
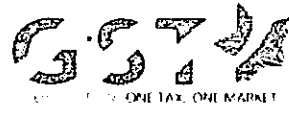


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हाँउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- oaahmedabad2@gmail.com</p>

निबन्धित पावती डाक द्वारा/By R.P.A.D
फा.सं./F.No. GST/15-20/OA/2023

DIN-20230864WT000000A020

आदेश की तारीख/Date of Order: - 23.08.2023

जारी करने की तारीख/Date of Issue :- 23.08.2023

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

सयुक्त आयुक्त / Joint Commissioner

मूल आदेश संख्या / Order-In-Original No. 27/JC/ LD /GST/2023-24

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 90 दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद-380015 को प्रारूप GST-APL-01 में दाखिल कर सकता है। इस अपील पर रू. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form GST-APL-01 to the Commissioner(Appeals), Central GST & Central Excise, Central Excise Building, Ambawadi, Ahmedabad-380015 within three months from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त (अपील) के समक्ष नियमानुसार पूर्व जमा के धनराशी का प्रमाण देना आवश्यक है।

An appeal against this order shall lie before the Commissioner (Appeal) on giving proof of payment of pre deposit as per rules.

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या GST-APL-01 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केंद्रीय जी. एस. टी. नियमावली, 2017 के नियम 108 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

- (1) उक्त अपील की प्रति।
- (2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू. 5) 00. पांच रुपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form GST-APL-01 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 108 of CGST Rules, 2017. It should be accompanied with the following:

- (1) Copy of accompanied Appeal.
- (2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय:- कारण वताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. Gexcom/AE/INV/GST/5409/2022-AE-II dated 31.03.2023 issued to M/s Lubi Industries LLP, Near Kalyan Mills, Naroda Road, Ahmedabad, Gujarat-380025.





BRIEF FACTS OF THE CASE

M/s. Lubi Industries LLP, 24AAEFL7190C2ZH, situated at Near Kalyan Mills, Naroda Road, Ahmedabad (hereinafter referred to as "the taxpayer") are engaged in the manufacturing of Water Pump and Electric Motors falling under Chapter 84 and 85. They are registered with GSTIN having registration No. 24AAEFL7190C2ZH and falls under the jurisdiction of Central GST & Central Excise, Ahmedabad North Commissionerate.

2. An information was received indicating that the Taxpayer was exporting their finished/manufactured goods out of India under payment of Integrated Goods and Services Tax (in short "IGST") and availing benefit of refund in terms of Rule 96 of the Central Goods & Services Tax Rules, 2017 (in short "CGST Rules, 2017") although they were not eligible to claim such refund under the said rules.

3.1 Under the Central Goods and Services Tax Act, 2017 (CGST Act, 2017) and Rules made thereunder, exporters are permitted to claim, refund of either unutilized Input Tax Credit (ITC) under Rule 89 of the CGST Rules, 2017 or refund of IGST paid on the goods exported out of India under Rule 96 of the CGST Rules, 2017. However, the government while restoring the tax-free scheme, for the EOUs, Advance Authorization/EPCG holders, restricted the second option for such exporters i.e. if they had imported inputs under Advance authorization license and availed full exemption from payment of IGST on the same & then exported finished goods on payment of IGST and claimed the refund of such IGST paid, then such Simultaneous benefit of exemption of IGST on goods imported vide Customs Notification No. 79/2017 dated 13.10.2017 as well as benefit of automatic refund of IGST paid on the goods exported is not allowed in terms of Rule 96(10) of the Central Goods and Service Tax Rules, 2017.

3.2. The purpose of introducing the above provision was made clear in the GST council meeting and a clarification in the form of Circular No. 45/19/2018-GST dated 30th May 2018 was issued. Para-7.1 of the above circular, emphasized the objective of introduction of sub-rule (10) of Rule-96 which reads as under:

"Sub-rule (10) of rule 96 of the CGST Rules seeks to prevent an exporter, who is receiving goods from suppliers availing the benefit of certain specified notifications under which they supply goods without payment of tax or at reduced rate of tax, from exporting goods under payment of integrated tax. This is to ensure that the exporter does not utilize the input tax credit availed on other domestic supplies received for making the payment of integrated tax on export of goods."

The provisions of Rule 96(10) of CGST Rules, 2017 are as under:-

96. Refund of integrated tax paid on goods or services exported out of India:-



(1) .

(2) .

“(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have –

(a) received supplies on which the benefit of the Government of India, Ministry of Finance notification No. 48/2017-Central Tax, dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E), dated the 18th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme or notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rd October, 2017 has been availed; or

(b) availed the benefit under notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E), dated the 13th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme”

3.3 From the plain reading of above provisions, it can be construed that Rule 96 of the CGST Rules, 2017 deals with the procedure for refund of taxes paid on export of goods and services. Rule 96 (10) restricts the eligibility to claim refund of taxes paid on export in those cases where the exporter has received raw material under any of the scheme notified under sub-rule 96(10) like deemed export, Advance Authorization/License, reduced rate of procurement by the merchant exporter etc. This restriction was first introduced vide Notification No. 03/2018-Central Tax dated 23.01.2018, which got subsequently modified and amended by way of Notifications issued from time to time (as discussed below).

Notification No. 03/2018-Central Tax dated 23.01.2018 reads as :-

(x) with effect from 23rd October, 2017, in rule 96,

“(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have received supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 48/2017- Central Tax dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E) dated the 18th October,

2017 or notification No. 40/2017-Central Tax (Rate) 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E) dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate) dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E) dated the 23rd October, 2017 or notification No. 78/2017-Customs dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E) dated the 13th October, 2017 or notification No. 79/2017-Customs dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E) dated the 13th October, 2017.”;

The above notification says that person claiming refund of IGST paid on exports of goods or services should not have received supplies on which the supplier has availed the benefit of Notifications as mentioned therein.

3.4 Vide Notification No. 39/2018-Central Tax dated 04.09.2018, the said Rule 96(10) of CGST Rules, 2017 was further amended as below :-

“6 In the said rules, with effect from the 23rd October, 2017, in rule 96, for sub-rule (10), the following sub-rule shall be substituted, namely: -

“(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have -

(a) received supplies on which the benefit of the Government of India, Ministry of Finance notification No. 48/2017-Central Tax, dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1305(E), dated the 18th October, 2017 or notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1320(E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1321(E), dated the 23rd October, 2017 has been availed; or

(b) availed the benefit under notification No. 78/2017-Customs, dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1272(E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299(E), dated the 13th October, 2017.”

Thus, from the perusal of above notification, it can be construed that refund on exports cannot be availed by the exporter if the inputs procured by them have enjoyed benefits of certain notifications mentioned therein in the Rule 96(10) including the Advance Authorisation benefits with retrospective effect from 23.10.2017. Further, vide Notification No. 53/2018-Central Tax dated 09.10.2018, the Rule 96(10) was further amended with effect from 23.10.2017 which reads as:-



"1. (1) These rules may be called the Central Goods and Services Tax (Eleventh Amendment) Rules, 2018.

(2) They shall be deemed to have come into force with effect from the 23rd October, 2017.

2. In the Central Goods and Services Tax Rules, 2017, in rule 96, for sub-rule (10), the following sub-rule shall be substituted and shall be deemed to have been substituted with effect from the 23rd October, 2017, namely:-

"(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have received supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 48/ 2017-Central Tax, dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G. S.R 1305 (E), dated the 18th October, 2017 or notification No. 40/ 2017-Central Tax (Rate) dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G. S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G. S.R 1321 (E), dated the 23rd October, 2017 or notification No. 78/ 2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/ 2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E) dated the 13th October, 2017. "

Thus, from the perusal of above notification, it can be observed that sub-clause (a) and (b) of sub-rule 10 of Rule 96 are merged and this notification is also made effective from 23.10.2017. It says that person claiming refund of IGST paid on exports of goods or services should not have received supplies on which the supplier has availed the benefit of Notifications as mentioned therein.

The subject matter pertaining to Rule 96 (10) of CGST Rules, 2017 was further amended by the issuance of Notification No. 54/2018-Central Tax dated 09.10.2018 and an exception was carved from the restriction imposed by sub-rule 96(10) of rule 96 for those exporters who are importing capital goods under the EPCG Scheme. This notification was made effective from the date of publication in the Official Gazette i.e. 09.10.2018. The said Notification reads as:

"(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have -

(a) received supplies on which the benefit of the Government of India, Ministry of Finance notification No. 48/2017-Central Tax, dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E), dated the 18th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme or notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India,

Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rd October, 2017 has been availed; or

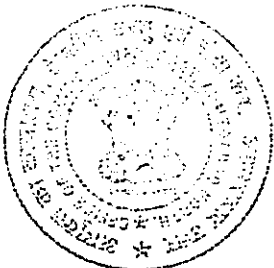
(b) availed the benefit under notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E), dated the 13th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme.

Further, CBIC issued a Circular No. 125/44/2019-GST dated 18.11.2019, wherein it was clarified in the para 52 of the said Circular that:-

"52. The net effect of these changes is that any exporter who himself/herself imported any inputs/capital goods in terms of notification Nos. 78/2017-Customs and 79/2017-Customs both dated 13.10.2017, before the issuance of the notification No. 54/2018 - Central Tax dated 09.10.2018, shall be eligible to claim refund of the Integrated tax paid on exports. Further, exporters who have imported inputs in terms of notification Nos. 78/2017-Customs dated 13.10.2017, after the issuance of notification No. 54/2018 - Central Tax dated 09.10.2018, would not be eligible to claim refund of integrated tax paid on exports. However, exporters who are receiving capital goods under the EPCG scheme, either through import in terms of notification No. 79/2017-Customs dated 13.10. 2017 or through domestic procurement in terms of notification No. 48/2017-Central Tax, dated 18.10.2017, shall continue to be eligible to claim refund of Integrated tax paid on exports and would not be hit by the restrictions provided in sub-rule (10) of rule 96 of the CGST Rules."

Further, H'ble High Court of Gujarat in the Special Civil Application No. 15833 of 2018 & in matter of M/s. Cosmo Films Ltd. Vs UOI, in which the Constitutionality of the provision of Rule 96(10) of the CGST Rules, 2017 was challenged, passed an order dated 20.10.2020 and held that :-

"However, it is also made clear that Notification No. 54/2018 is required to be made applicable w.e.f 23rd October, 2017 and not prior thereto from the inception of Rule 96(10) of the CGST Rules. Therefore, in effect Notification No. 39/2018 dated 04.09.2018 shall remain in force as amended by the Notification No. 54/2018 by substituting sub rule (10) of Rule 96 of CGT Rules, in consonance with subsection (3) of Section 54 of CGST Act and Section 16 of IGST Act. The Notification NO. 54/2018 is therefore held to be effective w.e.f 23rd October 2017. Rule is made absolute to the aforesaid extent."



In view of the above, The Notification No. 54/2018-Central Tax dated 09.10.2018 is made retrospective, effective from 23rd October 2017. Further, an Explanation was added to Rule 96(10) of the Rules by Notification No. 16/2020-Central Tax dated 23.3.2020.

“10. In the said rules, in rule 96, in sub-rule (10), in clause (b) with effect from the 23rd October, 2017, the following Explanation shall be inserted, namely, -

Explanation. - For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.”

From the above, it appeared that by inserting the Explanation in Rule 96(10) of the Rules, the option for claiming refund under clause (b) to the Rule is only for the exporters who avail the exemption of Basic Customs Duty ('BCD') only and pay IGST on the inputs. In the instant case, it was gathered that the taxpayer had availed full exemption of IGST at the time of import of raw materials, which have been imported for use in the manufacture of goods to be exported & thereafter, the finished/manufactured goods were exported on payment of IGST & refund was claimed of such IGST paid. The said mechanism adopted by taxpayer is prohibited under GST law as discussed above.

4.1 Based on the above information, an investigation was initiated against M/s. Lubi Industries LLP, 24AAEFL7190C2ZH, by way of Summons proceedings under Section 70 of the CGST Act, 2017. During the investigation, Summons dated 04.02.2021 was issued to record statement and to submit requisite information/details/documents, for the period July 2017 onwards, as per Annexure to the Summons dt. 04.02.2021 (RUD-1). The taxpayer neither submitted any documents to this office nor appeared before the summoning authority to tender his statement. The taxpayer was again issued Summons on 15.07.2021 & 29.11.2022 (RUD-2) to tender statement and submit details/information/data, as per the annexure to the above summons, the taxpayer did not appear this time as well, however, vide their letter dated 27.02.2023, sent through e-mail dated 27.02.2023, (RUD-3), the taxpayer submitted details regarding the refund of IGST Paid on exports wherein benefit of Advance Authorization License had already been availed at the time of Import of Goods. As per the details submitted by the taxpayer they have claimed total refund of IGST Rs. 3,62,21,378/- for the period 23.10.2017 to Sept 2020. The details furnished by the taxpayer appended below:-

S. No.	Advance Authorization License No.	Advance Authorization License Date	FOB Value of Export	IGST paid on Zero Rated Supply	IGST Refund Received
1	810138873	18.10.2016	13584758	1630171	1630171
2	810140027	05.04.2017	2483847	298062	161640
3	810140545	22.06.2017	11263271	1351593	723545
4	810086954	03.03.2010	75652408	9078289	9078289
5	810090670	21.07.2010	166384148	19966098	19952828
6	810145329	21.05.2019	32476378	3897165	3717042
	Total		301844810	36221378	35263515

4.2. On going through the above submission of the taxpayer it appears that they had imported the inputs under advance authorization license and availed full exemption from payment of IGST on the same. The taxpayer had further exported their final products on payment of IGST and claimed refund of IGST paid as mentioned herein above. Which resulted into erroneous refund of Integrated Goods and Service Tax paid on Zero Rated Supplies/ on the export of Goods.

5.1 From the investigation of case, the following facts have emerged:

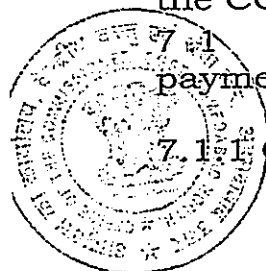
The Taxpayer have availed the double benefit, one at the time of procuring IGST free raw material in terms of Notification No.79/2017-Customs dated 13.10.2017 and on the other hand by claiming the refund on the exports made on payment of IGST in terms of Rule 96 of the Central Goods and Services Tax Rules, 2017 as mentioned above. However, as per the provisions of Rule 96(10) of CGST Rules, the taxpayer can avail refund of either IGST paid on goods exported or exemption of IGST on the goods imported under Customs notification no. 79/2017 dated 13.10.2017. Once exemption of IGST is availed on the input materials, refund of IGST on export good stands prohibited and vice versa.

6.1 As per the details submitted by the taxpayer vide their letter dated 27.02.2023, the total amount of wrongly taken IGST refund is to the tune of Rs.36221378/-on exports after availing benefit of advance authorization on the inputs procured through import. As per the provision of Rule 96(10) of the CGST Rules, 2017, the said refund of the IGST appears to be inadmissible.

6.2 Thus, the amount of Rs.36221378/- of IGST Refund on finished/final goods exported by the taxpayer, whose raw material/inputs had been procured through import under benefit of advance authorization license is required to be demanded and recovered from the taxpayer under the provisions of Section 74(1) of the CGST Act 2017.

Following are the relevant provisions applicable for payment of GST by the Taxpayer: -

7.1.1 Cross empowerment of Central Tax/CGST officers:



The Government has authorized officers of CGST as well as SGST as proper officer under Section 6 of CGST Act 2017. Section 6 of Gujarat Goods and Services Tax Act, 2017 also deals with such authorization. The relevant portions of the said Acts are reproduced hereunder for ease of reference:

(A) Section 6 of CGST Act 2017:

"6. (1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

(2) Subject to the conditions specified in the notification issued under sub-section (1),-

(a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;

(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act shall not lie before an officer appointed under the SGST Act or the Union Territory Goods and Services Tax Act. "

(B) Section 6 of SGST Act 2017:

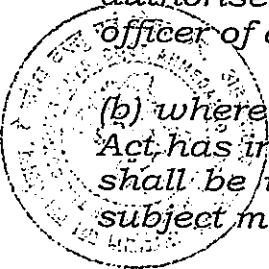
"6. (1) Without prejudice to the provisions of this Act, the officers appointed under the Central Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

(2) Subject to the conditions specified in the notification issued under sub-section (1),

(a) where any proper officer issues an order under this Act, he shall also issue an order under the Central Goods and Services Tax Act, as authorised by the said Act under intimation to the jurisdictional officer of central tax;

(b) where a proper officer under the Central Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act, shall not lie before an officer appointed under the Central Goods and Services Tax Act. "



7.1.2 Thus, from the above, it is clear that the officers of Central Tax as well as officer of State Tax, both are the Proper OfficerS for the purpose of Section 6 of CGST Act as well as SGST Act and any of them can initiate any proceeding under this Act.

7.2 Section 54 of Central Goods and Services Tax Act, 2017: -Section 54 of the CGST Act, 2017 provides for provision with respect of Refund. Section 54(8) of the CGST Act, 2017 states with regard to refund on export good that:

(8) Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to-

(a) refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies;

7.3 Section 16 of Integrated Goods and Services Tax Act, 2017:- This provision of law provide for refund of tax, accumulated on account of Zero rate supply or paid on effecting zero rated supply. The provision states that:

(1) "zero rated supply" means any of the following supplies of goods or services or both, namely: -

(a) export of goods or services or both; or

(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:-

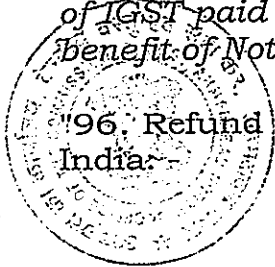
(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilized input tax credit; or

(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied,

in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.

7.4 Rule 96(10) of the CGST Rules 2017

As per Rule 96(10) of the CGST rules, 2017 the taxpayer availing refund of IGST paid on Zero rated Outward Supplies should not have availed the benefit of Notification no. 79/2017- Customs dated 13.10.2017.



196. Refund of integrated tax paid on goods or services exported out of India

"(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have –

(a) received supplies on which the benefit of the Government of India, Ministry of Finance notification No.48/2017-Central Tax, dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E), dated the 18th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme or notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rd October, 2017 has been availed; or

(b) availed the benefit under notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E), dated the 13th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme.

Further, as per the Notification No.16/2020-CT dated 23.03.2020 an amendment has been made by inserting following explanation to Rule 96(10) of CGST Rules, 2017 as amended (With retrospective effect from 23.10.2017).

"Explanation.- For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications."

By virtue of the above amendment, the option of claiming refund under option as per clause (b) is restricted to the exporters who only avails BCD exemption and pays IGST on the Raw materials.

Sec. 59 of CGST Act, 2017

The Government had introduced self-assessment system under a trust-based regime which casts the onus of proper assessment and discharging of the tax on the taxpayer. Section 59 of the Central Goods and Services Tax Act, 2017 provides that every registered person shall self-assess the taxes payable under this Act. Thus, it appears that the taxpayer had failed to self-assess the eligibility of the refund thereby contravening the provisions of Section 59 of the Central Goods and Service Tax Act, 2017.

Sec. 39(7) of CGST Act 2017

[(7) Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return: Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, the tax due taking into account inward and outward supplies of goods or services

or both, input tax credit availed, tax payable and such other particulars during a month, in such form and manner, and within such time, as may be prescribed:

Provided further that every registered person furnishing return under sub-section (2) shall pay to the Government, the tax due taking into account turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, and such other particulars during a quarter, in such form and manner, and within such time, as may be prescribed.]

Sec. 39(9) of CGST Act 2017

Section 39(9) of the Central Goods and Service Tax Act, 2017 provides that

"Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act; Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier."

7.5 Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts.

"Section 74 (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or any willful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilized input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

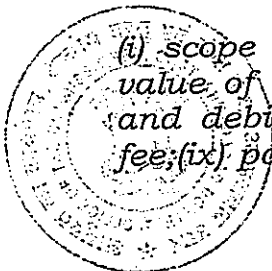
7.6 Interest on delayed payment of tax

Section 50(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

7.7 Section 20 of the IGST Act, 2017:

"Section 20. Subject to the provisions of this Act and the rules made thereunder, the provisions of CGST Act relating to,

(i) scope of supply;(ii) composite supply and mixed supply;(iii) time and value of supply;(iv) input tax credit;(v) registration;(vi) tax invoice, credit and debit notes;(vii) accounts and records;(viii) returns, other than late fee;(ix) payment of tax;(x) tax deduction at source;(xi) collection of tax at



source;(xii) assessment;(xiii) refunds;(xiv) audit;(xv) inspection, search, seizure and arrest;(xvi) demands and recovery;(xvii) liability to pay in certain cases;(xviii) advance ruling;(xix) appeals and revision;(xx) presumption as to documents;(xxi) offences and penalties;(xxii) job work;(xxiii) electronic commerce;(xxiv) transitional provisions; and(xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty.

shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act."

8.1 From the foregoing paras, it appeared that the Taxpayer have contravened the following provisions of the CGST Act, 2017 and Rules made thereunder and also the provisions of IGST Act, 2017:

- (i) Section 54 of the CGST Act, 2017 along with the corresponding entry of the Gujarat State Goods and Services Act, 2017 read with the provisions of Section 20 of Integrated Goods and Service Tax Act, 2017 in as much as they have fraudulently claimed the refund of IGST paid on export of Goods.
- (ii) Section 16 of the IGST Act, 2017 in as much as they have fraudulently claimed the refund of IGST without being eligible for the same.
- (iii) Rule 96 of the CGST Rules, 2017 along with the corresponding entry of the Gujarat State Goods and Services Act, 2017 read with the provisions of Section 20 of Integrated Goods and Service Tax Act, 2017 in as much as they have availed the benefit of said rule although they were not eligible for the same in light of conditions laid down in Rule 96(10) of the CGST Rules, 2017.
- (iv) Section 39(7) & Section 39(9) of the Central Goods and Services Tax Act, 2017 along with the corresponding entry of the Gujarat State Goods and Services Act, 2017 read with the provisions of Section 20 of Integrated Goods and Service Tax Act, 2017 in as much as they have failed to pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return;

9.1 It is pertinent to mention here that the system of self-assessment is specifically incorporated in respect of GST under the provisions of Section 59 of CGST Act' 2017 /Gujarat GST Act'2017 which reads as

"59. Every registered person shall self-assess the taxes payable under this Act and furnish a return for the tax period as specified under section 39".

It appeared that the said taxpayer suppressed wrong availment of refund as discussed herein above and thereby it appears has knowingly failed to correctly self assess tax payable with an intent to evade payment of proper tax. In the scheme of self-assessment, the department comes to know about the supplies made and tax paid during the scrutiny of the statutory returns filed by the

taxpayers under the statute. Therefore, it places greater onus on the taxpayer to comply with standards of disclosure of information in the statutory returns.

9.2 Explanation 2 to Section 74 of the CGST 2017 has defined suppression as under:

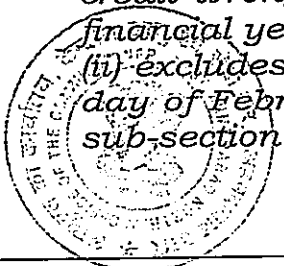
"Explanation 2.-For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

9.3 From the Information/ data of the taxpayer, it appears that the taxpayer have suppressed the erroneous refund of IGST paid on exports, it appears that the taxpayer's liabilities are not properly discharged. The failure to properly discharge their Tax liability is utter disregard to the requirements of law and breach of trust deposited on them is outright act in defiance of law by way suppression, concealment & non-furnishing value of erroneous refund with intent to evade payment of tax. The above said erroneous refund of IGST paid on export, is unearthed after investigation was conducted by officers of Central Tax, Ahmedabad North and therefore had the investigation not been initiated by this office, the said facts would have not come to light. All the above facts of contravention on the part of the Taxpayer have been committed with an intention to evade the payment of GST by suppressing the facts. Therefore, the same is required to be demanded from them under Section 74(1) of the CGST Act, 2017/Gujarat GST Act'2017 read with Section 20 of IGST Act'2017 by invoking extended period of five years. Since the said taxpayer was liable to self-assess the liability to pay tax, they had an obligation to furnish the correct and complete information.

9.4 Further, it appeared that the taxpayer had not paid the tax within the prescribed due dates. Further, it appears they had erroneously availed refund of IGST. These non-payments of Tax were not shown in their statutory GST returns. It, therefore, appears that there is a case of suppression of facts with intent to evade the payment of tax. It appears that short paid/ not paid IGST is to be demanded/ recovered from the said taxpayer under the provisions of Section 74(1) of the CGST Act' 2017 read with the provisions of Section 20 of the IGST Act,2017. Further, CBIC issued Notification No. 13/2022-Central Tax dated 05.07.2022 vide which time limits prescribed under Sec. 73(9) & 73(10) was extended and reads as under:-

"(i) extends the time limit specified under sub-section (10) of section 73 for issuance of order under subsection (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, in respect of a tax period for the financial year 2017-18, up to the 30th day of September, 2023;

(ii) excludes the period from the 1 st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation under sub-section (10) of section 73 of the said Act for issuance of order



under subsection (9) of section 73 of the said Act, for recovery of erroneous refund;

(iii) excludes the period from the 1 st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act.”

Further, H'ble Supreme Court in matter of Re: Cognizance for Extension of Limitation [Miscellaneous Application No. 21 of 2022 in miscellaneous Application No.665 of 2021 in suo moto writ petition (C) NO. 3 of 2020 dated 10 Jan 2022]revived limitation extension order till Feb 28, 2022, vide order dated 10.01.2022. H'ble Supreme Court pronounced that:

we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions: -

1. *“The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasijudicial proceedings.*

II. Consequently, the balance period of limitation remaining as on 03.10.2021,if any, shall become available with effect from 01.03.2022.

9.5 In view of the above facts, the erroneously refunded amount of Rs.3,62,21,378/- was liable to be recovered from them under section 74(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 and the Rules made there under along with interest as applicable under Section 50(1) of the said Acts and the Rules made there under. Further, by such acts of omission and commission, the Taxpayer have also rendered themselves liable for penal action under Section 74(1) of CGST Act, 2017 for contravention of provision of CGST Act, 2017 /IGST Act, 2017 and rules made thereunder.

9.6 Further, Form GST DRC-01A regarding intimation of tax ascertained, as being payable under Section 74(5) of CGST Act, 2017 before issuing of Show Cause Notice was issued to the taxpayer on 20.03.2023 and sent vide email dated 20.03.2023.

9.7 In reply, the taxpayer vide their letter dated 27.03.2023 submitted that out of total liability of Rs. 36221377/- an amount of Rs. 32748159/- belongs to period 09th October 2018 to 30th September 2020 which have already been paid by them & remaining balance Rs. 3473218/- belongs to period Oct 2017 to 8th October 2018. The details of payment made by the taxpayer is as under:-

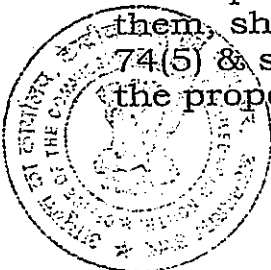
S.No.	DRC 03	Date	Amount (IGST in Rs.)
1	DC2402230301919	23.02.2023	26978308
2	DC2402230302006	23.02.2023	3423011
3	DC2402230301968	23.02.2023	2346840
Total			32748159

The above payment has been made under Section 73(5) & the payment particulars i.e. FORMS GST DRC-03 have remark as: - Being erroneous refund claimed under rule 96(10) is paid back through DRC-03. Amount paid is "Under Protest". The Taxpayer has further submitted that as far as liability for the period Oct 2017 to 8th Oct 2018 is concerned, they are not liable to pay back, refund received based effective provision prevailing for Rule 96(10) which is amended by various notification from time to time. The taxpayer submitted, since refund claimed is not violating any revenue impact, they have not paid interest thereon & further submitted, since they have not received any show cause notice nor any demand notice till time they have make payment of such tax & they have identified and paid tax liabilities voluntarily, penalty would not be imposed under GST. The taxpayer further submitted that the **payment is under protest.**

9.8 With reference to the taxpayers' contention regarding payment for the period Oct 2017 to 8th Oct 2018, discussion has already been held in para 3 above. Notification No. 54/2018-Central Tax dated 09.10.2018 is made retrospective, effective from 23rd October 2017. Therefore, they are liable to pay back the refund amount for the period Oct 2017 to 8th Oct 2018 as well. Further, with respect to the taxpayers' contention that refund claim is not violating any revenue impact & they have identified and paid tax liabilities voluntarily, interest and penalty would not be imposed under GST, discussion in this regard has already been held in paras 3 to 9. Therefore, the contentions of the taxpayer do not appear to be tenable.

10. Therefore, Show Cause Notice No.Gexcom/AE/INV/GST/5409/2022-AE-II dated 31.03.2023 was issued to M/s. Lubi Industries LLP, called upon to show cause as to why:

- (i) Erroneously refunded IGST amount of Rs.3,62,21,378/- (Rs. Three Crore Sixty two Lakhs Twenty One Thousand Three Hundred and Seventy Eight Only) should not be demanded and recovered from them under Section 74(1) of the CGST, 2017 read with corresponding section of Gujarat GST Act 2017 read with Section 20 of the IGST Act, 2017;
- (ii) As the taxpayer have paid the IGST amount of Rs. 3,27,48,159/- (Three Crore Twenty Seven Lacs Forty Eight Thousand One Hundred and Fifty Nine Only) under Section 73(5), under protest, vide aforementioned DRC-03s, they are required to show cause as to why the IGST paid by them, should not be considered, payment, under Section 74(5) & should not be adjusted & appropriated against the proposed demand at (i).



- (ii) Interest at appropriate rate should not be demanded and recovered from them on the proposed demand mentioned at (i) above under Section 50(1) of the CGST Act, 2017 read with corresponding section of Gujarat GST Act 2017 and read with Section 20 of the IGST Act, 2017;
- (iii) Penalty should not be imposed upon them on the proposed demand at (i) above under Section 74(1) of the CGST Act, 2017 read with corresponding section of Gujarat GST Act 2017 and read with Section 20 of the IGST Act, 2017.

DEFENCE REPLY

11. The tax payer vide letter dated 15.05.2023 submitted their reply to SCN and wherein they stated that they have received summons dated 04.02.2021, 15.07.2021 and 29.11.2011 and produced documents with respect to IGST refund claimed by them in case of export with payment of tax. They have carried out export with payment of tax and on the other hand for few transactions they have obtained benefit of advance authorization at the time of import of goods which has been used for finished goods which is ultimately exported with payment of tax. Rule 96(10) was amended so many times with constantly changing proposition with respect to applicability of restriction imposed and effective date thereof. They have gone through then same and earlier there on the bonafide belief that export with payment of tax which they have carried out is perfectly as per legal provisions of the act and rule. But as soon as they get to know the restrictions, they have suspended carrying out export with payment of tax for the goods for which they have availed advance authorisation benefits as per Rule 96(10).

12. They further stated that they are still under the sure impression that there is no revenue impact on the transactions carried out by them which is violation of Rule 96(10) for the reasons cited below, but to save themselves from future liability interest and penalty burden they have voluntarily paid all the refund which they have received via export with payment of tax in contravention of Rule 96(10) immediately.

13. They further highlighted the fact that they have already paid refund amount received in contravention to Rule 96(10) before receipt of SCN. They have provided detailed calculation of export carried out by them, details of export with payment of tax and details of without payment of tax, details of export where advance authorization benefits has been availed or not and further all the information. Based on their calculation they have identified amount to be payable and paid the same via DRC 3 voluntarily and provided proof of payment alongwith reply dated 27.02.2023. They have paid total amount of Rs.3,27,48,159/- wrongly availed for the period 9.10.2018 to 30.09.2020. As they have already paid the amount, they agreed to adjust the said amount with the tax portion demand provided. They have paid the amount **under protest** because the reason that in case, this issue has been held subsequently in favour of tax payer then they won't face trouble in getting refund of such

amount paid because as per their understanding various writ petition have been filed for similar matter in various high courts.

14. As far as interest is concerned, since refund claim is not violating any revenue impact, they have not paid interest thereon. Refund claimed is nothing of payment by tax by accumulated eligible input tax credit itself. Had that would be the case where export with payment of tax was not carried out then they might have opted the route of claiming refund of accumulated ITC where also refund component would be similar or even larger since they are under inverted duty structure where ITC on inward supply would be high compared to output tax liability on outward supply. Further they have large accumulated input tax credit lying in their electronic credit ledger and may go through electronic credit ledger for the same. As far as penalty is concerned sine they have paid the amount voluntarily before receipt of SCN, penalty would not be imposed under GST.

15. As far as demand for the period October 2017 to 8th October 2018, is concerned vide Circular No.125/44/2019-GST dated 18.11.2019, it was clarified that any exporter who have imported any input/capital good in terms of Notification No.78/2017-custom and No.79/2017 custom both dated 13.10.2017 before the issuing of Notification No.54/2018 dated 09.10.2018 shall be eligible to claim refund of IGST paid on export. Vide Para 52 of the said circular. Once the refund become eligible retrospective notification in the same would not be curtail the benefit that tax payer ought to have. Hence they did not agree for the tax, interest and penalty demand for the said period and hence they have not calculated tax for such period for voluntary payment.

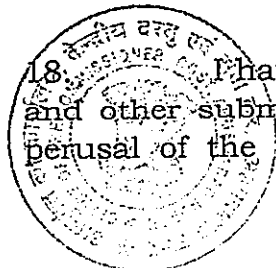
16. Further they stated that there is no suppression at all, all the details have been clearly communicated to tax authority by way of filing of shipping bill and filing of GST returns with clear communicated invoice number which can be easily linked with shipping bill data. Hence there is no case for invoking demand under section 74. They have produced relevant documents and requested to consider the facts together with payment made by them through DRC-03 and drop the demand.

PERSONNAL HEARING

17. Personal Hearing in the instant case was held on 25.07.2023 and Shri Hiren Pathak, CA, duly authorised representative, attended the P.H. on behalf of the assessee. He reiterated their written submissions dated 15.05.2023 and requested to drop the proceedings on merits.

DISCUSSION AND FINDINGS

18. I have carefully gone through the Show Cause Notice, reply to SCN and other submissions made by the assessee during the course of P.H. On perusal of the above documents, I find that the issue to be decided is to



whether the said tax payer is liable to pay erroneously refunded amount to Rs. 3,62,21,378/- during the period from 23.10.2017 to Sept.2020. In the instant case, I find that the tax payer are engaged in manufacturing and clearing of water pump and electric motors for which they have registered with GST under Registration No. 24AAEFL7190C2ZH.

19. An information was received that the Taxpayer was exporting their finished/manufactured goods out of India under payment of Integrated Goods and Services Tax (in short "IGST") and availing benefit of refund in terms of Rule 96 of the Central Goods & Services Tax Rules, 2017 (in short "CGST Rules, 2017") although they were not eligible to claim such refund under the said rules.

20. Based on the above information, an investigation was initiated against the taxpayer and they submitted details regarding the refund of IGST Paid on exports wherein benefit of Advance Authorization License had already been availed at the time of Import of Goods. As per the details submitted by the taxpayer they have claimed total refund of IGST Rs. 3,62,21,378/- for the period 23.10.2017 to Sept 2020.

21. On going through the above submission of the taxpayer it was noticed that they had imported the inputs under advance authorization license and availed full exemption from payment of IGST on the same. The taxpayer had further exported their final products on payment of IGST and claimed refund of IGST paid as mentioned herein above which resulted into erroneous refund of Rs.3,62,21,378/- IGST paid on Zero Rated Supplies/ on the export of Goods.

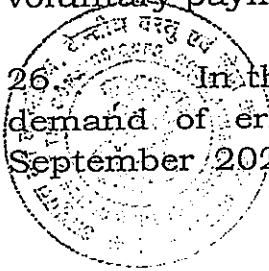
22. In this connection, I find that in terms of CGST Act, 2017 and the Rules made thereunder, an exporter can claim refund of IGST paid on goods exported. Whereas refund of input tax credit is governed by rule 89 of the Central Goods and Services Tax Rules, 2017, the Rule 96 ibid governs the procedure for refund of integrated tax paid on goods exported out of India. In order to safeguard revenue interests and to restrict any possible double benefit claim, the sub rule (10) of rule 96 was amended to restrict those exporters who have imported and /or utilized IGST exempted inputs for manufacture of final products from claiming refund of integrated tax on goods exported. In fact, this sub-rule was amended more than once and vide Notification No. 53/2018-C.T dated 09.10.2018, it was substituted retrospectively with effect from 23.10.2017, and Notification No. 16/2020-C.T dated 23.03.2020 was issued to insert retrospectively from 23.10.2017 an explanation in the rule 96 (10) to disallow benefit of refund where IGST exemption was availed under two Customs notifications. The explanation provided that where only the Basic Customs duty exemption was availed for the imported inputs under Notification No. 78/2017-Customs, dated 13.10.2017 or Notification No. 79/2017-Customs, dated 13.10.2017, the benefit of IGST refund on goods exported would be permissible. The sum and substance of the above changes in the rules was to restrict the refund of IGST paid on goods exported in case IGST exempted inputs have been obtained by a supplier under Advance Authorisation or similar Notifications for manufacture of the final product which is exported.

23. On perusal of the provisions, I find that under the CGST Act, 2017 and Rules made thereunder, exporters are permitted to claim, refund of either unutilized Input Tax Credit (ITC) under Rule 89 of the CGST Rules, 2017 or refund of IGST paid on the goods exported out of India under Rule 96 of the CGST Rules, 2017. However, the government while restoring the tax-free scheme, for the EOUs, Advance Authorization/EPCG holders, restricted the second option for such exporters i.e. if they had imported inputs under Advance authorization license and availed full exemption from payment of IGST on the same & then exported finished goods on payment of IGST and claimed the refund of such IGST paid, then such simultaneous benefit of exemption of IGST on goods imported vide Customs Notification No. 79/2017 dated 13.10.2017 as well as benefit of automatic refund of IGST paid on the goods exported is not allowed in terms of Rule 96(10) of the Central Goods and Service Tax Rules, 2017.

24. On verifying refund of IGST paid on exports claimed by M/s. Lubi Industries LLP, it was noticed that they had procured imported raw materials under Advance License without payment of integrated tax. Advance licenses issued were used for procurement of duty free inputs and refund obtained of IGST paid for the exports and Refund of Rs.3,62,21,378/- was credited to their account during the period from October 2017 to September 2020. Accordingly the tax payer was liable to pay erroneously refunded amount of Rs.3,62,21,378/- for the period October 2017 to September 2020. To recover the said amount, GST DRC - 1A dated 20.03.2023 was also issued to the assessee and in response they vide their letter dated 27.03.2023 stated that out of the total liability of Rs.3,62,21,377/- an amount of Rs.3,27,48,159/- belongs to the period 09.10.2018 to 30.09.2020 was paid by them **under protest** and remaining amount of Rs.34,73,218/- belongs to the period October 2017 to October 2018 was not paid by them. The said amount of Rs.3,27,48,159/- was paid under section 73(5) vide 3 DRC 3 Forms all dated 23.02.2023. They further stated that since they refund claimed is not violating any revenue impact, they have not paid interest thereon. They also claimed that there is no suppression of any facts, in this case, they are not liable to pay any penalty also.

25. As far as demand for the period October 2017 to 8th October 2018, is concerned vide Circular No.125/44/2019-GST dated 18.11.2019, it was clarified that any exporter who have imported any input/capital good in terms of Notification No.78/2017-custom and No.79/2017 custom both dated 13.10.2017 before the issuing of Notification No.54/2018 dated 09.10.2018 shall be eligible to claim refund of IGST paid on export. Vide Para 52 of the said circular. Once the refund become eligible retrospective notification in the same would not be curtail the benefit that tax payer ought to have. Hence they did not agree for the tax, interest and penalty demand for the said period and hence they have not calculated tax for such period for voluntary payment.

26. In this connection, I find that the assessee agreed with the demand of erroneous refund for the period from 09.10.2018 to September 2020 and accordingly paid back the refund erroneously



availed by them. They have paid the said amount under protest because the reason that in case, this issue has been held subsequently in favour of tax payer then they won't face trouble in getting refund of such amount paid because as per their understanding various writ petition have been filed for similar matter in various high courts.

27. As far as demand for the period October 2017 to 8th October 2018, is concerned vide Circular No.125/44/2019-GST dated 18.11.2019, it was clarified that any exporter who have imported any input/capital good in terms of Notification No.78/2017-custom and No.79/2017 custom both dated 13.10.2017 before the issuing of Notification No.54/2018 dated 09.10.2018 shall be eligible to claim refund of IGST paid on export. Vide Para 52 of the said circular, once the refund become eligible retrospective notification in the same would not be curtail the benefit that tax payer ought to have. Hence they did not agree for the tax, interest and penalty demand for the said period and hence they have not calculated tax for such period for voluntary payment.

28. In this regard, I have gone through the provisions, Notifications, Circular and Ruling of Hon'ble High Court of Gujarat and find that under the CGST Act, 2017 and Rules made thereunder, exporters are permitted to claim, refund of either unutilized Input Tax Credit (ITC) under Rule 89 of the CGST Rules, 2017 or refund of IGST paid on the goods exported out of India under Rule 96 of the CGST Rules, 2017. However, the government while restoring the tax-free scheme, for the EOUs, Advance Authorization/EPCG holders, restricted the second option for such exporters i.e. if they had imported inputs under Advance authorization license and availed full exemption from payment of IGST on the same & then exported finished goods on payment of IGST and claimed the refund of such IGST paid, then such Simultaneous benefit of exemption of IGST on goods imported vide Customs Notification No. 79/2017 dated 13.10.2017 as well as benefit of automatic refund of IGST paid on the goods exported is not allowed in terms of Rule 96(10) of the Central Goods and Service Tax Rules, 2017.

29. The purpose of introducing the above provision was made clear in the GST council meeting and a clarification in the form of Circular No. 45/19/2018-GST dated 30th May 2018 was issued. Para 7.1 of the above circular, emphasized the objective of introduction of sub-rule (10) of Rule-96 which reads as under:

Sub-rule (10) of rule 96 of the CGST Rules seeks to prevent an exporter, who is receiving goods from suppliers availing the benefit of certain specified notifications under which they supply goods without payment of tax or at reduced rate of tax, from exporting goods under payment of integrated tax. This is to ensure that the exporter does not utilize the input tax credit availed on other domestic supplies received for making the payment of integrated tax on export of goods."

30. In this connection, I have gone through the above provisions and find that from the plain reading of above provisions, it can be concluded that Rule 96 of the CGST Rules, 2017 deals with the procedure for refund of taxes paid on export of goods and services. Rule 96 (10) restricts the eligibility to claim refund of taxes paid on export in those cases where the exporter has received raw material under any of the scheme notified under sub-rule 96(10) like deemed export, Advance Authorization/License, reduced rate of procurement by the merchant exporter etc. This restriction was first introduced vide Notification No. 03/2018-Central Tax dated 23.01.2018, which got subsequently modified and amended by way of Notifications issued from time to time which clarifies that that person claiming refund of IGST paid on exports of goods or services should not have received supplies on which the supplier has availed the benefit of Notifications as mentioned therein.

31. Vide Notification No. 39/2018-Central Tax dated 04.09.2018, the said Rule 96(10) of CGST Rules, 2017 was further amended as below :-

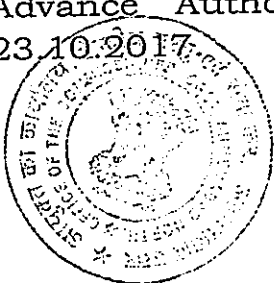
"6 In the said rules, with effect from the 23rd October, 2017, in rule 96, for sub-rule (10), the following sub-rule shall be substituted, namely: -

"(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have -

(a) received supplies on which the benefit of the Government of India, Ministry of Finance notification No. 48/2017-Central Tax, dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1305(E), dated the 18th October, 2017 or notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1320(E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1321(E), dated the 23rd October, 2017 has been availed; or

(b) availed the benefit under notification No. 78/2017-Customs, dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1272(E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299(E), dated the 13th October, 2017."

32. Thus, from the perusal of above notification, it can be seen that refund on exports cannot be availed by the exporter if the inputs procured by them have enjoyed benefits of certain notifications mentioned therein in the Rule 96(10) including the Advance Authorization benefits with retrospective effect from 23.10.2017.



33. Further, vide Notification No. 53/2018-Central Tax dated 09.10.2018, the Rule 96(10) was further amended with effect from 23.10.2017 which reads as:-

"1. (1) These rules may be called the Central Goods and Services Tax (Eleventh Amendment) Rules, 2018.

(2) They shall be deemed to have come into force with effect from the 23rd October, 2017.

2. In the Central Goods and Services Tax Rules, 2017, in rule 96, for sub-rule (10), the following sub-rule shall be substituted and shall be deemed to have been substituted with effect from the 23rd October, 2017, namely:-

"(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have received supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 48/ 2017-Central Tax, dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G. S.R 1305 (E), dated the 18th October, 2017 or notification No. 40/ 2017-Central Tax (Rate) dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G. S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G. S.R 1321 (E), dated the 23rd October, 2017 or notification No. 78/ 2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/ 2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E) dated the 13th October, 2017. "

Thus, from the perusal of above notification, it can be observed that sub-clause (a) and (b) of sub-rule 10 of Rule 96 are merged and this notification is also made effective from 23.10.2017. It says that person claiming refund of IGST paid on exports of goods or services should not have received supplies on which the supplier has availed the benefit of Notifications as mentioned therein.

34. The subject matter pertaining to Rule 96 (10) of CGST Rules, 2017 was further amended by the issuance of Notification No. 54/2018-Central Tax dated 09.10.2018 and an exception was carved from the restriction imposed by sub-rule 96(10) of rule 96 for those exporters who are importing capital goods under the EPCG Scheme. This notification was made effective from the date of publication in the Official Gazette i.e. 09.10.2018. The said Notification reads as:

(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have –

(a) received supplies on which the benefit of the Government of India, Ministry of Finance notification No. 48/2017-Central Tax, dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E), dated the 18th October, 2017 except so far it relates to

receipt of capital goods by such person against Export Promotion Capital Goods Scheme or notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rd October, 2017 has been availed; or

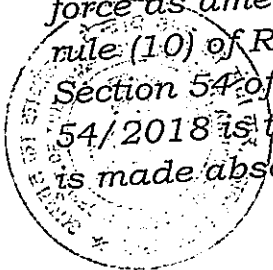
(b) availed the benefit under notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E), dated the 13th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme.

35. Further, CBIC issued a Circular No. 125/44/2019-GST dated 18.11.2019, wherein it was clarified in the para 52 of the said Circular that:-

"52. The net effect of these changes is that any exporter who himself/herself imported any inputs/capital goods in terms of notification Nos. 78/2017-Customs and 79/2017-Customs both dated 13.10.2017, before the issuance of the notification No. 54/2018 - Central Tax dated 09.10.2018, shall be eligible to claim refund of the Integrated tax paid on exports. Further, exporters who have imported inputs in terms of notification Nos. 78/2017-Customs dated 13.10.2017, after the issuance of notification No. 54/2018 - Central Tax dated 09.10.2018, would not be eligible to claim refund of integrated tax paid on exports. However, exporters who are receiving capital goods under the EPCG scheme, either through import in terms of notification No. 79/2017-Customs dated 13.10. 2017 or through domestic procurement in terms of notification No. 48/2017-Central Tax, dated 18.10.2017, shall continue to be eligible to claim refund of Integrated tax paid on exports and would not be hit by the restrictions provided in sub-rule (10) of rule 96 of the CGST Rules."

36. Further, H'ble High Court of Gujarat in the Special Civil Application No. 15833 of 2018 & in the matter of M/s. Cosmo Films Ltd. Vs UOI, in which the Constitutionality of the provision of Rule 96(10) of the CGST Rules, 2017 was challenged, passed an order dated 20.10.2020 and held that :-

"However, it is also made clear that Notification No. 54/2018 is required to be made applicable w.e.f 23rd October, 2017 and not prior thereto from the inception of Rule 96(10) of the CGST Rules. Therefore, in effect Notification No. 39/2018 dated 04.09.2018 shall remain in force as amended by the Notification No. 54/2018 by substituting sub rule (10) of Rule 96 of CGT Rules, in consonance with subsection (3) of Section 54 of CGST Act and Section 16 of IGST Act. The Notification NO. 54/2018 is therefore held to be effective w.e.f 23rd October 2017. Rule is made absolute to the aforesaid extent."



In view of the above, The Notification No. 54/2018-Central Tax dated 09.10.2018 is made retrospective effective from 23rd October 2017. Further, an Explanation was added to Rule 96(10) of the Rules by Notfn. No. 16/2020-Central Tax dated 23.3.2020 as follows.

"10. In the said rules, in rule 96, in sub-rule (10), in clause (b) with effect from the 23rd October, 2017, the following Explanation shall be inserted, namely, -

Explanation. - For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications."

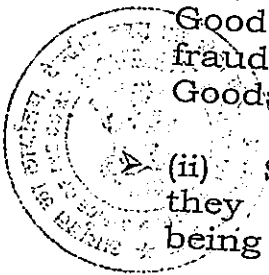
From the above, I find that by inserting the Explanation in Rule 96(10) of the Rules, the option for claiming refund under clause (b) to the Rule is only for the exporters who avail the exemption of Basic Customs Duty ('BCD') only and pay IGST on the inputs. In the instant case, it was gathered that the taxpayer had availed full exemption of IGST at the time of import of raw materials, which have been imported for use in the manufacture of goods to be exported & thereafter, the finished/manufactured goods were exported on payment of IGST & refund was claimed of such IGST paid. The said mechanism adopted by taxpayer is prohibited under GST law as discussed above.

37. From the above discussion, I find that the said taxpayer had availed the benefit of Notification No.79/2017-Customs dated 13.10.2017 at the time of procurement of inputs and thereafter the finished /manufactured goods were exported on payment of IGST & refund was claimed of such IGST paid. The refund of IGST paid on Zero Rated export supplies will not be available if the claimant of such refund had availed the benefit of Notification 79/2017-Customs dated 13.10.2017. As per the provisions of Rule 96(10) of the CGST Rules, 2017, the said refund of IGST appeared to be inadmissible. In view of the above, it appeared that the said taxpayer had contravened the following provisions of law:

➤ Section 54 of the CGST Act, 2017 along with the corresponding entry of the Gujarat State Goods and Services Act, 2017 read with the provisions of Section 20 of Integrated Goods and Service Tax Act, 2017 in as much as they have fraudulently claimed the refund of IGST paid on export of Goods.

➤ (ii) Section 16 of the IGST Act, 2017 in as much as they have fraudulently claimed the refund of IGST without being eligible for the same.

➤ (iii) Rule 96 of the CGST Rules, 2017 along with the corresponding entry of the Gujarat State Goods and Services Act, 2017 read with the provisions of Section 20 of Integrated Goods and Service Tax Act, 2017 in as much as they have



availed the benefit of said rule although they were not eligible for the same in light of conditions laid down in Rule 96(10) of the CGST Rules, 2017.

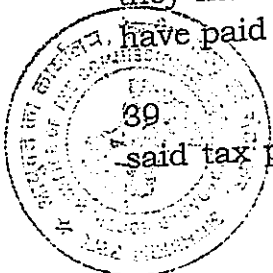
- (iv) Section 39(7) & Section 39(9) of the Central Goods and Services Tax Act, 2017 along with the corresponding entry of the Gujarat State Goods and Services Act, 2017 read with the provisions of Section 20 of Integrated Goods and Service Tax Act, 2017 in as much as they have failed to pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return;
- Rule 96(10) of the Central Goods and Services Tax Rules, 2017 along with the corresponding entry of the Gujarat State Goods and Services Act, 2017 read with Section 20 of the Integrated Goods and Service Tax Act, 2017 in as much as they had filed the refund of IGST paid on Zero Rated Supplies after availing the benefit of Notification no. 79/2017-Customs dated 13.10.2017.
- Section 39(9) of the Central Goods and Services Tax Act, 2017 along with the corresponding entry of the Gujarat State Goods and Services Act, 2017 read with the provisions of Section 20 of Integrated Goods and Service Tax Act, 2017 in as much as they have failed to pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return;
- Notification No.16/2020-CT dated 23.03.2020 under which an amendment has been made by inserting the following explanation to Rule 96(10) of CGST Rules, 2017 as amended (With retrospective effect from 23.10.2017).

“Explanation.- For the purpose of this sub-rule, the benefit of the Notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.”

- Section 59 of the Central Goods and Services Tax Act, 2017 along with the corresponding entry of the Gujarat State Goods and Services Act, 2017 and provisions of Section 20 of the Integrated Goods and Service Tax Act, 2017 in as much as they had failed to self-assess the taxes payable under the provisions of the act and failed to reverse/pay the amount of erroneous refund of Integrated Goods and Service Tax as detailed above.

38. In this connection, I have gone through the reply to SCN wherein the tax payer stated that they are still under the sure impression that there is no revenue impact on the transactions carried out by them which is violation of Rule 96(10) , but to save themselves from future liability interest and penalty burden they have voluntarily paid all the refund which they have received via export with payment of tax in contravention of Rule 96(10) immediately. They further submitted that as they have not received any SCN till time they have make payment of such tax, have paid tax voluntarily, no penalty is imposable on them.

On perusal of the reply to SCN, I find that the contention of the said tax payer is not correct as from the facts, it appeared that the taxpayer



was fraudulently claiming refund of such IGST by filing shipping bills and received such refunds through automatic route, even when such exports were made towards fulfillment of their export obligation. This was nothing but a fraudulent way of encashment of unutilized ITC available in balance, as the exported goods were evidently manufactured out of exempted supplies received. By following such modus operandi, the said taxpayer was able to get refund of such unutilized ITC in the guise of ITC paid on Zero-rated supplies, through automatic mechanism without any conditions, procedures, departmental scrutiny and by dodging the restrictive formula provided under Rule 89(4), 89(4A) 89(4B) or 89 (5), as the case may be. It is, therefore, evident that they had suppressed the erroneous refund of IGST paid on exports and accordingly the taxpayer's liabilities were not properly discharged. The failure to properly discharge their Tax liability is utter disregard to the requirements of law and breach of trust deposed on them is outright act in defiance of law by way of suppression, concealment & non- furnishing value of erroneous refund with intent to evade payment of tax. It is also a fact that the said tax payer did not pay the erroneous refund upto 23.02.2023. It was only when the department had initiated inquiry against them they paid the tax along with interest. The above said erroneous refund of IGST paid on export, was unearthed after initiating inquiry by the officers of Central Tax, Ahmedabad North and therefore had the investigation not been initiated by this office, the said facts would have not come to light. All the above facts of contravention on the part of the Taxpayer had been committed with an intention to evade the payment of GST by suppressing the facts. Therefore, the same is required to be demanded and confirmed from them under Section 74(1) of the CGST Act, 2017/Gujarat GST Act'2017 read with Section 20 of IGST Act'2017 by invoking extended period of five years.

40. I further find that the contention of the said taxpayer that penalty was not leviable since they had paid the tax before issuance of the show cause notice is not correct. In this connection, the provisions of Section 74(5)&(6) of the CGST Act, 2017 reads as follows :-

(5) *The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.*

(6) *The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.*

Section 74(5) read with Section 74(6) of the CGST Act, provides an opportunity for the taxpayer to ascertain the proper amount of tax, interest and penalty and settle the issue. At this stage the proceedings are closed on the basis of either a self-ascertainment by an assessee and acceptance of the same by the revenue or vice versa. However, if where there is no such closure then it provides for an avenue to continue the proceedings by way of issuance of Show Cause Notice as provided for under Section 74(1) of the CGST Act. The provisions of Section 74(1) of the CGST Act, 2017 which reads as follows :-

(1) *Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit,*

requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

42. In view of the above provisions of law, I find that the contention of the said taxpayer that penalty is not imposable is not correct. They had an opportunity to settle the matter before issuance of Show Cause Notice by way of payment of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent of such tax.

43. From the above facts, I hold that the said amount of IGST of Rs.3,62,21,378/- is liable to be demanded and recovered from the said tax payer under the provisions of Section 74(1) of the CGST Act, 2017 read with the Section 74(1) of the Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 along with applicable interest under the provisions of Section 50 of the Act, ibid. I find that the said tax payer has paid the IGST amount of **Rs.3,27,48,159/- under protest** and the same needs to be appropriated against the demand.

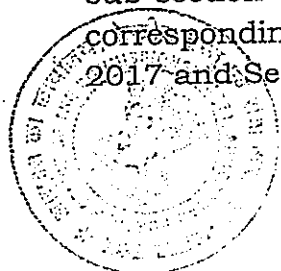
44. Further, as per Section 50(1) of the CGST Act, 2017 read with Gujarat GST Act, 2017, every person who is liable to pay tax in accordance with the provisions of this Act or the rules made there under, but fails to pay the tax or any part thereof to the Government within the period prescribed is liable to pay the interest at the applicable rate of interest. Since the said tax payer had failed to pay their Tax liabilities in the prescribed time limit, I find that the said tax payer is liable to pay the said amount along with interest. Thus, the said Tax is required to be recovered from the said tax payer along with interest on account of delayed payment of IGST under Section 50(1) of the CGST Act, 2017 read with Gujarat GST Act, 2017.

45. As far as imposition of penalty under Section 74(1) of the CGST Act, 2017 read with Gujarat GST Act, 2017 is concerned, on perusal of the facts of the case and in view of the above discussion, I find that this is a fit case to levy penalty under 74(1) of the CGST Act, 2017 read with Gujarat GST Act, 2017 as they failed to pay the tax with the intend to evade the same. These facts would not have come to light had the department not initiated inquiry against the said tax payer. The assessee had thus, willfully suppressed the erroneous refund of IGST paid on exports with an intent to evade the Tax. Hence, I find that this is a fit case to impose penalty equivalent to the tax under Section 74(1) of the CGST Act, 2017 read with Gujarat GST Act, 2017.

46. In view of the above discussion and findings, I pass the following order :-

O R D E R

- (i) I confirm the demand of IGST of Rs.3,62,21,378/- (Rupees Three Crore Sixty Two Lakhs Twenty One Thousand Three Hundred Seventy Eight Only) and order to recover the same from them under the provisions of sub-section (1) of Section 74 of the CGST Act, 2017 and the corresponding entry of the Gujarat State Goods and Services Tax Act, 2017 and Section 20 of the IGST Act, 2017.



- (ii) I order to appropriate the IGST of Rs.3,27,48,159/- (Rupees Three Crore Twenty Seven Lakhs Forty Eight Thousand One Hundred Fifty Nine Only) paid through ITC/Cash against the demand of IGST liability as per para (i) above;
- (iii) I order to demand interest at the rates prescribed and recover the same from them under the provisions of Section 20 (xxv) of the IGST Act, 2017 read with Section 50(1) of the CGST Act, 2017 and the corresponding entry of the Gujarat State Goods and Services Tax Act, 2017 and Section 20 of the Integrated Goods and Service Tax Act, 2017;
- (iv) I impose a penalty of Rs.3,62,21,378/- (Rupees Three Crore Sixty Two Lakhs Twenty One Thousand Three Hundred Seventy Eight Only) under Section 74(1) of the CGST Act, 2017 read with the Section 74(1) of the Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 on the taxpayer. In terms of sub section (11) of Section 74 ibid, where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded;

47. Accordingly the Show Cause Notice No. Gexcom/AE/INV/GST/ 5409/2022-AE-II dated 31.03.2023 is disposed off.



(Signature)
23/08/2023
(Lokesh Damor)
Joint Commissioner
Central GST & CE,
Ahmedabad North

F.NO.GST/15-20/OA/2023

DT.

By speed post/hand delivery

To,
M/s. Lubi Industries LLP,
Near Kalyan Mills, Naroda Road,
Ahmedabad-380025.

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, Central GST & Central Excise, Div- VII Ahmedabad North.
3. The Superintendent, Range-III, Division-VII, Central GST & Central Excise, Ahmedabad North with a request to create GST DRC 7 and upload the same alongwith OIO electronically in terms of DSR advisory No.01/2018 dated 26.10.2018 of the ADG, Systems & Data Management, Bengaluru.
- ✓ 4. The Superintendent (System), Central GST & Central Excise Ahmedabad North for uploading the order on website.
5. Guard File.