

## Northern India Textile Mills' Association

PHD House, Sector 31 A, Chandigarh-160 031

Contact Nos.: +91 172 2637 573, +91 81466 77291, +91 81464 00264



Capt. Amarinder Singh,  
The Hon'ble Chief Minister,  
Govt. of Punjab,  
Punjab Civil Secretariat, 2<sup>nd</sup> Floor,  
Sector – 01  
Chandigarh.

Date : June 08, 2019

**Subject: Representation for Reviewing of "Input Tax Credit" provisions under CGST Act impacting the honest tax payers (Buyers) due to Defaults made by Suppliers or their Sub-Vendors.**

Respected Sir,

We, Northern India Textile Mills' Association (NITMA) is an association of Textile Mills located in Northern India and was established in the year 1958. It is registered under Societies Act XX1 of 1860 and is a non-profit body solely engaged in helping promote the interests of Indian Textile Industry not only in the northern part as the name suggests but also in central and western states of the country.

NITMA is serving the interests of textile units for more than five decades. Many of the large, medium and small textile industries located in northern India are associated with NITMA with the combined turnover above Rs. 50,000 Crores and represents approx. 20% of textile production capacity.

NITMA's objective is to promote and protect the economic interest in relation to production, sales, trade and commerce of textile and textile manufacturers. NITMA takes up the issues and concerns of its constituent member units effectively with all the wings of the Government both at the Central and State levels.

### **Para A: Brief Summary of the Textile Industry Concerns impacting Business**

- (a) Textile Industry across World is considered as Labour-Intensive Industry and involves long chain from "Cotton – Cotton Yarn- Dyed Yarn- Fabrics – Made ups / Garments". The chain involves right from Agriculturist / farmer to various Middleman, Ginners, Traders and lastly the core Manufacturing Industry before the product is sold off in retail market.
- (b) Recently, NITMA has come across with various issues concerning Textile industry specially in Punjab which has hit the businesses hard thus impacting industry survival, growth and employment opportunities.
- (c) Reputed Groups i.e. Vardhman Textiles Limited, Trident Limited, Nahar Spinning, Garg Acrylics Limited, Sportking etc... always have ensured compliances and contributed to Government treasury by paying Tax. Some of these groups for e.g. Trident have been reporting to Central / State Tax Authorities cases of non-filing of monthly returns and have lodged cases also against defaulters who have made supplies and not made tax payments. These Groups contribute 1100 cr. of GST annually majorily from Vardhman Textiles Limited (Rs. 210 cr), Trident Limited (Rs. 250 cr).

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- (d) GST Payments has been made on outward supplies thus ensuring compliance by the above-named companies.
- (e) Buyers of goods namely Cotton have also ensured that the Suppliers have filed required Returns i.e. GSTR-1 and GSTR-3B at GST Portal.
- (f) Despite of ensuring compliances, these esteemed groups have been asked to pay / reverse Input Tax Credit wherever the defaults have been committed by Suppliers of their sub-vendors, which appears to be injustice done with Buyer of Goods.
- (g) No visibility at GST Portal to ensure whether the correct output tax has been paid by the Supplier and whether the supplier making sales of product has made purchases of that material or not. Thus, Buyer should not be made responsible for Suppliers default.

Hence request is placed herewith for review of Input Tax Credit provisions so as not to make the Buyers of Goods / Services liable for default on the part of Supplier or their sub-vendors.

### **Para B: Seamless Flow of Input Tax Credit to Buyers of Goods – Ease of Doing Business**

- I. One of the Important objectives of Introduction of Goods and Service Tax is to have seamless flow of Input Tax Credit to recipient of goods.
- II. As per provision of Section 16(2) of CGST Act, Input Tax credit is admissible to person if the Tax has been paid by way of Cash / utilisation of Input Tax credit admissible in respect of said supply.
- III. Tax Credit is availed on receipt of Goods / Services against Tax Invoice as the tax charged is shown on Invoice on bona fide belief that the taxes have been remitted by seller to Government treasury.
- IV. Though **in earlier regime**, since the invoices were not being uploaded, there was lack of transparency in availability of data, but in the new suggested compliances, where invoices to be uploaded by supplier and accepted by recipient (locked) tax administration will have ready data of defaulters.
- V. Department in present GST Return system has details of uploaded and accepted invoices but tax not paid thereon, and thus can proceed promptly against the defaulting suppliers and recover the tax along with interest and penalties in an automated time bound manner.

The intent of Government appears clear and fine that recipient shall be entitled to the ITC from the government only in the event when tax has actually been paid to the government and not otherwise, is fairly based on the logic that credit can be passed/paid back only once it has been received by the government, which is appreciated.

When the Buyer of goods pays to Supplier the Principal amount along with the Tax amount, Buyer of goods should not be made to suffer if the Supplier defaults as the same would amount to injustice to the

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Buyer as would lead to Double Taxation and open windows for litigation. This is also against the constitutional Rights as specified in Article 14 of constitution.

**Recommendation:** Hence, it's requested to review the provisions as contained in Section 16(2)(c) of CGST Act 2017 and made Supplier liable to pay if he defaults for tax payment > 60 days and his registration No. should be cancelled or he should be blocked from uploading Invoices and preparing E-Way bill. The same would protect the Revenue leakage and loss to be caused to Government treasury.

### **Para C: Input Tax Credit not to be denied to Recipient of Goods for Defaults made by Supplier or Supplier Sub-Vendors**

One of the important concern Textile Industry across nation coming across is receiving notices in respect of "Reversal of Input Tax Credit" on Inputs namely "Cotton" procured from various Suppliers (Traders, Agents, Middlemen's, Ginners) on account of certain mis chiefs done by him or by sub-vendors in his back chain of sourcing.

Notices are being received by Buyer of Goods despite of compliance of relevant provisions of Section 16 of CGST Act 2017 by him. Reference is drawn to provisions as stated in Section 16(2) of CGST Act, which is reproduced as under:

### **Para D: Relevant Provisions in CGST Act and Compliances by Textile Players in Punjab**

Section 16(2) of CGST Act 2017 states that the person is eligible for Input tax credit, if following conditions are complied by him and the goods are used in the course of furtherance of business.

Relevant Section of CGST Act	Provisions in CGST Act	Compliances made by Textile Units
16(2)(a)	Person is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other taxpaying documents as may be prescribed;	Goods have been received under cover of Tax Invoice, E-Way Bill (wherever required).
16(2)(b)	Person has received the goods or services or both.	Goods have been physically received. Compliant Taxpayers (for e.g. Trident Limited, Vardhman textiles Limited, Nahar Spinning, Garg Acrylics, Sportking, etc) have available with them copy of Tax Invoice, E-Way Bill, Inward evidence of goods i.e. Gate Entry, Pictures of Driver with Vehicle getting In /Out. Weighment Slips, Loading Report, Goods Inspection Report, Recoding in

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		Accounting Books, Tax Payment on Goods manufactured from Inputs Received)
16(2)(c)	the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply	Taxpayers have validated and released Tax payments upon verifying the Invoices in their GSTR-2A and submission of GSTR-3B.
16(2)(d)	Person has furnished the return under section 39 (Filed Monthly Return)	Taxpayers have verified at GST Portal submission of GSTR-3B.

Records maintained by large buying manufacturing units of Cotton in Punjab i.e. Vardhman Textiles Limited, Trident Group, Garg Acrylics Limited, Nahar Spinning, depicts the compliances systems being adhered to ensure the receipts of goods and no leakage of Revenue. One would find the below records being maintained for supply of goods:

- Copy of Tax Invoice as per GST Act.
- Copy of E-Way Bill for Transportation of Goods.
- Copy of Weighment Slip.
- Copy of Material Loading Report from Loading Station.
- Copy of Goods Inspection Report.
- Copy of Weighment Slip.
- Photos of Driver of Vehicle with Vehicle at the time of Vehicle Gate-In and Gate-Out along with the photos of weighment of Truck before / after loading.

**Buyers such as Vardhman textiles Limited, Trident Limited, Garg Acrylics Limited, Sportking Industries, Nahar Spinning have verified / matched the Purchase Transaction as is appearing in their GSTR-2A and subsequently verified that their Sellers have filed GSTR-3B returns at portal have thus ensured compliance to provision of Section 16(2) of CGST Act and any misdeeds done by Sub-Vendor of Supplier should not come as way for making the buyers liable to pay Tax.**

Despite of Buyers of goods having complied to all the above requisites for availing ITC and has sufficient evidence as to receipt of goods, ITC should not be denied to them if supplier defaults.

**Para E: No Control of Recipient over the Suppliers Backward Purchases / Tax Payment**

- i. Buyer of Goods ensures that the goods are received under cover of valid Tax Invoice, E-Way Bill as specified in GST Act and Rules.
- ii. Tax Credit is availed on receipt of Goods / Services against Tax Invoice as the tax charged is shown on Invoice **on bona fide belief that the taxes have been remitted by seller to Government treasury.**

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- iii. Buyer of goods does not have any control in the present system over the Supplier's GSTR-1 or GSTR-3B (Monthly Returns), hence they should not be made responsible for Tax Payments on account of Defaults made by Supplier as the Buyer has already paid Principal along with Tax amount to Supplier of goods.
- iv. However, there may be instances, though sparing, or due to system glitches where the tax could not be paid by the supplier due to various reasons, including intentional or beyond his bonafide control, and the benefit of input tax credit is denied to a bona fide purchaser, because of the default of the supplier over whom such recipient has no control.
- v. It is the foremost concern of trade and industry that the eligible ITC should not be denied to the bona fide recipient merely for the fault of supplier considering that the law should be fair for the bonafide taxpayers. It should not be made the responsibility of the recipient to ensure that the tax is deposited by the supplier when the transaction is bonafide.
- vi. Further, it would be inviable at the Buyers end to track / go through the Vendors Input Tax Credit admissibility and ensuring Tax payment as Supplier makes sales to large no of customers and **Substantial compliance cost would increase by devoting time and effort on follow up with the unorganized sector.**
- vii. Whereas the transparency and ITC under GST will lead to better discipline and enhanced tax collections, penalising a genuine buyer will definitely disrupt the entire value chain and **will be counterproductive to business.**
- viii. Further, this is a good protection measure, but it is unfair to penalise a genuine buyer with both tax and interest for no fault.

**Recommendation:** Suppliers should be blocked from Uploading E-Way Bills / Tax Invoices at GST Portal of he fails to make Tax Payment within 60 days from return filing date and recovery of Tax amount shall be initiated by Tax Officers. This should not make the honest Tax payers suffer.

**Para F: Higher Courts have already declared the Recovery of Tax from Buyer as Unconstitutional if Supplier Defaults**

Denial of ITC to the Buyer of Goods for failure of payment of tax by supplier under the provisions of earlier tax regime in VAT / Central Excise have been held be unreasonable by various judicial pronouncements.

In this backdrop, we urge that the input tax credit should not be denied to the recipient for non-payment of tax by supplier, when recipient acted in bonafide manner.

- i. Higher Courts have held that Nevertheless, irrespective of whether the purchasing dealer is innocent, on account of subsequent conduct of the selling dealer, who has collected the VAT from the purchasing dealer and has failed to deposit it with the government or has failed to lawfully adjust it against his output tax liability, the purchasing dealer is made to suffer. This is violative of Article 14 of the Constitution inasmuch as it treats both the innocent purchasers and the guilty

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purchasers alike. **In other words, it is submitted that by treating unequal's equally the legislative measure is violative of Article 14 of the Constitution.**

- ii. That no liability can be fastened on the purchasing registered dealer on account of non-payment of tax by the selling registered dealer in the treasury unless it is fraudulent, or collusion or connivance with the registered selling dealer or its predecessors with the purchasing registered dealer are established".
- iii. "ITC should not be denied to the bonafide purchasing dealer merely on fault of selling dealer. It should not be made the responsibility of the purchasing dealer to ensure that the tax is deposited by the selling dealer to the extent transaction is bonafide".

### **Para G: Minutes of Meetings of 26<sup>th</sup> GST Council held on 10<sup>th</sup> March 2018**

Source: [www.gstcouncil.gov.in](http://www.gstcouncil.gov.in)

Reference is drawn to Para 26 of GST Council Meeting 26<sup>th</sup> held on 10<sup>th</sup> March 2018 wherein the Return system was discussed in detail by the respective State Finance Minister and the union Finance Minister and mentioned below are their submissions.

- i. Refer Para 26.6, Delhi Dy CM shared his views that if the Buyers was made liable to pay Tax due to wrong doing at Sellers end, it would amount to Double taxation at Buyers end.
- ii. Hon'ble Minister from Punjab shared his view (Para 26.7) that the system would punish Honest Tax payers and it appears that the law was made for errant Taxpayers. He also emphasised that this type of system is not found anywhere in the world.\
- iii. It was also shared that the system is not conducive to Trade and advised that the Buyers should not be made responsible for reversal of Input Tax Credit.
- iv. It's appreciated and we also agree what is shared by Secretary in Para 26.9 that the government should not allow the Input Tax Credit where the Buyer and Seller were indulging in collusive behaviour.
- v. It's rightly shared in GST Council Meeting (Para 26.10) that the law should not be made keeping in view 1-2% of errant Tax payers.

### **RECOMMENDATIONS**

- We submit humble advice and suggest to the CBIC / GST Council to amend this provision of Section 16(2) of CGST Act, which penalises genuine buyer and which will create more confidence and trust of business community at large
- The provisions of Section 16(2) (c) of CGST Act be amended to the effect that tax be paid either by the supplier or the recipient; or explanation/ proviso be added- ITC shall be admissible in case

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recipient submits documentary evidence to the satisfaction of the commissioner, to the effect that he has paid the amount of tax to the supplier or government directly.

- Option be given to the recipient, for all supplies received, to pay tax direct to Government as in the case under RCM for the ITC to be taken in a hassle-free manner and no loss to revenue.
- Immediate Automatic Notice be issued to supplier on default of payment.

We are hopeful that the above placed facts deserve merits and review of relevant provisions in CGST Act so that the honest Tax Payers should not be made to suffer for defaults made by Supplier and GSTIN systems should be made so efficient to avoid any revenue leakages and loss to the respective Government ex-chequer.

Thank You.

With kind regards

**G. Balasubramanian**  
Secretary General