide number G.S.R. 268 (E), dated the 31st March 2014 and subsequently amended by :-

Sr.	Notification Number	Notification Date
1.	G.S.R. 297 (E)	28-04-2014
2.	G.S.R. 122 (E)	24-02-2015
3.	G.S.R. 438 (E)	29-05-2015
4.	G.S.R. 493 (E)	06-05-2016
5.	G.S.R. 48 (E)	20-01-2018
6.	G.S.R. 435 (E)	07-05-2018
7.	G.S.R. 6416 (E)	05-07-2018

MCA

MCA has clarified that as per the extant rules, in respect of an individual who is in possession of Duplicate/Multiple DINs, he can retain the Oldest DIN only. DINs obtained later have to be surrendered. Further DIN once associated is NOT eligible for surrender. Application for surrender of DIN in e-form DIR-5 can be filed with any reason such as DIN is unused and not intended for future reference also or multiple DINs are allotted to same person or DIN holder is no more/has become of unsound mind or insolvent etc. This application will further be processed by RD-north region. The eForm DIR-5 is required to be filed pursuant to Section 153 of the Companies Act, 2013 & Rule 11 (f) of Companies (Appointment and Qualification of Directors) Rules, 2014.

CLARIFICATION ON SC ORDER ON DIRECTOR DISQUALIFICATION

After the article published by some journalist on Supreme Court Order stating that "Supreme Court stays Bombay High Court order along with all other High Courts granting relief to disqualified directors" which created a pandemonium situation among all the disqualified directors considering the Legitimacy of all existing orders and future situations.

Here we would like to share facts of the order passed by Supreme Court whose interpretation was done wrongly and huge chaos is created.

"The order dated 6th August 2018 passed against the appeal in which the 10 petitioners challenged their disqualification as directors under Section 164 sub-section 2 of the Companies Act 2013, further the petitioners desired to avail the CODS -2018, **CONDONATION OF DELAY SCHEME 2018,** However they have been disabled from availing the benefits of CODS because the company never carried on their business since the date of inception hence the petitioners are not able to seek revival of company through NCLT Route. Further they submitted that they voluntary seek dissolution of the company under Section 248 sub-section 2 of Companies Act 2018, if they are given opportunity to do so. The Respondent UNION OF INDIA submitted that if the company never carried out any business, so they ought to have applied for the status of Dormant Company under Section 455 of **Companies Act 2013.**

This clearly means that Supreme Court order does not have any impact on interim stay on DIN DISQUALIFICATION granted by Delhi High Court.

Further to add to the situation Delhi High Court has granted interim stay on Directors Disqualification on 10th August'2018 also hereby proving the above facts.

DON'T GET MISLEAD by the Supreme Court order a Writ Petition in the Delhi High Court for Removal of Directors Disqualification is still a way out.

A Writ Petition in the High Court for Removal of Directors Disqualification is a way out

Writ Petition in the High Court for Removal of Directors Disqualification

*In case you are not willing to revive your company or your company is not eligible for Revival or the same is not in operations or if Bank Account is not available, then you can file Writ Petition in High Court and get immediate interim relief. Whole process can run in 10 Days.

The Process Ahead

- ❑ Drafting of Writ Petition.
- ❑ Filing the matter with the High Court.

- Appearance by Advocates and pleadings for the same.
- Interim Order from the High Court
- Filing the High Court Order and Pending Compliance Documents with Respective ROC.
- DIN Activation and Removal of Disqualification.

The whole process takes about 10 days.

REPORT OF THE COMMITTEE TO REVIEW OFFENCES UNDER COMPANIES ACT, 2013

Report of the Committee to review offences under Companies Act, 2013 attempts to make an objective assessment of the existing regulatory framework under the Companies Act, 2013 and makes recommendations to be able to achieve a marked improvement in corporate compliance. In order to ensure that serious offenders are brought to book, it is necessary to free the courts from dealing with offences that are essentially procedural and technical lapses that can be handled effectively through an in-house adjudication mechanism. For the sake of clarity it may be emphasised that there is no intent to dilute the rigours or scope of the enforcement action relating to serious corporate offences, including fraud. On the contrary the aim is to strengthen the enforcement of law against serious offences by de-burdening the courts of matters of routine nature. It may also be noted that the cross-cutting liability under section 447, which deals with corporate fraud, remains wherever fraud is found irrespective of the section under which an offence is committed and the primary liability it attracts.

2. The report also attempts to declog the National Company Law Tribunal **("NCLT")** by recommending suitable amendments, including significant reduction in compounding cases before the Tribunal. In addition it also touches upon certain essential elements related to corporate governance such as declaration of commencement of business, maintenance of a registered office, protection of depositors, registration and management of charges, declaration of significant beneficial ownership, and independence of independent directors. The main recommendations of the Committee are as follows:

I. Re-categorizing of 16 offences out of the 81 which are in the category of compoundable offences to an in-house adjudication framework wherein defaults would be subject to a penalty levied by an adjudicating officer.

II. No change is suggested in respect of any of the non-compoundable offences.

III. Instituting a transparent and technology driven in house adjudication mechanism and increasing the transparency in the in-house adjudication mechanism by minimizing physical interface, conducting proceedings on an online platform and publication of the orders on the website.

IV. Strengthening the in-house adjudication mechanism by necessitating a concomitant order for making good the default at the time of levying penalty, to subserve the ultimate aim of achieving better compliance.

V. Declogging the NCLT **by:**

   a) Enlarging the jurisdiction of Regional Director **("RD")** by enhancing the pecuniary limits up to which they can compound offences under section 441 of the Act.

   b) vesting in the Central Government the power to approve the alteration in the financial year of a company under section 2(41); and

   c) Vesting the Central Government the power to approve cases of conversion of public companies into private companies.

VI. Chapter IV contains recommendations related to corporate compliance and corporate governance. The main recommendations include reintroduction of declaration of commencement of business provision to better tackle the menace of 'shell companies'; protection of public deposits through greater disclosures; greater accountability with respect to filing documents related to creation, modification and satisfaction of charges; non-maintenance of registered office to trigger de-registration process; holding of directorships beyond permissible limits to trigger disqualification of such directors; and imposition of a cap on maximum remuneration to independent directors to ensure that there does not exist material pecuniary relationship between the independent director and the promoter group that can impair his independence.

ARTICLES

LOAN TO DIRECTORS UNDER SECTION 185

Section 185 of the Companies Act, 2013 imposed blanket ban on loans to directors, their relatives and partners. The main intention of the Section 185 is to ensure that directors who hold a fiduciary position with respect to shareholders do not misappropriate the funds of the company for their own benefits.

Why Companies opposed the Section 185 of Companies Act, 2013?

The argument of promoters is that where the shareholders being the ultimate owners themselves approve the utilization of the funds of the company in the specified manner, the law should not create a bar or restrictions on the same.

Why Companies debarred?

In India, majority of companies are enjoying credit facilities from banks and financial institutions. Thus, they are using public money in an indirect way. So, it's very much important to check and balance the acts of promoters that they don't misappropriate the funds of the shareholders and banks for their own benefits.

JOURNEY OF RELIEF SINCE ENACTMENT OF COMPANIES ACT, 2013

A diverse section of stakeholders including professionals opposed the Section 185 since its enactment and notification and various representations have been made to Government for some relaxation at least to the Private Companies.

A journey of relief started with the exemption notification dated 5th June, 2015 exempting Private Companies from Section 185 and thereafter **Companies (Amendment) Act, 2017** which allowed to give loans, guarantee and securities to other Companies and Body Corporates after passing Special Resolution.

Exemption from Section 185 to Private Companies vide Notification dated 5th June, 2015

Private Companies were facing problems due to stringent provisions of Section 185 while carrying out operations. So, Government exempted private companies from entire Section 185 to ease the compliance requirement vide notification dated 5th June, 2015, subject to following 3 conditions:

1. There should be no investment in the concerned company from any other body corporate;
2. The company should not have any borrowings from banks, financial institutions and other body corporate equal to or more than twice its paid up share capital, OR Rs. 50 crores, whichever is lower; and
3. There should be no subsisting default at the time of making such transaction, and that the company should have the capability to pay off the loan.

Hence, any Private Company fulfilling above conditions are completely out of purview of Section 185. However, before granting any loan to Directors or any other person in whom directors are interested, Company has to pass Board Resolution as per Section 186 and the said loan must be within the limit specified in Section 186 of the Companies Act, 2013.

Companies (Amendment) Act, 2017.

Government substituted entire Section 185 by way of Companies (Amendment) Act, 2017 to promote ease of doing business. The original Section 185 specified more exhaustive list to which Companies can't give loans, guarantee and securities. Thus, at par with the global company laws, the provision has been amended to remove the prohibition to an extent and provides for the passing of shareholders' resolution for granting of loans, guarantees, and securities to entities in which directors are interested.

For better understanding of the section, I classified 3 categories i.e Prohibited, Restricted and Unrestricted for giving loans, guarantees and securities.

*1) **PROHIBITED***

All the Companies (Except Private Companies which fulfill the criteria of exemption notification dated 5th June, 2015) are prohibited to give loans, guarantees and securities to the following persons and firm:

1. Any Director of a Company
2. Any Relative of a Directors
3. Any Partner of a Directors
4. Any Directors of a Holding Company
5. Any firm in which any such director or relative of a Director is a Partner

*2) **RESTRICTED***

Companies can give loans, guarantee or securities to the following entities after passing Special Resolution at a duly convened general meeting:

1. Any private company of which any such director is a director or member;
2. Any body corporate in which more than 25% of the total voting power exercised or controlled by any such director, or by two or more such directors, together;
3. Any body corporate, the BoD, MD or manager, whereof is accustomed to act in accordance with the directions or instructions of the BoD, or of any director or directors, of the lending Company.

Earlier, Companies were prohibited to give loans, guarantee or securities to above mentioned entities but after enactment of Companies (Amendment) Act, 2017, Companies may grant loans, guarantees and securities to above entities, subject to approval of the shareholders by passing a special resolution and on the condition that such loans are utilized by the borrower for its principal business activities.

It is noted that the loan, guarantee and security provided under this section must be within the limit of Section 186 of the Companies Act, 2013.

3) UNRESTRICTED OR EXEMPTED

The Provisions of Section 185 doesn't apply to the following transactions:

1. Any loan given to a M.D or W.T.D as a part of the conditions of service extended by the company to all its employees; OR pursuant to any scheme approved by the members by a Special Resolution;
2. A company which 'in the ordinary course of its business' provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged at a rate not less than the rate of prevailing yield of one year, three years, five years or ten years Government security closest to the tenor of the loan; or
3. Any Loan/Guarantee or Security made by a holding company to its wholly owned subsidiary Company.

PENAL PROVISIONS

If any loan is advanced or a guarantee or security is given or provided or utilized in contravention of the provisions of this section,—

1. The company shall be punishable with fine between Rs. 5,00,000/- to Rs. 25,00,000/-
2. Every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine between Rs. 5,00,000/- to Rs. 25,00,000/- and
3. The director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine between Rs. 5,00,000/- to Rs. 25,00,000/- or with both.

Companies (Amendment) Act, 2017 seeks to make section 185 less stringent in nature, by proposing that certain transactions be completely prohibited, while others be subject to a special resolution. Another check and balance mechanism in which the section provides that full disclosures relating to the amount of loan, purposes of the loan, and other relevant details must be placed before the shareholders for their informed consent. **Thus, the Amendment Act of 2017 is partly prohibitive and partly restrictive by nature**.

IMPORTANCE OF GSTR-2A RECONCILIATION

From the date of implementation of GST regime, the Government has mandated filing of GSTR-1 and GSTR-3B only. During this period, registered persons were allowed to take input tax credit (ITC) based on figure reported in GSTR-3B. Although filing of GSTR-2 was kept in abeyance but, by virtue of some provisions of GST legislation, it is necessary for them to reconcile the ITC claimed in GSTR-3B with auto populated GSTR-2A.

Following are some aspect which supports the above statement-

Tax has been actually paid to the Government:

Section 16(2) of **Central GST Act, 2017**, inter alia, include one condition for ITC which reads as under-

"Subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the government, either by cash or through utilisation of input tax credit admissible in respect of the said supply."

Under GST regime, supplier shall furnish details of outward supplies (party-wise) in GSTR-1 on the basis of which output tax liability shall be determined and be paid through GSTR-3 or GSTR-3B (at present). Details furnished by supplier will be reflected to recipient in GSTR-2A on the basis of recipient shall decide the input tax credit available to him.

Therefore, unless supplier has reported supply in GSTR-1 i.e. reflected in GSTR-2A, it may not be considered as actually paid to the Government.

Note: Although supplier may say that he has reported supply in GSTR-3B but unless same is considered in GSTR-1, for recipient, practically it would be difficult to justify about ITC so claimed.

Difference in ITC claimed and ITC reflected in GSTR-2A to be added to liability of recipient:

Section 42(5) of Central GST Act, 2017 states that the amount i.e. mismatch between GSTR-1 and GSTR-2A, in respect of which any discrepancies is communicated and not rectified by supplier, shall be added to the output tax liability of the recipient.

The above provision is very clear that wherever any excess ITC claimed is found which is not reflected by supplier in his GSTR-1, shall be added to liability of recipient. In order words, this cast responsibility on recipient to ensure that ITC claimed by him is being properly reported by the supplier.

Based on above, we can conclude that recipient must ensure that all ITC claimed by him is properly reflected in his GSTR-2A. In case of any discrepancies found, same shall be promptly communicated to supplier so that he can report the same in his coming GSTR-1.

Last date to claim ITC for F.Y. 2017-18: 20 October 2018 (Due of GSTR-3B of September)

Section 16(4) of Central GST Act, 2017 put restriction on recipient to claim ITC after filing of return for the month of September 2018. Thus, where any supplier has corrected reporting in GSTR-1 post Sept 2018 then also recipient may face difficulty in claim such ITC as same was not reflected in GSTR-2A till September 2018.

It shall be noted that, being practical experience, wherever supplier report any prior period supplies in current period's GSTR-1, such supplies gets reflected in GSTR-2A of current period and not in period to which it belongs. For Example, when invoice dated 10 February 2018 is reported by supplier in GSTR-1 of August 2018 then such invoice will reflect in GSTR-2A of August 2018 and not February 2018.

Therefore, any supply reported post September month's return may not be considered as actually paid to the Government till September 2018 and accordingly may not be eligible for ITC on account of non-fulfillment of one of condition of section 16(2) of Central GST Act, 2017.

Conclusion:

Where recipient possessed tax invoice and also had made payment to supplier, he may justify his claim even when supplier has not reported or reported but after September 2018 such supply. However, it will certainly lead to litigation which can be avoid by taking pre-caution at present. Therefore, registered person may undertake reconciliation exercise and get the discrepancies resolves by with supplier before end of September 2018.

COMPARATIVE SUMMARY OF SOME GST AMENDMENTS AS PASSED BY LOK SABHA

To iron out the practical hindrances and issues being faced by the Industry Inc since the implementation of GST, the Lok Sabha, on August 9, 2018, has passed the following amendment Bills to the GST Law:

- Central Goods and Services Tax (Amendment) Bill, 2018 [**"CGST Amendment Bill"**] amending the CGST Act, 2017 [**"CGST Act"**];
- Integrated Goods and Services Tax (Amendment) Bill, 2018 [**"IGST Amendment Bill"**] amending the IGST Act, 2017 [**"IGST Act"**];
- Union Territory Goods and Services Tax (Amendment) Bill, 2018 amending the UTGST Act, 2017; and
- The Goods and Services Tax (Compensation to States) Amendment Bill, 2018 amending the Goods and Services Tax (Compensation to States) Act, 2017

The GST Council (apex decision making body for GST) on July 9, 2018 had unveiled the draft of proposed changes in GST law before they were introduced in the ongoing monsoon session of the Parliament. Total 46 amendments were suggested as a major step towards facilitating trade and ease of doing business. More or less these Bills are drawn on the line of amendments as were suggested by the GST Council in their Draft Amendments (with certain drafting corrections), but there are certain crucial changes which were either not forming part of the Draft Amendments but forms part of the Amendment Bills or those which were earlier forming part of the Draft Amendments now stands withdrawn from these Bills. Moreover, few amendments are now proposed to be amended/inserted from retrospective effect.

Importantly, the proposal to delete interest applicability when GST ITC is reversed for non-payment of invoice amount after 6 months from date of invoice does not find place in the CGST Amendment Bill. Further, non-availability of transitional credit of cess is made retrospectively applicable.

Gist of key amendments in GST law:

1. **Definition of 'services': Service charges in relation to transaction in securities clarified to be taxable**

   An explanation is proposed to be inserted in Section 2(102) of the CGST Act, which provides clarity that although 'securities' [s. 2(h) of Securities Contract Regulations Act, 1956] are excluded from the definition of 'goods' and 'services' in the CGST Act, but if some service charges or service fees or documentation fees or broking charges or such like fees or charges are charged in relation to transactions in securities, the same would be a consideration for provision of service and chargeable to GST.

2. **Meaning and scope of 'Supply': No GST on Schedule II items which are otherwise not 'supply'**

   The term 'supply' is proposed to be amended to exclude activities/ transactions listed in Schedule II to ensure that the activities/ transactions as per Schedule II is to determine only whether the same is supply of goods or services. Hence, activities/ transactions listed in Schedule II (as supply of service or supply of goods) shall be taxed only when they constitute 'supply' in accordance with provisions of Section 7(1)(a), (b) and (c) of the CGST Act.

   Stated changes are made applicable retrospectively in the CGST Amendment Bill. Thus, there shall not be any past litigation on account of any transaction merely covered under Schedule II, but otherwise not a 'supply'.

3. **Schedule I: Widening taxability of import of services from related person/establishments outside India**

   Import of services by entities which are not registered under GST (say, they are only making exempted supplies) but are otherwise engaged in business activities shall be chargeable to tax when such services received from a related person or from any of their establishments outside India.

4. **Schedule III: Inclusion of Merchant trading, High Seas and In bond sales**

   The scope of Schedule III is proposed to be expanded to include following transactions:

- **Merchant trading** i.e. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into the taxable territory.
- **Supply of goods in the course of High Seas Sale and Sale of warehoused goods:** To ensure no double taxation on such transactions before clearance for home consumption as clarified by recent Circulars stating that IGST would be payable only once at the time of clearance of goods for home consumption, now, these transactions are proposed to be included as 'neither a supply of goods nor supply of services' in Schedule III, which is a major relief to the taxpayers.

Note: It is also proposed that the same shall not be regarded as exempt supply for the purposes of input tax credit reversal.

5. **Reverse Charge U/S 9(4) of the CGST Act: Applicability restricted only to notified registered person for specified goods and services**

   It is proposed to omit existing Section 9(4) of the CGST Act and instead, grant an enabling power for the Govt. to notify a class of registered persons who would be liable to pay tax on reverse charge basis in case of receipt of specified goods or services or both (as against taxable goods or services or both) from an unregistered supplier. The details of such specified persons are to be notified in future.

   The IGST Amendment Bill prescribes similar changes in Section 5(4) of the IGST Act.

6. **Composition suppliers: Enhanced threshold of INR 1.5 crores and allowing supply of services to specified limit**

   It is proposed to give effect to its earlier decision of GST Council to increase threshold limit for the composite suppliers from INR 1 crore to 1.5 crores and further to enable registered manufacturers and traders to opt for composition scheme u/s 10(1) of the CGST Act even if they supply services of value not exceeding 10% of the turnover in a State/Union territory in the preceding FY or Rs. 5 lakhs, whichever is higher [Presently, registered persons engaged in the supply of services (other than restaurant services) are not eligible for the composition scheme].

   The CGST Amendment Bill now also clarifies that this limit shall apply for services other than restaurant services.

7. **Time of Supply of goods and services under forward charge u/s 12(2) & 13(2) of the CGST Act:**

   The amendment seeks to correct a drafting error in the earlier law, as the issuance of invoice/other documents are also to be included as specified in other sub-sections of Section 31 of the CGST Act.

8. **Input Tax Credit:**

- Enables GST ITC available to recipient on deeming fiction when goods or services supplied by supplier on direction of registered person to any other person as on agent or otherwise. Earlier this deeming fiction was present only in case of "bill-to-ship-to" supply of goods. The same has been extended to services as well.
- **Proposal to delete interest applicability when GST ITC is reversed for non-payment of invoice amount after 6 months from date of invoice does not find place in the CGST Amendment Bill**.
- ITC non-availability in case of motor vehicles restricted to only those meant for transportation of persons having approved capacity of not more than 13 persons (including the driver) except when used for specified purposes. Further, the words 'other conveyances' have been removed. The amendment is sought to make it clear that input tax credit would now be

available in respect of dumpers, work-trucks, fork-lift trucks and other special purpose motor vehicles.

- No ITC shall be available on vessels and aircrafts except when used for specified purposes under clause (aa) – scope of credit is widened to also include taxable supply of imparting training on flying aircraft.
- Proposal to allow ITC in respect of motor vehicles if they are used for transportation of money for or by a banking company or a financial institution, is withdrawn in the CGST Amendment Bill.
- The proposal is to clarify that GST ITC is not available in respect of services of general insurance, servicing, repair and maintenance in respect of those motor vehicles, vessels and aircraft on which ITC is not available.

  Extent of ITC availment on services of general insurance, servicing, repair and maintenance on motor vehicles, vessels or aircraft is extended in the CGST Amendment Bill to allow ITC to even manufacturer of such motor vehicles, vessels or aircraft and to those engaged in supply of these services in respect of motor vehicles, vessels or aircraft.
- Presently, in accordance with the provisions of Section 17(5)(b), ITC is not available in respect of food and beverages, health services, travel benefits to employees etc. Now, it is proposed that ITC in respect of food and beverages, health services, renting or hiring of motor vehicles, vessels and aircraft, travel benefits to employees etc., can be availed where the provision of such goods or services is obligatory for an employer to provide to its employees under any law for time being in force.

  The CGST Amendment Bill further allows ITC on renting or hiring of motor vehicles, vessels or aircraft when they are used for purposes specified in clause (a) or (aa).

9. Value of Exempt Supply for reversal of ITC:

It is clarified by way of explanation inserted in Section 17(3) of the CGST Act that no reversal of common ITC shall be required on activities or transactions specified in Schedule III (other than sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building) by excluding it from the ambit of 'exempt supply' for the purpose of reversal.

10. Registration:

- The proposed amendment in Section 25(2) of the CGST Act allows multiple places of business of the taxpayers in addition to the different business verticals within the state to be registered separately. This provides a major relief to certain industries like transporters, PSU etc. by increasing the ease of doing business.
- It is proposed that State of Assam, Arunachal Pradesh, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand be removed from special category States along with J&K in explanation (iii) to Section 22 of the CGST Act and, thereby, increase the threshold limit for registration from 10 lakhs to 20 lakhs in these States. Earlier the proposal was restricted to only Assam.
- Clause (x) of Section 24 is being amended to provide that only those e-commerce operators who are required to collect tax at source under Section 52 of the CGST Act would be required to take compulsory registration. Other e-commerce operators who are not required to collect tax at source under Section 52 would henceforth not be required to take registration if their aggregate turnover in a financial year did not exceed Rs. 20 lakhs.
- Provision inserted for separate registration of a person having a unit(s) in a SEZ or being a SEZ developer as a business vertical distinct from his other units located outside the SEZ. This provision is already contained in Rule 8 of the CGST Rules, 2017.
- The CGST Amendment Bill deletes the earlier proposal of granting separate registration in respect of each unit to a person having multiple units in a SEZ.

11. Temporarily suspension of registration during pendency of cancellation proceedings:

It is proposed to insert a new proviso to Section 29(1) & (2) of the CGST Act, to provide for suspension of registration during pendency of proceedings relating to cancellation of registration. This would relieve the taxpayer of continued compliance burden under the law till such time as the process of allowing cancellation of registration is completed.

12. Issuance of Credit and Debit Note in respect of multiple invoices:

The amendment seeks to permit a registered person to issue consolidated credit / debit notes as prescribed under Section 34 of the CGST Act in respect of multiple invoices issued in a Financial Year without linking the same to individual invoices.

13. Simplification of Returns:

- A new provision is being introduced by inserting section 43A, to enable the new return filing procedure as proposed by the Returns Committee and approved by the GST Council. However, the detailed mechanism of giving effect to the above proposal is awaited.
- Provisions have been inserted to provide for prescribing the procedure for quarterly filing of returns for specified class of registered persons.

14. GST Practitioners: **Widening scope of functions**

It is proposed to allow the GST practitioner to perform other functions such as, filing refund claim, filing application for cancellation of registration etc., apart from furnishing the details of outward and inward supplies and various returns on behalf of a registered person.

15. Payment of Tax: Order for utilization of credits

To allow fund settlement on account of IGST, it has been proposed that a registered person would be able to utilize credit on account of CGST, SGST/UTGST once the registered person has exhausted all the ITC on account of IGST.

It has been further proposed to insert an enabling provision 5A in Section 49 of the CGST Act that allows the Government, on the recommendation of the GST council, to provide a specific order in which a registered person can utilize Input tax credit viz. integrated tax, central tax, State tax or Union territory for the settlement of the tax liability.

16. GST Refunds:

- **Relevant date for filing refunds in case of unutilized ITC** – Amendments are proposed under explanation 2(e) to Section 54 of the CGST Act to prescribe that the relevant date in the case of refund of unutilised ITC arising out of inverted duty structure, shall be the due date for furnishing of return under section 39 for the period in which such claim for refund arises.

  For all other cases of unutilized ITC, relevant date shall be the end of any tax period as mentioned in Section 54(3) of the CGST Act.

- **Refunds in case of export of services** – Amendments are proposed under explanation 2(c) to Section 54 of the CGST Act which allows receipt of payment in Indian rupees, where permitted, by the RBI in case of export of services since particularly in the case of exports to Nepal and Bhutan, the payment is received in Indian rupees as per RBI regulations.

  In this respect, the provisions of Section 2(6)(iv) of the IGST Act are also being amended to provide that services shall qualify as exports even if the payment for the services supplied is received in Indian rupees as per RBI regulations.

- **Unjust Enrichment** – Section 54(8)(a) of the CGST Act is proposed to be amended to allow unjust enrichment in case of refund claim arising out of supplies of goods or services made to SEZ developer/unit.

17. Recovery of Taxes: To be made from distinct persons

It has been proposed by the Council to broaden the scope of persons to include "distinct persons" as provided under Section 25(4) and 25(5) of the CGST Act so that at the time of recovery of tax the authorities can collect the tax from the other entities of the registered person operating in other parts of India.

18. Pre-deposits for filing an appeal to Appellate Authority and Appellate Tribunal:

It is proposed under Section 107(6) of the CGST Act to put a ceiling on the limit of the amount to be deposited before filing an appeal to the appellate authorities which is 10% of the disputed tax amount subject to maximum limit of Rs.25 crores.

Further, it is also proposed under Section 112(8) of the CGST Act, the maximum amount to be deposited to file appeal from the appellate authority to appellate tribunal is 20% of the disputed tax amount along with the amount deposited u/s 107(6) subject to maximum of Rs. 50 crores.

19. Detention, seizure and release of goods and conveyances in transit:

New amendment in the CGST Amendment Bill seeks to increase the time limit before which proceedings under Section 130 can be initiated from seven to fourteen days.

20. Transitional Provisions – No credit of EC/ SHEC/ KKC, etc:

It is proposed to clarify that only transitional credit of eligible duties can be carried forward in the return and not all credits. This provision is already contained in Rule 117(1) of the CGST Rules. The eligible duties do not include the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978.

Furthermore, explanation is inserted to clarify that the expression "eligible duties and taxes" excludes any cess which has not been specified in Explanation 1 or Explanation 2 above and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975.

The CGST amendment Bill makes this amendment as retrospective applicable.

21. Extension in time period for return of Inputs/ CG from Job Worker:

It is proposed to insert a proviso in Section 143 to provide that the period of one year or three years for Inputs/ CG may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding one year and two years respectively.

22. Other Miscellaneous changes:

- **Proposed changes in the IGST Act**

- It is proposed to allow acceptance of receipts in Indian currency for export of services, wherever it is permitted by RBI u/s. 2 (6) (iv).
- The reference to Panchayat under Article 243G is sought to be added in the definition of Governmental authority in the Explanation to 2(16).
- It is proposed u/s 12 (8) that the transporters located in India transporting goods outside the Indian territory would not be liable to pay IGST as a place of supply is outside India and would amount to an export.
- It is proposed under Proviso to Section 13(3)(a) that no tax liability shall be imposed on the job work that is done on the goods imported and then exported.
- Section 20 – The IGST Amendment Bill prescribes the maximum ceiling of INR 50 crores/ 100 crores as pre-deposit for filing appeal to Appellate Authority/ Appellate Tribunal respectively. The amendment is made in line with amendments proposed in Section 107(6) and 112(8) of the CGST Act, 2017.
- **Proposed changes in the GST (Compensation to States) Act, 2017**
- It is proposed u/s 10 (3A) that the fund remaining unutilized in the fund may distributed among the center and the states on an adhoc basis on the recommendation of the council.
- U/s 7(4)(b)(ii) it has been proposed to change the name to Central Board of Indirect Taxes and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963).

QUICK INSIGHT ON GST – TEXTILE INDUSTRY

India's textiles sector is one of the oldest industries in Indian economy dating back several centuries. Even today, it is one of the largest contributors to India's exports with approximately 13 per cent of total exports. The textiles industry is also labour intensive and is one of the largest employment provider in the country. The textile industry employs about million people directly and indirectly.

India's overall textile exports during FY 2017-18 stood at US$ 37.74 billion. In the global exports of textiles, India is ranked as the third largest exporter, trailing EU27 and China. The position has been achieved by tremendous government support in way of subsidies and tax reliefs. Under GST, some of the existing subsidization would be taken care of automatically.

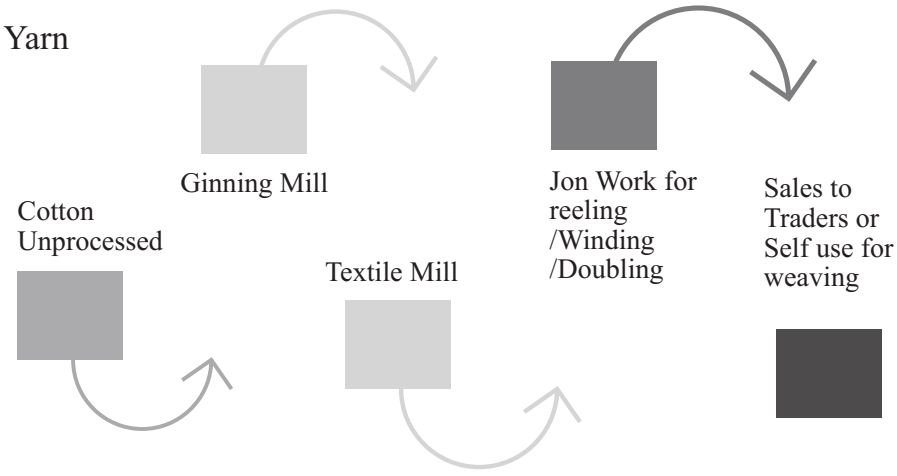
The textile industry has two broad segments. First, the unorganized sector consisting of handloom, handicrafts and sericulture, which are operated on a small scale and through traditional tools and methods. The second is the organized sector consisting of spinning, apparel and garments segment which apply modern machinery and techniques, both in respect of inputs and finished products. The textile industries draw various inputs (Raw Cotton, Yarn, Silk, Viscous etc.) and services (Job worker, weaver, handcraft etc.) from many other sectors consisting of both goods and services including dyes and chemicals and other allied products.

India being vastly geographically diversified country, the quality and nature of fabric available for production and manufacture varies from region to region. Based on this the whole country can be divided on the basis of type of fabric produced and based on this the industries can be deduced as well.

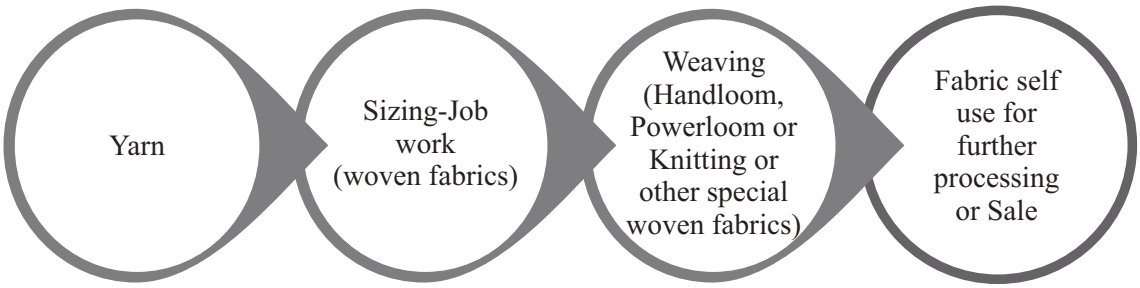
The textile sector consisting of the following major sub-sectors.

Various supply chains in Textiles Sector

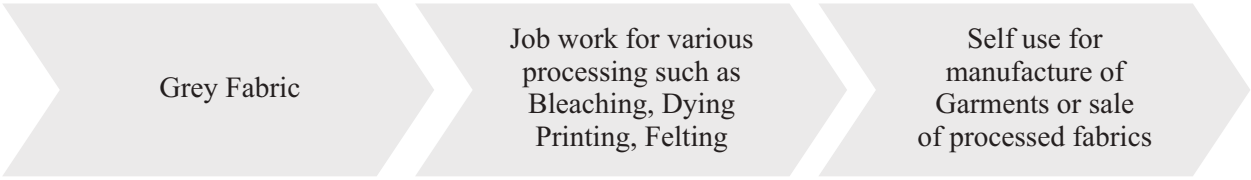
1. Fibers-Cotton to Yarn



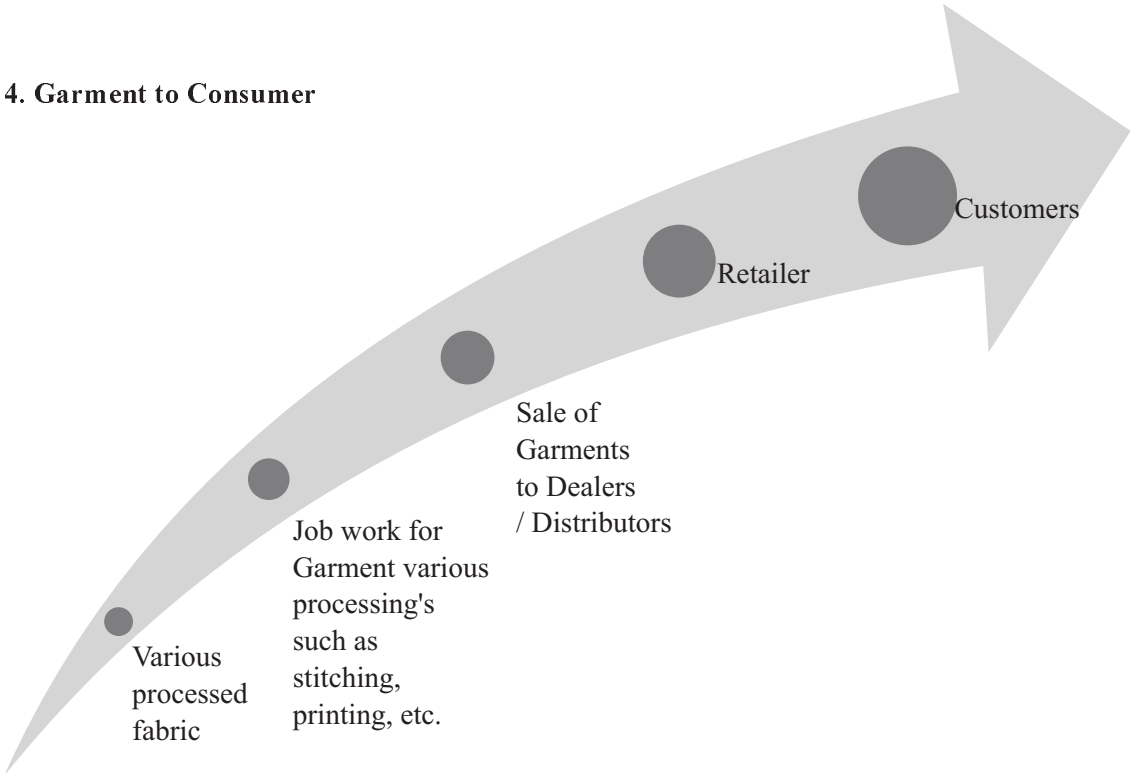
2. Yarn to Grey/Processed Fabric (Woven/Knitted etc.)



3. Grey Fabrics to Processed Fabric /Garment



4. Garment to Consumer



-Different types of textiles sector:

- Khadi and handlooms
- Cotton textiles
- Woolen textiles
- Silk textiles
- Art silk and synthetic fibre textiles
- Jute, hemp, and Mesta textiles
- Ready-made garments
- Miscellaneous textile products

2. Historical Tax Regime

Historically Indian textile industry being vastly based on the handloom industry, the government of India have always been inclined towards keeping this particular industry out of the tax net. The motive being increase in production and exports resulting in increase in employment and net foreign inward remittances. The indirect tax tructure in the country basically consisted of 3 major taxes i.e. excise duty, sales tax and the service tax. Out of the three taxes, the excise duty was implemented in the 40's whereas the sales tax and the service tax are of relatively younger age. Initially the textile industry was kept out of the excise net and it continued for several decades. Finally, in the initial phase of 90's i.e. when the liberalization started, the textile industry was bought under the excise net. Yet due to continuously increasing competition and the deteriorating health of the industry forced the government to withdraw excise duty on the textile industry. Similarly, sales tax was not made applicable on it and service tax had a very limited coverage that was only by reverse charge mechanism. Another major reason of the failure of the taxation scheme was the huge impact of cascading effect because the credit flow was restricted due to non-alignment of the taxes into each other. Credit of inter-state transaction not being allowed was also a impactful reason of trade being limited to specific regions only. It can be concluded that not being in the tax net obviously helped the industry to thrive but also forced it to remain largely unorganized sector

3. Overview of GST

The concept of GST was introduced keeping in consideration the trade practices prevalent worldwide. It aimed towards streamlining the flow of goods and services across borders. The baby steps were taken in the initial decade of 2000 where it was discussed for the first time in the parliament. After intensive and intense debates and discussions and crossing many hurdles, it finally saw the dawn in year 2017.

The main objective of GST is to replace the numerous central and state taxes. The important taxes that were subsumed in GST are Excise and Service tax at the Central level and State VAT/Sales tax, Central sales tax and entry tax at the state level along with other duties and cess and surcharges. Taxation of textile sector is opaque and non-neutral across its various segments. Most of the textile outputs are either exempt under the central and state tax regimes or are subjected to relatively low tax rates. Most of the indirect taxes fall on inputs, both goods and services, and therefore remain hidden. On the whole, the textile sector is lightly taxed and extensively subsidized. Textile exports are supported through payments of unrebated taxes (duty drawback) on textile inputs and other subsidies. With the introduction of GST on Textile industries the whole industry is being affected as the sector was majorly dependent on non-taxation and subsidies which were the first things to be removed under GST.

Now, because the sector was unorganized and not used to indirect taxation, the basic infrastructure needed for implementation of a new and large scale taxation was absent. As a result, the industry initially couldn't sustain the impact and as a result faced a shut down for about a month. The issues faced by the industry in the intervening period have been discussed in detail hereunder.

4. Transitional phase

The most important period of the GST implementation was the transitional phase which was initially supposed to run till 30th September 2017. It was subsequently extended till December end due to various technical and system hiccups. The transitional phase aimed to smoothly transit the existing and the new aspirants into GST regime. It aimed towards the transfer of stocks and conversion of credits along with liabilities to the GST taxation. This became important for the textile industry because as on 30th June 2017, there was no tax and suddenly from 1st July they were to be taxed under GST. Huge stocks were lying in the textile factories, trading concerns and job workers. How they would be taxed and how they were to be consequently subsidized was discussed and implemented under the GST phase. The important aspects of the transitional phase are summarized below:

a. **Issue:** Transitional provisions were stated in the section 140-143 read with CGST rules 117 and onwards. According to it, the manufacturers and traders were allowed the credit of the stock lying with them. The

reason behind it was that the raw material used in the manufacture of fabric was subject to the excise and VAT duties. In absence of any tax, neither excise nor VAT, on finished goods, these taxes formed part of cost component. But under GST, the finished goods were taxed thus it became important to provide the assessee with credit of tax on goods lying in stock.

Now because the industry was unorganized, there was lack of infrastructure in place to keep a consistent track of the stock. The movement of stock was unaccounted for and this resulted in difficulties for the manufacturers to account the stock for claiming credits. Apart from this the quantitative measurement in the textile industry keeps changing at every stage of manufacture and thus it became more difficult for the manufacture to keep track of production.

As a result of this the transitional phase proved to be an unfruitful exercise in case of textile industry as majority of assesses were unable to avail benefit of this formulation.

b. **Issue :** A registered person who was not registered under the earlier law is allowed to take an ad-hoc input tax credit on the basis of the goods held in stock on the appointed day if he is not in possession of any document evidencing payment of central excise duty. In order to avail this credit, that person needs to submit Form GST TRAN-1 and GST TRAN-2 for declaring stocks and subsequently showing the supplies effected for each of the six tax periods ranging from July to December 2017 the date of which was extended till 31st march 18. The assessees were supposed to get 40/60% re-credit of the taxes paid on such sales but here again due to continuous technical and system problems, assessees were unable to file these statements on time resulting in huge loss in GST regime due to nonavailability of credit on stocks.

Similarly, job work is also a major aspect of textile industry. So is its impact that in many instances the stock at a job worker's premise is more than the manufacturer's itself. Thus accounting for that stock also for claiming credits was necessary and it proved to be a tedious job as well.

5. Levy and collection

As per Section 7(1) of CGST Act 2017, the expression "supply"includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business;

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; and

(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

Thus the definition has more or less included every possible transaction. Thus supply of textile products as well as the intermediate processes more commonly known as job work have been made leviable to GST. As a result, the manufacturers, traders, job workers and commission agents have all been covered under this net. The major rates of taxes applicable on this industry are summed up in table below:

Type of assessee	Rate applicable
Manufacturer and trader	5% on most textile products
Job worker	Initially 18% later on reduced to 5%
Commission agent	18%

Textile industry comprises of medium and small scale industries whose major customer base are unregistered consumers who don't need the credit of GST for further consumption. The textile products are also of basic utility and consumers can't afford them getting costlier. As a result, the consumers don't want to bear the burden of taxation. The small business, thus in order to keep the prices unchanged, bears the burden of taxes himself. A major setback of GST on consumer basic utilities is they are getting costlier.

6. Classification of Goods:

Classification of goods has always been a center spot for litigation under indirect tax laws. The Excise and VAT laws are full of instances on classification disputes over textile fabrics. GST too couldn't remain untouched and had its share of clarifications in its initial phase itself.

Classification of unstitched salwar fabrics

Before becoming readymade articles or an apparel, fabric is cut from bundles or thans and sold in that unstitched state. The consumers buy these sets or pieces and get it stitched to their shape and size. Fabrics are classifiable under chapters 50 t 55 of the First Schedule to the Customs Tariff Act, 1975 on the basis of their constituent materials and attract a uniform GST rate of 5% with no refund of the unutilized input tax credit as per Notification No 5/2017 –CT (Rate) dated 28th June 2017.

Government clarified this issue by issuing clarification vide Circular no. 13/13/2017-GST dated 27th October 2017 that by Mere cutting and packing of fabrics into pieces of different lengths from bundles or thans, will not change the nature of these goods and such pieces of fabrics would continue to be classifiable under the respective heading as the fabric and attract the 5% GST rate.

7. Composition Scheme

As per Section 10 of the CGST Act, 2017 provides an option to the 'Registered person'whose 'aggregate turnover'during preceding FY does not exceed "One Crore rupees"Vide Notification 46 dated 13th October 2017 and "Seventy-Five Lakh"for certain special category states to discharge its GST liability on a composite or nominal rate. The Person registered under Composition scheme is neither permitted to collect any tax and nor can avail any credit on input the registered person received.

The limit to increase aggregate turnover limit from current limit of Rs. 1 Crore to Rs. 1.5 crore is under consideration for composition scheme the same is approved by Lok Sabha THE CENTRAL GOODS AND SERVICES TAX (AMENDMENT) BILL, 2018 dated 10th August 2018. Official notification for ncrease of limit is awaited till date.

Here Aggregate Turnover means:

As per Section 2(6) of CGST Act 2017 "aggregate turnover"means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;

Under this scheme a Trader or Manufacturer can take registration if his turnover is less than the prescribed limit.

Major benefit to register under composition scheme as follow:

1. The persons paying tax under composition scheme are required to pay tax on quarterly basis and also required to file a quarterly return in FORM GSTR-4. Hence the compliance cost for such will remain less as compare to regular filling of returns.

Important Points to be taken care of in composition scheme:

1. This scheme is not provided to the service provider. Hence in textile industry the Job work services are not eligible to take registration under composition scheme.

Issue 1: The textile sector works on very prominent pattern that same assessee has both job unit and manufacturing unit. Thus a person having a job unit can't opt for composition scheme for its manufacturing unit because single PAN holder can't opt composition and regular registration simultaneously for its units.

Issue 2: Another issue faced by a composition dealer is that if a person registered under composition scheme received earns consideration in the form of interest or discount against services by way of extending loans,deposits or advances will be not eligible for composition scheme. That means even if interest on saving bank account is earned, it would render the composition scheme ineffective. This was proving to be major hindrance in the application of this scheme.

This problem was addressed by government vide Order no. 1/2017-Central Tax dated 13th October 2017 in which the government clarified that such services provided by registered Person will not render him ineligible for composition scheme.

Issue 3: Further, in the computation of aggregate turnover for determining eligibility to composition scheme, value of supply of any exempt services including services by way of extending loans, advances or deposits will not be considered. To resolve this problem the GST council, in its 28th meeting held on 21st July, 2018 decided to propose a threshold limit of value not exceeding 10% of turnover or preceding or 5 lakhs whichever is higher, to which a composition dealer can provide services.

Issue 4: As discussed earlier the definition of aggregate turnover includes turnover of exempt supplies. So if trader/manufacturer supplies some exempted goods along with taxable goods, he has to pay taxes on the total turnover including the exempted turnover. This way, the exempted goods were also being taxed which was against the intention of law. To remove this conflict in law, notification no. 01/2018-Central Taxwas issued on 01ST January 2018 whereby the words "taxable turnover"was inserted thereby giving the effect that composite rate will be applicable only on the taxable portion of total turnover.

2. The composition dealer cannot sale the goods in interstate transaction. But can purchase the goods from interstate. It has restricted trade opportunities for small traders as well as manufacturers.

3. The person registered under composition scheme can't avail registration under regular scheme in any other state if he has the same PAN no. that means the registration under composition or regular scheme has to be opted on PAN India basis. This proves a hurdle for persons having diversified businesses in service sector and manufacturing/trading sector. This can be very well related to the textile sector comprising of manufacturing/service sector.

4. The goods held in stock by a person to opt the composition scheme on the appointed day had not been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State. This again has relevance in case of textile structure where huge amounts of stock remains lying with the job worker and the agents across India.

5. A registered person opting for composition scheme shall not issue a tax invoice. He shall issue a BILL OF SUPPLY hence the person opting such scheme may face issues as tax credit is not passed on to buyer.

6. Taxable person under composition scheme is not eligible to claim input tax credit.

8. Reverse Charge Mechanism (RCM)

The GST law has also brought in a concept of RCM on Goods and Services u/s Section 9(4) of CGST Act, 2017 and Section 5(4) of IGST Act, 2017 according to which if supply of Goods & Services is taken from Unregistered Person then the recipient of such Goods and Services has to pay the tax on Reverse Charge Basis.

The RCM mechanism is directly hampering the textile industries. Since purchase of inputs (Ex. Raw Cotton from Farmers, Yarn purchased from Unregistered traders/ dealer etc.) and input services (Ex. Job worker services, Rent, Transport services) are majorly procured from unregistered dealers, it attract reverse charge. The GST Act requires the tax under RCM to be deposited in cash and thus directly affecting the working capital of the entity. Simultaneously this tax paid is allowed as credit but it only raises question on the viability of this proposition. The Government had to defer the applicability of this section on 13th October, 2017 in wake of heavy public agitation.

Major Issues in Reverse Charge Mechanism for Textile industries.

1. Issue: As per Notification no. 8/2017-Central Tax dated 28th June 2017 the intra state supplies received by a registered person from Unregistered taxpayers will be exempted subject to the amount of Rs. 5000 per day. This means that only when the aggregate value of taxable supplies exceeds Rs. 5000 in a day from all unregistered persons, tax will be payable underreverse charge mechanism. However, if such supplies are below Rs. 5,000 in a day, they will be considered as exempted. For Inter State Supplies the limit of 5,000 is not applicable.

This provision resulted in increase of workload and paper work as to check the 5000 limit on daily basis proved to be very difficult. Practically the invoices are not received on the same of the provision of services or supply of goods. Thus the limit check has to applied every time a new invoice was entered.

Due to many representation and in benefit for the public in large the Government released **Notification no. 38/2017-Central Tax (Rate) and 32/2017-Integrated Tax (Rate),** wherein any intra /inter State supplies received by a registered person from unregistered persons was exempted irrespective of the aggregate value in a day. The limit of Rs. 5,000 was been withdrawn from 13th October 2017. Although this notification was for the good of the public, the experts found a lacuna in this notification also. The language of this notification gave an impression that the exemption has been given retrospectively from 01/07/2017. There was no clarification issued in this regards.

*Current Scenario: Government **Notification No. 22/2018 –Central Tax (Rate) dated 06th August 2018 and Notification no. 23/2018-Integrated Tax (Rate) dated 06th August 2018,** deferred reverse charge under Section 9(4) till 30th September 2019. This means that all such supplies will be treated as exempted in nature till 30th September 2019. But services and goods notified under sec. 9(3) are still covered under RCM. Hence the tax under RCM is still to be paid on such goods and services. Some of the notified services by government are Goods Transport Agency (GTA) Services, Director Services, Advocates Services etc.

9. Time and value of supply

The most prominent issue faced by the industry due to provisions contained in section 12 of the CGST Act was that due to tax on advance receipts of payments by manufacturer/trader. The provision is reproduced here for ready reference:

Time of supply in case of goods as per Section 12(2) has been stated to be earlier of the following dates:

a) Date of issue of invoice or the last date on which he is required to issue the invoice with respect to the supply

b) Date on which supplier receives the payment with respect to the supply.

The introduction of the date of payment as the time of supply under GST was a completely new concept for supplier of goods. Under the Excise and VAT law, the person manufacturing/selling goods did not consider the date of payment at all while making the payment of taxes. The introduction of GST led to an additional process for these persons supplying goods. Receipt of advance led to the time of supply to arise under GST.

The textile industry is basically a credit based industry and working capital requirement are met out be payments received in arrears for supplies made during prior periods. In such adverse conditions, introduction of this section cause severe adversaries to this already cash deprived industry. liability to pay taxes on advance would only result in more liquidity issues for the industry.

As a result, the Government had to remove the condition of date of payment while determining the time of supply Vide Notification No. 66/2017-Central Tax dated 15th November 2017 and now only the time of issuance of invoice is considered for payment of taxes in case of goods.

10. Valuation of Supply:

The major problem faced by the textile sector under this section is the provision related to interest on delayed payments:

Section 15(2)(d) states that value of supply shall include interest or late fee or penalty for delayed payment of any consideration for any supply.

As mentioned earlier textile sector works primarily on credit based sale pattern and it is a prevalent practice in industry to charge interest on late payments made by buyers. In the earlier tax regimes, there was no such provision for charging of tax on such delayed payment's interest but under GST, the scene has changed. Now such interest or late fee received is also chargeable to tax. But the real problem arises when this section is read in conjunction with section 12(6). It reads as follows:

The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

According to above mentioned sections, the tax on such receipt of interest has to be paid at the time of receipt of such amount. The practical problem in this case arises because no buyer would like to pay GST on interest component. As a result the seller has to assume the receipt inclusive of GST and pay it out of his own pocket. The accounting of receipt of interest and tax thereon and generation of invoice for the same is yet another matter which is cumbersome.

11. Input tax credit under GST

Input tax credit on inputs and input services and Capital goods are provided for the complete supply chain. It is to be noted that materials such as chemicals, dyes, accessories and packing materials which constitutes major raw material cost is eligible as input tax credit. Although the governing section 17 comes with its own set of restrictions and the major one is the restriction imposed in relation to supply of free gifts and samples.

Section 17(5)(h) states that goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples will not be eligible for input tax credit.

In textile sector it is common practice give away free fabric pieces as gift items or even as samples for sales promotion. Restricting its cenvat credit despite it being used as a business practice results in loss of credit for the assessee which simultaneously results in increased payment of taxes in cash. This affects the cash flow and working capital of the entity too.

12. Registration under GST

As per section 22(1) of CGST Act 2017 Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

This threshold limit of turnover is not applicable if persons making any inter-State taxable supply as per Section 24 of CGST Act 2017. Hence registration is mandatory if any inter-state taxable supply is there.

For Inter-State supply:

The business pattern of the textile industry is such that the goods are supplied from the factory premises/job premises to the sales offices or depots situated in other states. As a result of GST, such registered persons having different establishments in different states (if under same PAN no.) were made liable to avail separate registration in each and every state. This increased the compliance cost and also increased the number of returns to be filed by a single person despite of having inter unit

transactions. Given the current regime, a taxable person having turnover more than 1.5 Cr. has to file at least 24 returns for a single establishment in a state. Multiply that to no. of registrations taken all over India and that will be the total number of returns to be filed by single person.

For Intra-State supply:

The current system and provisions of CGST Act and rules provides for single registration in a state. As a result suppliers having more than one unit in a state has to consolidate data for each unit every month for the purpose of filing returns. This was resulting in mistakes in uploading of data and payment of taxes. In the latest meeting of council, it was decided to extend the facility of separate registration for units located in the same state. It is a welcome step towards easement of business processes.

Major Issue on Registration under GST:

1. Issue: Textile Trader or Manufacturer has to take mandatory registration under GST if he is availing services covered under the provisions of Section 9(3) of the CGST Act (refer sec. 24(1)(iii)) So here threshold limit of turnover (20 Lakhs & 10 Lakhs) will be not considered for taking registration. This hampers the small traders who don't cross the threshold limit and still they have to take registration. This increases the compliance cost heavily for such small traders and also results in inflation of their product's prices.

2. Issue: Textile Industries is majorly having smaller business units and SME's. Sec. 24(1)(i) mandates assessees having inter-state transactions to mandatorily avail registration. These small traders/manufacturer take part in exhibitions in other states to sell his finished goods and also regularly makes taxable supplies of such items in other States. Due to mandatory registration provision as per section 24 of CGST act, these small traders/manufacturer have to take registration under GST act.

Solution: To remove the hardship and in public interest Government vide its Notification No. 8/2017 – Integrated Tax dated 14th September 2017 notified some tariff on which the sec. 24(1)(i) won't apply. These notified items were basically textile related goods. This came as major relief to small traders having turnover less than 20 lakhs including inter-state transactions.

Notified tariff items:

Textile Handloom products	including 50, 58, 62, 63
Textile hand printing	50, 52, 54
Zari thread	5605
Carpet, rugs and durries	57
Textile hand embroidery	58

13. Job Work Mechanism Under GST

In Textile Industries Job Work process is the backbone activity of the industries as textile material is processed/transformed from raw cloth to finished product or semi-finished product by the process of Job work. The process of Job Work may be Printing, Embroidery, Stretching, Designing and many other allied activities which is done by various Small Scale SMEs/Units and individual Job Worker.

The term Job work has been defined in the CGST Act 2017. As per clause (68) of section 2 of the CGST Act, 2017, "job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly.

Further the clause 3 of the Schedule II states that any treatment or process which is applied to another person's goods is a supply of services.

Before introduction of GST, under service tax regime, the intermediate process related to job work of textile products was specifically exempted in the mega exemption notification. Post introduction of GST, the exemption for textile related job work was withdrawn. Thus now the job workers have to follow all the provisions of GST.

Here we will discuss some of the key issues face by Job Work Industries vis-a-vis Principal Manufacture/trader under GST regime.

1. Scope of Job Work definition:

The definition of job work is an extensive definition covering almost every process and that is why even a small process can get covered under job work and all the compliances have to be followed with. For eg. Even a bike given for repair will be covered under job work. Similarly, textiles industry comprises of many type of simultaneous processes and thus at each stage all the

compliances are to be done regarding job challans and returns. This has in practical terms proved to be very tedious for both the principal and job worker.

in practical terms proved to be very tedious for both the principal and job worker.

2. Registration under GST for Job Worker and Principal

Issue: As we have earlier discussed and as per provision of section 24 of CGST Act 2017 if a person supplies any goods/services interstate then he has to take mandatory registration under GST Act. The same applies to job worker too. Although the Government vide Notification no. 7/2017- Integrated Tax dated 14th September 2017 exempted job workers from obtaining registration under GST even if they are making inter-State taxable supply of services. However, this exemption from registration will not apply if they exceed the threshold limit for registration under Section 22(1) or they had opted for registration voluntarily.

Similarly, sec 143(1) also stipulates that the principal shall not supply the goods from the place of business of a job worker in accordance with the provisions of this clause unless the said principal declares the place of business of the job worker as his additional place of business except in a case—

(i) where the job worker is registered under section 25; or

(ii) where the principal is engaged in the supply of such goods as may be notified by the Commissioner.

Thus this additional liability has been conferred upon the principle to add the unregistered job worker in his registration if any goods are supplied directly from his premises. In case where there are numerous such unregistered job workers, then adding all these names in registration required frequent amendments in registration certificate which is not plausible in practical scenarios.

3. Rate of GST in case of Job Worker Services:

Issue: Initially in GST regime a Registered Job worker providing services of Job work to any principal had to charge GST @ 18%. This higher rate of tax on textile industry is creating harsh impact on various small SME's and Job workers as the output tax rate on textile sector is just 5%. As a result, huge amounts of credit balances are accumulated with the principal restricting the cash flows of the entity.

To overcome this, the Government, on the recommendations of the Council reduced the rate of tax on Job Work services from 18% to 5% vide Notification No. 11/2017-Central Tax (Rate) dated 28thJune 2017 on the following services which was further amended by Notification No 20/2017 – Central Tax (Rate) Dated 22ndAugust 2017:

(i) Services by way of job work in relation to-

(b) Textiles and textile products falling under Chapter 50 to 63 in the First Schedule to the Customs Tariff Act, 1975 (51of 1975).

4. Filling of Return:

Issue: In the excise regime, there were no return compliance for job works. Only challan movement and tracking of challans would suffice for compliance purposes. But the GST act require to file a statement for the details of movement of goods from principal to Job Worker and vice versa in form GST ITC-04. It contains the details of goods sent by the principal to the job worker or received by the principal from the job worker or sending of goods from one job worker to the other. The time limit for furnishing of such return has been specified as 25th day of the month succeeding the quarter in which the said goods have been sent/received. There are many practical issues in compliance of this return which are listed below:

1. Challan wise details have been asked for in return, the number of which is generally extensive and thus filling all the details in the return manually is very tedious.

2. Separate details of onward and return of goods have been asked challan wise which again is a very tiring job and practically very difficult to comply, for small and medium enterprise.

3. The goods on job work are sent without payment of duty and yet in the return and in challan, the value of goods and tax payable is asked which has to be derived. The problem increases when the processed goods are returned because at that time the value derivation is more complex.

4. Another problem which arises is when multiple items are sent through single challan and a singular product is returned back. Entering separate details of every item value wise is very typical.

5. When the unit of measurement is changed while conversion, it becomes difficult to enter such quantities and relate them to original challan.

6. In the initial phase of GST, the return format even not accepted the entry of goods sent in one quarter and returned in another

quarter. Due to this error, many assessees were unable to file these returns.

7. Even today due to difficulty in record keeping of these challans the rate of return filing in the industry is very low.

14. REFUNDS IN TEXTILE INDUSTRY

Section 54 of the CGST Act, talks about the refunds available to various categories of assessees under different scenarios. The two basic scenarios for refunds are as follows:

1. refund of IGST or input duties to exporters

2. refund of accumulated balance of credit on account of supplies under inverted duty structure i.e. where rate of tax on input supplies is higher than that of output supplies.

Refund on exports is available to all categories of assessees including the textile sector. But there are restrictions placed for textile sector for claiming refund under inverted duty structure. Initially Notification No. 5/2017-Central Tax (Rate) dated 28.06.2017 was issued stating certain goods on the supply of which the refund of inverted duty structure was not allowed. The table is as follows:

Sr.	Tariff item, heading sub-heading or Chapter	Description of Goods
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 fibres, paper yarn
5	5407, 5408	Woven fabric of manmade textile materials
6	5512 to 5516	Woven fabrics of manmade staple fibres
7	60	Knitted or crocheted fabrics [All goods]

As a result, the manufacturers and traders dealing in these goods faced a typical problem of accumulation of credit. This was due to the reason that generally the output tax rate of such supplies is 5% only whereas the rate of input tax credit was coming at 18/28%. The major raw material such as colour, chemical and dyes are all chargeable at 18/28%. This bore a huge impact on working capital requirement of the entity.

Representations were made to the government in this regards and as a result the GST Council Meeting proposed that the refund of accumulated ITC on account of inverted duty structure shall be allowed. The notification allowing refund of inverted duty structure on fabrics is 20/2018-Central Tax (Rate) dated 26.07.2018. But there is a huge issue in this notification which has caused concern in the textile industry but the said notification clearly states that the assessees will be able to avail the benefit of refund of inverted duty structure on or after 01.08.2018.

Another major point that is a matter of huge concern is the provision wherein it has been stated that 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 upto 31.07.2018 shall lapse. This will be definitely setback for textile sector as this provision is against the basic settled principle that the right validly earned cannot be extinguished. There is no provision in Section 54(3) of CGST Act as well as in State GST Act that empowers the Central Government to lapse the credit.

Another major cause of accumulation of credit was the procurement of job services the rate of tax on job workers is 5% as discussed earlier.

Since the term output supplies included both supply of goods and services, it was interpreted that the supplier of goods or supplier of services where rate of tax on inputs is higher than rate of tax on output supplies would be eligible to claim the refund of inverted duty structure as per section 54(3)(ii) of the CGST Act, 2017. Moreover, it was also mentioned in the said provision that the government may notify the supplies of goods or services on which the refund of inverted duty structure would not be admissible which also strengthened the interpretation that the refund of inverted duty structure was available to service providers.

However, the mechanism for claiming refund under Rule 89(5) of the CGST Rules, 2017 did not support this interpretation because the formula mentioned therein only specified the "Turnover of inverted rated supply of goods". In the absence of words "and services" after this phrase and the phrase "Tax payable on such inverted rated supply of goods", refund claims on account of inverted duty structure filed by service providers were being rejected on the grounds that the formula prescribed in Rule 89(5) does not mention 'services' and so refund is not admissible. The cries of the service providers appear to have been

heard by the government and amendment has been made in Rule 89(5) of the CGST Rules, 2017 vide Notification No. 21/2018-Central Tax dated 18.04.2018 wherein the words "and services" have been included in the formula given for computing the maximum amount of refund claim on account of inverted duty structure.

This amendment has brought a great sigh of relief to the service providers eligible for claiming refund of accumulated credit on account of inverted duty structure. However, it is pertinent to mention that the amendment in formula has been made applicable w.e.f. 18.04.2018 thereby meaning that the revenue authorities have got a strong ground to deny the refund claim to service providers for the period from 01.07.2017 to 17.04.2018 as the amendment has prospective effect. Therefore, it is requested that the government realises the difficulty faced by the service providers in claiming the refund of accumulated credit on account of inverted duty structure due to lacunae in the formula prior to 18.04.2018 and give retrospective effect to the rectification made vide the notification no. 21/2018-Central Tax dated 18.04.2018.

Another issue pertinent to note here is that Earlier there was mentioned in the provision under the section 54(3)(ii) of CGST Act that **output goods and service** will be eligible for refund but rule 89 does not include the refund for services. So there was a contradiction in Act and Rule. It is proposition of law that when there is conflict in Act and Rule then Act will prevail.

However, the department did not agree. Many assessees providing output service and having inverted duty structure have applied for refund but were not granted. They have received show cause notices from the department that there is no provision in the Rule to grant the refund on output services. Textile job workers have mostly applied such type of refund claims.

However, the CBIC had come forward to resolve the issue and they have issued notification number 21/2018-CGST dated 18.04.2018 and amended the rule 89 to allow the refund to output service providers. But their problems did not end here. The department took the stand that it is prospective amendment and refund will be allowed after that date. Earlier refund claims continued with the show cause notice. Even some of the claims were rejected also. Many associations once again represented the matter to the Government.

The present Government is listening to voice of associations and they came up with this present notification 26/2018 cited supra wherein the rule was amended retrospectively. Now there was no dispute and now service providers having inward duty structure will get the refund from the department. But for those assesses whose refund claim has been rejected, they have only a remedial action of going further for an appeal, and can refer to this **Notification 26/2018 dated 13.06.2018** on the basis of the order received from the department. But it will take some time and hearing will come in due course before the Commissioner (Appeal). However, there is no doubt that they will get the refund claim. The government intended to more specific for textile processors and came up with a circular **48/22/2018 dated 14.06.2018** that wherein it clearly provided that refund will be granted to textile processors. The Textile industry should welcome this step of present Government.

Further, roses always have thorns also. This notification came up with a big relief for output service providers having inverted duty structure but has also a demerit point also. Initially, the Section 54 of CGST Act does not allow the refund of input services whereas the rule 89 provided for the same. Many assessees have applied for the refund and it was allowed also. Later on, to remove the ambiguity, the CBIC has came up with the amendment by notification 21/2018 and amended the rules. Now, it was clear that refund will not be allowed on input services. It will be allowed only on inputs. But since this notification had prospective effect, the refund of previous period was allowed. However, by current notification, the Government has amended the Rule 89 with retrospective effect and amended the rule. The change in the rule 89(5) of CGST Rules, 2017 has been reproduced as following:

"(5) In the case of refund on account of inverted duty structure, refund of input tax credit shall be granted as per the following formula:- Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net ITC ÷ Adjusted Total Turnover} – tax payable on such inverted rated supply of goods and services.

Explanation: – For the purposes of this sub-rule, the expressions – (a) Net ITC shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both; and (b) Adjusted Total turnover shall have the same meaning as assigned to it in sub-rule (4)."

However, many assessee who had applied for refund and were also granted the refund of input services, they may face the problem of receiving the show cause notices from the department now. This is a demerit of this Notification.

15. E-Way Bill under GST

After a lot of delay and deliberation over the E-way bill provisions, it was finally agreed to phase it out in a step by step manner and on differentiated dates. As per the current set of rules, every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees

1. in relation to supply;

2. or reasons other than supply;

3. or inward supply from unregistered person

shall generate e-way bill. It means, the consignor or consignee, as a registered person or a transporter of the goods can generate the e-way bill. The unregistered transporter can enroll on the common portal and generate the e-way bill for movement of goods for his clients.

Here "Consignment Value", means value determined as per section 15 of the CGST Act as mentioned on the invoice, bill of supply or delivery challan as the case may be including the applicable tax thereon. However, such consignment value shall exclude the value of exempted supply, where the invoice is issued in respect of both exempt and taxable supply of goods.

By whom the E-way Bill to be generated:

The primary responsibility to generate e-way bill shall be of the registered person who causes the movement of goods, i.e. the consignor or the consignee, as the case may be. However, if such consignor or consignee doesn't generate the e-way bill, it may be generated by transporter as well, if authorized by the registered person.

Also, in case of supply of goods by an unregistered person to registered person, the liability to generate e-way bill is on the recipient.

For Inter-State Supplies:

Issue: Mr. A trader of textile based in Rajasthan send some goods to process from job worker Mr. B (Job Worker) his consignment value is less that Rs 50,000. The place of Mr. B is Gujrat. Does E way bill to be generated since the consignment value is less than Rs. 50,000?

Solution: Proviso 3rd to Rule 138 (1) of CGST Rules 2017 provides that where goods are sent by principal located in one state to job worker located in another state, e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment. Hence Mr. A has to generate E way bill since the movement of goods is inter-state.

Practical Difficulty: Normally, in Textile industry the goods move from one job worker to another job worker. Goods move to one job worker for bleaching and then it send to another job worker for dyeing and thereafter to another job worker for printing and so on for finishing, washing, felt and packing. In each case, the principal has to generate e-way bill for each onward movement. Thus, it will make the procedure very cumbersome. The difficulty is immense if the principal is situated in another state. So for job work of Inter-State nature, E way bill has to be generated even if the value of consignment is less than 50,000.

For Intra State Supplies:

Issue: Mr. A trader of textile based in Rajasthan send some goods to process from job worker Mr. B (Job Worker) his consignment value is more that Rs 50,000. The place of Mr. B is Rajasthan itself. Does E way bill to be generated since the consignment value is more than Rs. 50,000?

Normally, in Textile industry the goods move from one job worker to another job worker. If the value exceeds 50,000 then principal has to generated E Way Bill. This is very typical task for principal whose goods or services processed at multiple location in same state and goods transferred to multiple job workers.

Solution: A welcome step has been taken by Rajasthan Governments vide notification dated 06th August 2018 to reduce the compliance burden on taxpayer by exempting the requirement to generate the E way Bill if the goods are transported for the distance upto 50 KM within the state of Rajasthan for any value for the purpose of Job Work are being sent from one job-worker to another job worker or are being return to the principal after such job work and where such transportation is not for final delivery of the finished goods.

Issue:

Another issue faced by job workers and principal is that the e-way bill can be generated by principal or job worker in case of return back of goods by job worker. This has been provided in Rule 138 cited supra. The circular number 38/12/2018 dated 26.03.2018 also allows the movement of goods either by principal or job worker. This can be done either by endorsement of job work challan or by issuance of new challan by job worker. However, the e-way portal shows that option of "job work return" in inward transaction type and as soon as the same is entered then the address of registrant comes in "Bill to" column.

Hence, it implies that the principal has also to generate e-way bill in case of return of job work. Normally, in industry the goods move from one job worker to another job worker. This is most common in textile industry. Goods move to one job worker for bleaching and then it send to another job worker for dyeing and thereafter to another job worker for printing and so on for finishing, washing, felt and packing. In each case, the principal has to generate e-way bill for each onward movement. Thus, it will make the procedure very cumbersome. The difficulty is immense if the principal is situated in another city.

Although the law as well as circular provides for the movement of goods by job worker but the e-way portal provides for job work return by principal only. The other option to job worker in case of return of job work goods generate the challan in other column. This anomaly in e-way portal is creating problems. Hence, in case of job work return, the portal should allow to enter name either in "Bill to" or "Bill from". It will smoothen the process of e-way bill.

EXEMPTION UNDER SECTION 54, 54EC & 54F -FAQS & CASE LAWS

Q. What is Capital Gain Account Scheme?

If the new asset is not acquired up to the date of submission of return of income, then the tax payers will have to deposit money in "Capital Gain Deposit scheme" with a nationalized bank. On the basis of actual investment and the amount deposited in the deposit account, exemption will be given to the tax payer.The details of amount deposited should be given in the return itself.

Q. Is the relief under section 54 is available to multiple sales & purchases of residential houses?

In case of multiple sale and purchase of residential houses, the exemption cannot be calculated considering the aggregate of capital gain and aggregate of investment in the residential houses. The exemption will be available in relation to each set of sale and corresponding investment in the residential house and the combination which is beneficial to the assessee has to be allowed. **[Rajesh Keshav Pillai v. ITO 7 Taxmann.com 11 (Mum.) (2010)]**

Q. Whether deduction u/s 54 is available for capital gains arising from sale of more than one house, however the sale proceeds are invested in one house?

There is no restriction placed in section 54 which restricts exemption only in respect of sale of one residential house. Even if assessee sells more than one house in the same year and the capital gains is invested in a new residential house, the claim of exemption cannot be denied if other conditions are fulfilled. **[DCIT v. Ranjit Vithaldas [2012] 23 taxmann. com 226 (ITAT-Mum)]**

Q. Can assessee claim exemption under section 54 for acquisition of more **than one house?**

- Where more than one residential house is purchased out of the sale proceeds of one residential house, exemption u/s 54 can be claimed only in respect of one house, provided the other conditions of Sec 54 are satisfied.[K.C. **Kaushik v ITO 185 ITR 499 (Bom.)(1990)].**

  In **Gulshanbanoo R. Mukhi v. JCIT 83 ITD 649 (ITAT- Mum) (2002),**it was held that exemption is allowed only for one flat.

  However, two or more residential houses purchased can be classified as one single residential house, the exemption under section 54 can be allowed. Some of the relevant judicial pronouncements are:

- Two adjacent residential units but used as one single residential house, exemption allowed. **[D. Anand Basappa v. ITO 309 ITR 329 (Kar.) (2009)]**
- Fact that residential house consists of several independent units cannot be a hindrance to allowance of exemption u/s 54 – Held, yes **[Prem Prakash Bhutani Vs. CIT 110 TTJ (Del) 440 (2007)]**
- Two adjoining flats converted into single residence, exemption allowed. **[ACIT v Mrs. Leela P. Nanda 286 ITR (AT) 113 (Mum) (2006)]**
- Four flats purchased in same building but on different floors because of large size of family, which maintained a common kitchen and a common ration card, exemption allowed. **[Vyas (K.G.) v ITO 16 ITD 195 (Bom.)(1986)]**
- Allowable in the case of adjacent & contiguous flats.**[ITOv. Mrs. Sushila M. Jhaveri 107 ITD 327 (ITAT- Mum. SB)(2007)]**
- Several self occupied dwelling units which were contiguous and situated in the same compound and within the common boundary having unity of structure should be regarded as one residential house. **[Shiv Narain Choudhary v. CWT 108 ITR 104 (All)(1 997)]**
- More than one units converted into one single house allowed for the purpose of sec. 54F as well. **[Neville J. Pereira v. ITO 8 Taxmann. com 68 (Mum. ITAT) (2010)]**
- Two flats which were not adjacent to each other and were separated from each other by common passage, lobby, staircase, etc., they could not be regarded as a single unit and, therefore, assessee was entitled to benefit of deduction under section 54F in respect of one of those two units. **[ACIT vs Sudhakar Ram [2011] 16 taxmann.com 175 (Mum.-ITAT)]**
- However, the claim for exemption u/s 54 is not admissible in respect of two independent residential houses situated at different locations. **[Pawan Arya v. CIT 11 taxmann.com 312 (P&H) [2011]]**

Q. Whether the property purchased in the joint name with wife is eligible for exemption u/s 54/54F?

Section 54F mandates that house should be purchased by assessee and it does not stipulate that house should be purchased in name of assessee. Property purchased by assessee in joint name with his wife for 'shagun' purpose because of fact that assessee was physically handicapped and the whole consideration was paid by assessee, assessee entitled to exemption u/s 54F. **[CIT**

Vs Ravinder Kumar Arora 15 taxmann.com 307 (Delhi) [2011])]

Other relevant judicial pronouncements

- Merely because sale deed is in joint name, assessee could not be denied benefit of deduction u/s 54. [DIT v. Mrs. Jennifer Bhide 15 taxmann.com 82 (Kar.) [2011]]
- House property in the name of HUF sold but new house purchased in the name of Karta and his mother to claim the benefit of sec. 54F. The residential house which is purchased or constructed has to be of the same assessee. [Vipin Malik (HUF) Vs CIT 183 Taxman 296 (Delhi) (2009)]
- Exemption u/s 54F is allowed only when the new residential property is purchased by the assessee in his own name and not in name of his adopted son. [Prakash v. ITO 173 Taxman 311 (Bom.) [2008]]
- Sec. 54 clearly says that if the assessee is owner of the property, he is entitled to exemption even if the new property purchased is in the name of his wife but the same is assessed in the hands of the assessee. [CIT v. V. Natarajan 154 Taxman 399 (Mad.) [2006]]

Q. Whether the nexus between capital gain and amount of investment u/s 54 is necessary?

Assessee is not required under the provision for section 54 to establish the nexus between the amount of capital gain and the cost of new asset.

Held that the assessee had initially utilized the sale proceeds on sale of its residential flat in commercial properties and, later on, he purchased two residential flats within a period specified in sub-section (2) of section 54. The Revenue's main dispute was that the sale proceeds were utilized for purchase of a commercial property and residential house was purchased out of the funds obtained from different sources, as such, the identity of heads has been changed. **[Ishar Singh Chawla Vs. CIT 130 TTJ (Mum) (UO) 108 (2010) and Ajit Naswanit Vs. CIT 1127 Taxman 123 (Delhi) (Mag.) (2001)]**

To avail exemption u/s 54F, the residential property should be acquired out of personal funds or sale proceeds?

If the assessee constructs or purchases a residential house out of the borrowed funds, he is not eligible for deduction u/s 54F of the Act. If it is not construed in such a manner the object of introduction of the beneficial provisions would be frustrated. The fiscal provisions are to be construed in such a manner, so that its objects of introduction can be achieved. **[Milan Sharad Ruparel 005 ITR 0570 (ITAT – Mum) [2010].**

However a different view was taken in **Bombay Housing Corporation v. Asst. CIT 81 ITD 545 (Bom.-ITAT) (2002),** Where assessee utilized the sale consideration for other purposes and borrowed the money for the purpose of purchasing the residential house property to claim exemption under section 54,it was held that the contention that the same amount should have been utilized for the acquisition of new asset could not be accepted.

Other relevant judicial pronouncement:

There is no requirement for claiming exemption under section 54 that same amount of sale consideration should be utilized for acquisition of property, even borrowed funds can be utilized for that purpose. **[Prema P. Shah Vs ITO 101 TTJ 849 (Mum-ITAT)(2006)].** Also see **J.V. Krishna Raovs DCIT [2012] 24 taxmann.com 104 (Hyd.-ITAT).**

Q Whether exemption under section 54 is allowable if residential units of a house property are purchased from different persons?

Execution of four different sale deeds in respect of four different portions of property did not materially effect nature of transaction or nature of property acquired since property in question was being used by assessee for her own purposes and investment made in purchase of same was, therefore, eligible for deduction under section 54.**[CIT V. Sunita Aggarwal (2006) 284 ITR 20(Del)]**

In **CIT vs Smt. Jyothi K. Mehta [2011] 12 taxmann.com 440 (Kar.),** it was also held that the fact that the assessee could not have purchased both the flats in one single sale deed or could not have narrated the purchase of two premises as one unit in the sale deed could not make any difference. The two flats purchased were situated side by side. Builder also stated that he had effected modifications to the flats to make them one unit by opening the door in between the two apartments.

Q Whether exemption u/s 54 can be claimed on the basis of a mud structure?

Exemption u/s 54 cannot be allowed for sale of a mud structure whereupon there was never any structure fitting to be described as "habitable residential house". **[M.B. Ramesh vs ITO 320 ITR 451 (Kar.) [2010]]**

Q **Whether benefit u/s 54(1) is available in case of sale of land adjoining to the building?**

The land appurtenant to the building means that the ownership of building and land appurtenant should be of same person. If

building is owned by one person and land is owned by another, it will be the case of land adjoining to the building and by no stretch of imagination it can be called land appurtenant to the said building and therefore, benefit of section 54(1) would not be available to such land adjoining to a building. **[P.K. Lahri v. CIT 146 Taxman 349 (ALL.)(2005)]**

Q .**Is it necessary that a person should reside in the house to call it a residential house.**

The popular meaning of words 'residential house' is a place or building used for habitation of people. It is not necessary that a person should reside in a house to call it a residential house. If it is capable of being used for the purpose of residence than the requirement of the section 54F is satisfied and benefit could not be denied. **[Amit Gupta v. DCIT 6 SOT 403 (Delhi)(2006) & Mahavir Prasad Gupta 5 SOT 353 (Del)(2006)]**

Q **Can the assessee claim exemption under section 54 in respect of investment in modification or renovation of the existing house?**

Exemption is available only when the investment is in the consideration of a house and not for investment in modification or renovation. Admitted facts are that the assessee had a fairly big house to which the assessee made addition of 140 sq. meters of plinth area. However, it is the conceded position that the assessee has not constructed any separate apartment or house. Section 54F does not provide for exemption on investment in renovation or modification of an existing house. On the other hand, construction of a house only qualifies for exemption on the investment. Even addition of a floor of a self contained type to the existing house would have qualified for exemption. However, since the assessee has only made addition to the plinth area, which is in the form of modification of an existing house, she is not entitled to deduction claimed u/s 54F of the Act. **[Mrs. Meera Jacob vs ITO 313 ITR 411 (Kerala) (date of order 9/06/2008)]**

Q **Whether exemption under section 54 is allowable for addition of floor to the existing house from the sale proceeds of residential house sold?**

Assessee owned two residential houses. He sold one house and utilized its sale proceeds to construct first floor on his second house after demolishing old structure, in this case exemption will be allowable under section 54. **[CIT vs P.V. Narsimhan [1989] 47 Taxman 89 (Mad.)**

However, in **CIT v. V. Pradeep Kumar [2007] 290 ITR 90/ [2006] 153 Taxman 138 (Mad.),** it was held that a mere extension of existing building would not give benefit to assessee under section 54F. Section 54F emphasizes construction of residential house and such construction must be real one and should not be a symbolic construction. Followed by **ACIT vs T.N. Gopal [2009] 121 ITD 352 (Chennai-ITAT) (TM)**

Q **Whether the expenditure to make a residential house habitable will be included in the cost of new asset?**

The words used about the amount spent on purchase of new asset are '**cost thereto'** and not '**price thereto'.** The cost includes purchase as well. Consequently, the words used signify that the amount of purchase will include other necessary expenditure in this behalf to make a residential house habitable and taken together that will be the cost of the new asset. The Tribunal had perused the items of the report of the architect. The residential house was in a state of general disrepair and was inhabitable. Consequently, the necessary repairs carried out to make the same habitable would constitute part of the cost of new house. **[Gulshanbanoo R. Mukhi v. JCIT 83 ITD 649 (ITAT- Mum) (2002)]**

Q **Whether exemption under section 54F would be allowable where assessee is already a co-owner of another flat?**

The word 'own' appearing in section 54F includes only such residential house which is fully and wholly owned by one person and not a residential house owned by more than one person. The assessee was already a co-owner of another flat. Being a co-owner, assessee was not the absolute owner of another residential flat, and exemption under section 54F could be denied on this ground. **[ITO vs Rasiklal N. Satra [2006] 98 ITD 335 (Mum.-ITAT)]**

Q **Whether determination of title to the property would commence from the first date of allotment or the subsequent date of allotment of the actual flat number and delivery of possession for the purpose of assessing long term capital gains.**

Title to the property is transferred with the issuance of the allotment letter and payment of installments is only a follow up action and taking of the delivery of possession is only a formality. **[Vinod Kumar Jain Vs CIT TIOL706-P&H (2010)]**

Q **Whether exemption under section 54 would be allowable where residential house property is purchased within time limit specified under section 139(4)?**

The due date for furnishing return of income as per section 139(1) is subject to extended period provided under sub-section (4) of section 139 and, if a person had not furnished return of previous year within time allowed under sub-section (1), assessee could file return under subsection (4) before expiry of one year from end of relevant assessment year. Therefore, section 54

specified period, it could be said that assessee complied with requirements of section 54. Merely because builder failed to hand over possession of flat within specified period, assessee could be denied benefit of benevolent provision of section 54.

Q **Does exchange of old flat with a new flat under a development agreement amounts to construction of new flat for purpose of claiming deduction under section 54?**

Exchange of old flat with a new flat to be constructed by the builder under development agreement amounts to transfer under section 2(47) of the Income Tax Act, 1961. The acquisition of a new flat under a development agreement in exchange of the old flat amounts to construction of new flat. The provisions of section 54 are applicable and assessee is entitled to exemption if the new flat had been constructed within a period of 3 years from the date of transfer. **[Jatinder Kumar Madan vs ITO [2012] 21 taxmann.com 316 (Mum.)]**

Q **Can deduction u/s 54 be claimed for purchase of a share in the residential house property where the assessee presently resides?**

Section 54 nowhere states that a residential house which is purchased by an assessee so as to enable the assessee to get exemption under the provisions of section 54 should not be the one in which the assessee was residing. Merely because the assessee was residing in a residential house which was purchased by her, exemption under section 54 could not be denied. **[CIT vs Chandan Ben Magan Lal 245 ITR 182 (Guj) (2000)].** Also see **CIT vs TN Arvinda Reddy 120 ITR 46 (SC) (1979), ITO vs RasikLal N Satra 98 ITD 335 (Mum) (2006)]**

Q **Whether transfer of only interest in flats under construction could be treated as transfer of residential house?**

Where the assessee transferred only his interests in two flats under construction of which possession was not taken and was not fit for human habitation, such transfer could not be treated as transfer of residential house. Hence, the capital gain derived by the assessee related to a capital asset held by him for a period of more than 36 months and, therefore, the gain arising from the transfer of his rights in the said flats constituted longterm capital gains. The assessee would, therefore, be entitled to grant of exemption under section 54F. **[Jagdish Chander Malhotra v ITO (1998) 64 ITD 251 (Del)]**

Q **Whether the assessee is entitled to deduction under section 54F for purchase of flat under construction before the expiry of statutory period of two years from the date of the capital gain?**

Where assessee invested amount of capital gain on sale of shares in purchase of flat before expiry of statutory period, benefit of deduction under section 54F could not be denied to assessee on ground that building was under construction stage and assessee had chosen to pay entire advance. **[ACIT vs Sudhakar Ram [2011] 16 taxmann.com 175 (Mum.-ITAT)]**

Section 54F does not prescribe completion of construction of residential house and thrust of said section is on investment of net consideration received on sale of original asset and start of construction of a new residential house. **[Smt. Rajneet Sandhu vs DCIT [2011] 16 taxmann.com 210 (Chd.-ITAT)]**

Q **Can construction of house property start before the date of transfer.**

Exemption on capital gains under section 54 cannot be refused merely on ground that construction of new house had begun before sale of old house.**[CIT v. HK Kapoor 150 CTR 128 (All) (1998)]**

Q **Can the assessee simultaneously take benefit of both purchase and construction of residential house property?**

If an assessee is entitled to relief on fulfillment of either of the two conditions specified under section 54, i.e., either purchasing a house property within one year or constructing the house within two years, it would be improper to read that on fulfillment of both the conditions, he would be disentitled to that relief. Section 54 does not contemplate two kinds of relief; it only contemplates fulfillment of two alternative conditions. If both the conditions are satisfied within the time stipulated, the assessee does not become disentitled to the relief if the other conditions are fulfilled. If a floor is constructed to the new house or if it is renovated it remains as one house only, especially when there is no evidence that two different houses bearing two different municipal numbers were constructed. Therefore, benefit can be availed jointly. **[BB Sarkar v. CIT 132 ITR 150 (Cal)(1 981)].**

Q **Where the minor has transferred an asset, will the exemption under section 54F/54EC be allowed to the minor or the parent.**

Provisions of section 64(1A) i.e. clubbing of income of the minor with the income of the parent have to applied in the end after computing income of minor under Income Tax Act.

Where proceedings under Act for assessment of income of a minor child are required to be taken, minor child can be treated as an assessee under section 2(7) for purposes of section 54F. Benefit under section 54F cannot be denied to minor child on ground that father of minor child has a residential house at time of transfer of capital asset. **[ACIT vs Madan Lal Bassi [2004]**

88 ITD 557 (CHD.)]

In case of clubbing of income of minor child, deduction under section 54EC is to be allowed on minors' income from LTCG separately and only net income is to be clubbed **[DCIT vs Rajeev Goyal [2012] 22 taxmann. com 34 (Kol.-ITAT)]**

Q **What is the date of investment in respect of section 54EC?**

For the purposes of the provisions of Section 54EC, the date of investment by assessee must be regarded as date on which payment was made and received by the National Housing Bank. **[Hindustan Unilever Ltd. v. DCIT 191 Taxman 119 (Bom) [2010]]**

Q **Whether the benefit under section 54EC could be availed where bonds are purchased in joint name?**

Merely because bonds are in joint name, assessee could not be denied benefit of deduction u/s 54EC. As far as it is established that the complete consideration has flown from the assesse, the benefit could not be denied on this ground. **[DIT vs Mrs. Jennifer Bhide 15 taxmann.com 82 (Kar.) [2011]]**

Q **Can exemption under Section 54EC be claimed where REC Bond were purchased prior to date of sale of property?**

Section 54EC clearly states that the investment in specified bonds is to be made "*within a period 6 months* ***after the date of such transfer",*** the intention of the legislature is clear. Had the legislature wanted to give liberty to the assessee to invest before or after the date of transfer, they would have explicitly said so, as has been provided in section 54 & 54F of the Act. Since such specific words are not used in section 54EC, deduction cannot be allowed to the assessee. **[Smt. Dakshaben R. Patel vs ACIT [2012] 22 taxmann.com 237 (Ahd.-ITAT)]**

Q **Is exemption u/s 54EC is available from capital gains on deemed transfer u/s 4 6(2) of the Income Tax Act 1961?**

Capital Gains in the hands of shareholder on distribution of assets by company in liquidation u/s 46(2) is a deemed transfer not an actual transfer which has specifically been taxed under that section. Exemption u/s 54EC is available from gains on actual transfer and not from gains u/s 46(2).**[CIT V. Ruby Trading Co. Ltd. 32 Taxman 500 (Raj) [1987]]**

Q Whether the benefit under section 54EC and 54F can be taken simultaneously?

Deduction under section 54EC cannot be denied on ground that assessee has availed exemption under section 54F also in respect of a part of capital gains. **[ACIT vs Deepak S. Bheda[2012] 23 taxmann.com 159 (Mum.)]**

Q Whether the benefits u/s 54, 54F & 54EC are available from gains of depreciable capital asset?

In **CIT V. Assam Petroleum Industries Pvt. Ltd. 131 Taxman 699 (GAU.) [2003],** it was held that, where a depreciable asset is held for more than 36 months before its transfer, then such depreciable capital asset is Long Term Capital Asset. However, according to section 50(1)&50(2), the gains or loss on DCA shall always be short term.

It was further held that benefit u/s 54,54F & 54EC which are available from gains of a LTCA shall be available from gains of Depreciable capital asset.

EXEMPTIONS SECTION 54, 54EC & 54F OF INCOME TAX ACT, 1961

The assessee can claim exemption from capital gains on sale of residential house property under the following sections:

Particulars	Sec. 54	Sec. 54EC	Sec. 54F
Exemption claimed	Individual/ HUF	Any person	Individual/ HUF
POH of Capital asset	Long - Term	Long - Term	Long - Term
Eligible specific asset	A residential house property	Any LTC asset. However wef A.y 2019-20 it should be land or building or both.	Any LTC asset (other than a residential house property)provided on the date of transfer the tax payer do not own more than one residential house property from the A.Y. 2001-02 (except the new house as stated in 4 infra). The Assesee Should either Purchase or Construct only one House within the specified time period. Also, the Assessee should not have more than one house in his name at the time of transfer of original asset income from which is charged under the head Income from house property

Particulars	Sec. 54	Sec. 54EC	Sec. 54F
Type of asset should be acquire to get the benefit of exemption	One Residential house property in India	Long Term Specified Asset, that is, Bonds of national highway authority of India or Rural Electrification Corporation. Wef Assessment Year 2018-19 investment in any bonds redeemable after three years shall be eligible for exemption. Wef A.y 2019-20 investment in any bonds redeemable after five years shall be eligible for exemption	One residential Property in India
Time limit for acquiring the asset	*Purchase:*1 yr backward or 2 yrs forward. *Construction :* 3yrs forward	Six Months from the date of transfer.	*Purchase:* 1yr backward or 2yrs forward. *Construction:* 3yrs forward
Relevant date for acquiring the new asset	From the date of transfer of house property but in case of compulsory acquisition from the date of compensation.	From the date of transfer of long term capital asset but in the case of compulsory acquisition from the date of receipt of compensation.	From the date of transfer of capital asset but in case of compulsory acquisition from the date of receipt of
Amount exempted	Investment in the new asset or capital gain, whichever is lower.	Investment in the new asset or capital gain, whichever is lower.	Amount of Exemption shall be equal to Capital Gains ÷Net Consideration ×Amount of Investment
Exemption revoke in a subsequent year	If the new asset is transferred within 3 yrs of its acquisition.	The Asset so purchased should not be transferred before 3 years (5 years if the investment in specified asset is made on or after 01.04.2018).	a) If the new asset is transferred within 3 yrs of its acquisition. b) if the assessee purchases, within the period of two years after the date of the transfer of the original asset, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", other than the new asset,

Different questions	Sec. 54	Sec. 54EC	Sec. 54F
When the exemption is revoked it is taxable as LTCG/STCG in the year in which the default is committed.	STCG	LTCG	LTCG
Scheme of deposit is applicable	Yes	No	Yes

COMPLIANCE REQUIRED U/S 151 R.W.S. 148 OF INCOME TAX ACT, 1961

As per section 151, no notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice. And in any other case no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.

For Further Clarity, Section 151 is re-produced below:

151 (1) No notice shall be issued under section 148by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.

(3) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself.

Requirements to be satisfied by Assessing Officer considering section 151:

1.Satisfaction has to be received by assessing officer before issue of notice:

The AO issued a notice for reopening on 30 March 2011 when as a matter of fact approval was received with reference to the provisions of Section151 from the Commissioner of Income Tax on 31 March 2011. As on the date on which the notice of reopening was issued, the Assessing Officer was not in receipt of the approval which is required under Section 151, the reopening was quashed in WRIT PETITION NO.1246 OF 2012 (BOMBAY HC), Shri. Ghanshyam K. Khabrani Vs. ACIT.

2. **Satisfaction required and not merely approval:**

Merely sign and stamp of approving authority will not amount to satisfaction.

In the case of The Central India Electric Supply Co. Ltd V/s ITO, reported vide 333 ITR 237 (2011), Honourable Delhi HC has held that,

Where a mere stamp is affixed and signed by a Under Secretary underneath a stamped "Yes" against the column which queried as to whether the approval of the Board had been taken. Rubber stamping of underlying material is hardly a process which can get the imprimatur of this Court as it suggests that the decision has been taken in a mechanical manner. Even if the reasoning set out by the ITO was to be agreed upon, the least, which is expected, is that an appropriate endorsement is made in this behalf setting out brief reasons. Reasons are the link between the material placed on record and the conclusion reached by an authority in respect of an issue, since they help in discerning the manner in which conclusion is reached by the concerned authority. Thus, we find force in the contention of learned counsel for the appellant that there has not been proper application of mind by the Board.

3. **Approval should be of the authority, as required in the section and not of the higher authority:**

In the reassessment within 4 years, act requires that no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.

The Apex Court in the case of Anirudh Sinhji Karan Sinhji Jadeja Vs. State of Gujarat, (1995) 5 SCC 302 has held that if a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If discretion is exercised under the direction or in compliance with some higher authorities instruction, then it will be a case of failure to exercise discretion altogether.

Honourable Bombay High Court in the case of DSJ Communication Ltd V/s. DCIT, Circle-2(1) & Anr. Held that, there is merit in the contention raised on behalf of the Assessee that the requirement of Section 151(2) could have only been fulfilled by the satisfaction of the Joint Commissioner that this is a fit case for the issuance of a notice under Section 148. Section 151(2) mandates that the satisfaction has to be of the Joint Commissioner. That expression has a distinct meaning by virtue of the definition in Section 2(28C). The Commissioner of Income Tax is not a Joint Commissioner within the meaning of Section 2(28C). In the present case, the Additional Commissioner of Income Tax forwarded the proposal submitted by the Assessing Officer to the Commissioner of Income Tax. The approval which has been granted is not by the Additional Commissioner of Income Tax but by the Commissioner of Income Tax. There is no statutory provision here under which a power to be exercised by an officer can be exercised by a superior officer. When the statute mandates the satisfaction of a particular functionary for the exercise of a power, the satisfaction must be of that authority. Where a statute requires something to be done in a particular manner, it has to be done in that manner.

30 अगस्त 2018 को कारखाना एवं बॉयलर्स निरीक्षण विभाग द्वारा बिजनेस रिफोर्म एक्शन प्लान 2018 में मुख्य निरीक्षक श्री मुकेश जैन का स्वागत करते हुए मानद महासचिव श्री आर के जैन।

बिजनेस रिफोर्म एक्शन प्लान 2018 कार्यक्रम में अतिथियों का स्वागत करते हुए मानद महासचिव श्री आर के जैन।

कार्यशाला में मंचासीन अतिथिगण।

मुख्य निरीक्षक श्री मुकेश जैन को स्मृति चिन्ह भेंट करते हुए वरिष्ठ उपाध्यक्ष श्री जे के बागडोदिया।

कार्यशाला में प्रस्तुति देते हुए कारखाना एवं बॉयलर्स निरीक्षण विभाग के मुख्य निरीक्षक श्री मुकेश जैन।

30 अगस्त 2018 को सूचना प्रौद्योगिक और संचार विभाग राजस्थान सरकार द्वारा आयोजित जॉब फेयर पर कम्पनी इन्टरएक्शन मीट में प्रस्तुतिकरण देते हुए वरिष्ठ अधिकारी श्री निशान्त।

पोस्टल रजि. नं. भीलवाड़ा/254/2018-2020 प्रेषण : प्रत्येक माह की 7 तारीख अधिकृत डाकघर : रेल डाक सेवा, भीलवाड़ा

स्वत्वाधिकारी मेवाड़ चेम्बर ऑफ कॉमर्स एण्ड इण्डस्ट्री, भीलवाड़ा के लिए सम्पादक-प्रकाशक आर. के. जैन द्वारा अलका प्रिन्टर्स, भीलवाड़ा से मुद्रित एवं मेवाड़ चेम्बर भवन, नागौरी गार्डन, भीलवाड़ा से प्रकाशित। सम्पादक-आर. के. जैन फोन : 01482-220908