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OFFICE OF THE COMMISSIONER

केंद्रीय वस्तु एवं सेवा कर तथा केंद्रीय उत्पाद शुल्क, अहमदाबाद उत्तर
CENTRAL GOODS & SERVICES TAX & CENTRAL EXCISE, AHMEDABAD NORTH

पहली मंजिल, कस्टम हाउस, नवरांगपुरा, अहमदाबाद - 380009

FIRST FLOOR, CUSTOM HOUSE, NAVRANGPURA, AHMEDABAD - 380009

फ़ोन/Phone: 079 - 27544557 ई-मेल/E-Mail: ofad/hq-cgstamdnorth@gov.in फ़ैक्स/Fax: 079-27544463

निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN-20240364WT000000B2DA

फ़ा.सं./F.No. GST/15-14/OA-AE/2022

आदेश की तारीख/Date of Order: - 19.03.2024

जारी करने की तारीख/Date of Issue :- 19.03.2024

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 101/ADC/ 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), केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केंद्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप GST-APL-01 में दाखिल कर सकता है। इस अपील पर रु. 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 जाएंगे।

- (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 रु. 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 बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. IV/10-04/Gr.V/IGST/Narayan Organics/2019-20 dated 31.03.2022 issued to M/s Narayan Organics Pvt. Ltd. having GSTIN: 24AAACN5297K1Z5, A-1101, 11th Floor, Sankalp Square-3, Besides Hotel Taj Skyline, Sindhu Bhavan Road, Shilaj, Ahmedabad, Gujarat-380059.





BRIEF FACTS OF THE CASE

M/s. NARAYAN ORGANICS PVT.LTD, having its principal place of business located at A-1101, 11TH FLOOR, SANKALP SQUARE-3, BESIDES HOTEL TAJ SKYLINE, SINDHU BHAVAN ROAD, SHILAJ, Ahmedabad, Gujarat, 380059 (hereinafter referred to as the 'said taxpayer') is holding Goods and Service Tax registration no. 24AAACN5297K1Z5. The taxpayer is engaged in the manufacturing and supply of taxable goods viz. pigments. Hereafter, wherever the provisions of Central Goods and Service Tax Act, 2017 and Central Goods and Service Tax Rules, 2017 are quoted, the corresponding provisions of Gujarat State Goods and Service Tax Act, 2017 and Gujarat State Goods and Service Tax Rules, 2017 would apply simultaneously. Further, in terms of Rule 2 of the Integrated Goods and Service Tax Rules, 2017, the provisions of Central Goods and Service Tax Rules, 2017 would apply for referring contraventions as mentioned in Section 20 of the Integrated Goods and Service Tax Act, 2017.

2. Whereas, on the basis of information, a search was conducted at the premise of M/s. NARAYAN ORGANICS PVT.LTD under Section 67(2) of CGST Act, 2017 on 10-10-2019. During the course of investigation and scrutiny of documents of the taxpayer, it was observed that said taxpayer has wrongly claimed refund of IGST paid on zero-rated export supplies by availing the benefit of Advance Authorization issued under Chapter-4 of the Exim Policy and for the goods made for Deemed Exports thus contravening Rule 96(10) of CGST Rules, 2017 read with Notification no. 48/2017-Central Tax dated 18.10.2017 for the period Sep-2018 to July, 2019 read with Notification no. 79/2017-Customs dated 13.10.2017. During the course of investigation, the taxpayer accepted the ineligibility of the IGST Refund claimed by them and initiated making payment along with the applicable interest through DRC03. During the course of investigation, it was revealed that the said taxpayer had availed the refund of IGST paid on Zero Rated Supplies after availing benefit of Notification no. 79/2017-Customs dated 13.10.2017 and contravening the provisions of Rule 96(10) of CGST Rules, 2017 as amended. Also, it was noticed that the said taxpayer had also exported the goods under IGST on the export made under Advance Authorisation instead of exporting the goods under LUT.

2.1. Whereas, in terms of Rule 96(10) of the Central Goods and Service Tax 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. The same has been clarified vide Notification No. 16/2020-CT dated 23.03.2020. On being pointed out and despite deliberating on the issue during the course of investigation, the taxpayer had admitted to have availed irregular IGST refund amounting to total Rs. 3,85,46,395/- and produced the details of IGST refund.

3. Whereas, Notification no. 54/2018-Central Tax dated 09.10.2018 substituted Sub-rule (10) of Rule 96 of the Central Goods and Service Tax Rules, 2017 with the following:

"(10) The persons claiming refund of integrated tax paid on Zero Rated Supplies 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."

4. Whereas, the said taxpayer had made the following Exports (Zero rated) on payment of IGST after having availing the benefit of Notification no. 79/2017 Customs, dated the 13.10.2017. The table detailed hereafter lists the number of Zero rated Supplies/IGST export and the amount of IGST refund received.

Shipping Bill wise Detail of Export with payment of IGST on which refund claimed by the tax payer.			
Financial Year 2018-19			
Sr. No.	Shipping Bill No.	Shipping Bill Date	IGST Amount
1	7577577	14-Sep-18	14,49,360
2	7672613	19-Sep-18	6,61,842
3	7730808	21-Sep-18	1,29,384
4	7780557	24-Sep-18	3,98,891
5	8263342	15-Oct-18	3,23,838
6	8239175	13-Oct-18	7,17,264
7	8270752	15-Oct-18	13,77,572
8	8327585	17-Oct-18	53,251
9	1106126	04-Jan-19	2,35,426
10	1189632	08-Jan-19	1,56,361
11	1189551	08-Jan-19	61,560
12	1259592	11-Jan-19	4,38,568
13	1352719	16-Jan-19	12,11,868
14	1369619	17-Jan-19	5,99,706
15	1397386	18-Jan-19	6,24,456
16	1581781	25-Jan-19	6,64,830
17	1708945	31-Jan-19	5,68,800
18	1740386	01-Feb-19	70,560
19	1795215	04-Feb-19	12,03,048
20	2185153	20-Feb-19	6,12,000
21	2212532	21-Feb-19	6,78,600
22	2304427	25-Feb-19	6,18,120
23	2387616	28-Feb-19	12,24,216
24	2493874	05-Mar-19	12,00,578
25	2567117	07-Mar-19	6,77,700
26	2611727	09-Mar-19	6,17,220
27	27220 14	14-Mar-19	5,45,371
28	2791269	16-Mar-19	4,24,800
29	2857777	19-Mar-19	1,72,170
30	3016400	26-Mar-19	1,21,428
31	3016107	26-Mar-19	2,11,118
32	3047064	27-Mar-19	2,82,358
33	3047417	27-Mar-19	3,74,825
34	3121362	29-Mar-19	13,45,590



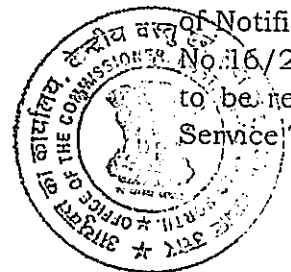
Shipping Bill wise Detail of Export with payment of IGST on which refund claimed by the tax payer.			
Financial Year 2019-20			
Sr. No.	Shipping Bill No.	Shipping Date	IGST Amount
1	3243791	03-Apr-19	5,45,080
2	3706070	24-Apr-19	5,59,580
3	3757881	26-Apr-19	6,76,125
4	3871509	01-May-19	11,72,637
5	3919424	03-May-19	6,28,033
6	4025678	08-May-19	5,67,558
7	4158279	14-May-19	7,03,037
8	4298001	20-May-19	11,73,312
9	4430776	25-May-19	11,69,172
10	4454889	27-May-19	7,12,757
11	4516345	29-May-19	7,07,742
12	4536963	30-May-19	6,01,740
13	4623944	03-Jun-19	12,10,810
14	4689349	06-Jun-19	5,87,070
15	4765598	10-Jun-19	13,46,881
16	4803108	11-Jun-19	2,79,058
17	4803069	11-Jun-19	75,166
18	4842587	13-Jun-19	11,84,904
19	4879410	14-Jun-19	13,54,900
20	5033760	21-Jun-19	1,97,345
21	5035030	21-Jun-19	2,76,223
22	5055986	22-Jun-19	13,80,672
23	5174178	27-Jun-19	7,85,036
24	5316698	03-Jul-19	5,98,878

5. 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.

6. During the search, a list of export made by the taxpayer against which they claimed IGST refund for the period from September, 2018 to July, 2019 total amounting to Rs.3,85,46,395/- submitted by the the taxpayer. Therefore, the taxpayer is ineligible to refund claim on which they have not paid IGST during the time of procurement of raw material. The amount of erroneously taken refund is Rs. 3,85,46,395/- from September, 2018 to July, 2019 and the same is required to demanded/pay back along with applicable interest and penalty.

7. During the course of investigation, it was pointed out that the aforesaid refund of IGST paid on Zero Rated Supplies was erroneous in terms of Rule 96(10) of Central Goods and Service Tax Rules, 2017 as the export of goods had availed the benefits of Notification no. 79/2017-Customs dated 13.10.2017 and in terms of Notification No.16/2020-CT dated 23.03.2020. Thus, the refund being erroneous was required to be recovered/paid under the provisions of Section 74(5) of Central Goods and Service Tax Rules, 2017 along with interest and penalty.



8. Whereas, the Government had introduced self assessment system under a trust based regime which casts the onus of proper assessment and discharging the liabilities 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.

8.1. Whereas, 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, investigation, 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;

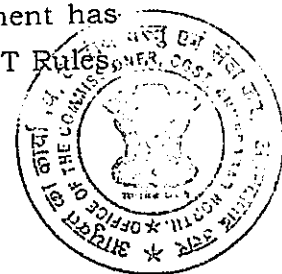
Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier."

9. Whereas sub-section (1) of Section 74 provides that -

"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 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 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."

10. Whereas, in view of the aforesaid narrations, it appears that the taxpayer has contravened the following provisions of law:

- 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. 48/2017- Central Tax, dated 18.10.2017 or 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 onlu 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 have 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 at para 4.

11. In terms of the provisions of Rule 142(1A) of the CGST Rules, 2017, DRC-01A was issued to the said taxpayer on 22.03.2022 intimating their liability under Section 74(5) of the CGST Act, 2017 or to file any submissions against the above ascertainment in Part-B of DRC-01A on or before 28.03.2022.

12. Therefore, M/s. NARAYAN ORGANICS PVT.LTD, having it principal place of business located at A-1101,, 11TH FLOOR,, SANKALP SQUARE-3, BESIDES HOTEL TAJ SKYLINE,, SINDHU BHAVAN ROAD, SHILAJ, AHMEDABAD, Ahmedabad, Gujarat, 380059 were called upon to Show Cause to the Additional/Joint Commissioner of Central Tax and Central Excise, Ahmedabad-North Commissionerate, having his office at Floor, Custom House, Navrangpura, Ahmedabad 380009 vide SCN bearing F.No. IV/19-04/Gr.V/IGST/Narayan Organics/2019-20 dated 31.03.2022 as to why:

- (i) the extended period of limitation, prescribed under provisions of sub section (10) of Section 74 of the Central Goods and Services Tax 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 should not be invoked against them for the reasons discussed above;
- (ii) total IGST of Rs.3,85,46,395/- (Rupees Three Crore Eighty Five Lakh Forty Six Thousand Three Hundred and Ninety Five Only) along with equivalent penalty should not be demanded, confirmed and recovered from the taxpayer under the provisions of sub-section (1) of Section 74 of the Central Goods and Services Tax 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 and;
- (iii) Interest at the rates prescribed should not be demanded and recovered from the taxpayer under the provisions of Section 20 (xxv) of the Integrated Goods and Service Tax Act, 2017 read with Section 50(1) of the Central Goods and Services Tax 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) IGST of Rs.2,00,52,679 /- (Rupees Two Crore Fifty Two Thousand Six Hundred and Seventy Nine Only) paid through ITC/cash, should not be appropriated against their outstanding GST tax liability as per para (ii) above.

Penalty under the provisions of Section 20 (xxv) of the Integrated Goods and Service Tax Act, 2017 read with Section 122(1) of the Central Goods and Service Tax Act, 2017 for the above contraventions.

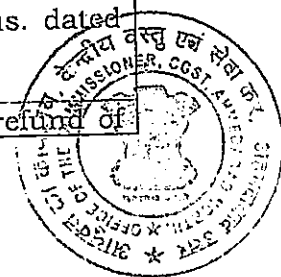


DEFENCE REPLY

13. M/s. Narayan Organics Pvt. Ltd. had filed their defence reply vide letter dated 04.04.2023 wherein they denied the allegations in the aforesaid SCN. Their reply is as under:-

13.1 For the sake of clarity summarized changes made in Rule 96(10) as below:-

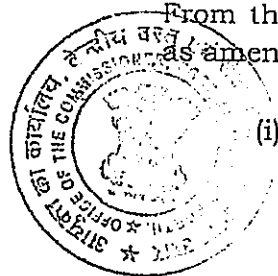
Rule 96 of CGST Rules, 2017			
Principal /Amending Notification	Date of Notification and effective date of operation of amendment	Comments	Gist
Notification No. 75/2017-CT.	29.12.2017 (with effect from 23.10.2017)	Rule 96(9) was inserted to impose restriction in claiming refund of IGST paid on export where registered person has received supplies from supplier who has claimed benefit of deemed export or merchant export notification.	The persons claiming refund of integrated tax paid on export of goods or services should not have received supplies on which the supplier has availed benefit of - a) NN. 48/2017-CT dated 18.10.2017 or b) NN. 40/2017-CT (Rate), dated 23.10.2017 or c) NN. 41/2017-IT (Rate), dated 23.10.2017
Notification No. 3/2018-CT.	23.1.2018 (with effect from 23.10.2017)	Rule 96(9) was brought as Rule 96(10) retrospectively. Further, it was additionally provided that the bar would also apply if supplier to registered person has availed IGST exemption under AA, EPCG or EOU.	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 benefit of - a) NN. 48/2017-CT dated 18.10.2017 or b) NN. 40/2017-CT (Rate), dated 23.10.2017 or c) NN. 41/2017-IT (Rate), dated 23.10.2017 d) NN. 78/2017-Cus. dated 13.10.2017 e) NN. 79/2017-Cus. dated 13.10.2017
Notification No. 39/2018-CT.	4.9.2018 (with effect from 23.10.2017)	Rule 96 (10) amended retrospectively. It was amended to provide that bar under said rule would apply when registered person himself avails IGST exemption benefit under AA, EPCG and EOU and not when supplier to registered person avails the same.	The persons claiming refund of integrated tax paid on exports of goods or services should not have - (i) received supplies wherein benefit availed of - a) NN. 48/2017-CT dated 18.10.2017 or b) NN. 40/2017-CT (Rate), dated 23.10.2017 or c) NN. 41/2017-IT (Rate), dated 23.10.2017 (ii) availed the benefit of a) NN. 78/2017-Cus. dated 13.10.2017 b) NN. 79/2017-Cus. dated 13.10.2017
Notification	9.10.2018	Two notifications were	The persons claiming refund of



on No. 53/2018-CT.	(with effect from 23.10.2017)	issued on the same day. One notification provided for Rule 96(10) which would apply from 23.10.2017 to 8.10.2018 (Phase I) in cases wherein the supplier to a registered person has availed benefit of AA, EPCG or EOU. This notification provided that during Phase I, the bar would apply if supplier to registered person avails IGST exemption under AA, EPCG or EOU. The same would not apply if registered person himself avails IGST exemption benefit under the said schemes.	integrated tax paid on exports of goods or services should not have received supplies on which the supplier has availed benefit a) NN. 48/2017-CT dated 18.10.2017 or b) NN. 40/2017-CT (Rate), dated 23.10.2017 or c) NN. 41/2017-IT (Rate), dated 23.10.2017 d) NN. 78/2017-Cus. dated 13.10.2017 e) NN. 79/2017-Cus. dated 13.10.2017
Notification No. 54/2018-CT.	9.10.2018 (with effect from 9.10.2018)	Another notification provided that amended Rule 96(10) would be applicable from 9.10.2018 (Phase II) This notification provided that during Phase II, the bar would apply when registered person himself avails IGST exemption benefit under said schemes except EPCG scheme. The same would not apply when supplier to registered person avails the said benefit.	The persons claiming refund of integrated tax paid on exports of goods or services should not have - (i) Received supplies wherein benefit availed of — (a) NN. 48/2017-CT dated 18.10.2017 except against EPCG scheme or (b) NN. 40/2017-CT (Rate), dated 23.10.2017 or (c) NN. 41/2017-IT (Rate), dated 23.10.2017 (ii) availed the benefit of (a) NN. 78/2017-Cus. dated 13.10.2017 (b) NN. 79/2017-Cus. dated 13.10.2017 except against EPCG scheme
Notification No. 16/2020-CT.	23.10.2020 (with effect from 23.10.2017)	Explanation was inserted in Rule 96(10) to provide that bar would not apply if IGST is paid and BCD is claimed as exemption under said schemes	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, Notification No. 54/2018-C.T. dated 09.10.2018 makes Rule 96(10) as amended applicable from 09.10.2018. Thus, the legal position is as under:

- (i) For the period from 23.10.2017 to 08.10.2018 – Rule 96(10) will apply to a person who has received supplies from supplier who has availed IGST exemption;



(ii) For the period from 9.10.2018 - Rule 96(10) will apply to a person who himself has availed IGST exemption.

13.2 They are engaged in the business of Manufacturing of Dyestuffs and Export finished goods for which they import Raw material without payment of IGST, under Advance Authorization Scheme, as per Notification No. 79/2017-Custom Act dated 13.10.2017. They export the said goods, after processing, with payment of IGST and claim the refund of IGST paid on said Export.

13.3 They submitted that total IGST refund amounting to Rs. 3,85,46,395/- during period 23.10.2017 to 31.03.2020, pertains to export of goods which are manufactured from inputs imported under Notification No. 79/2017-Cus.

13.4 Further, they contested that Notification No. 54/2018-CT dated 09.10.2018 has an effective date for implementation as the date of publication in Official Gazette which is 09.10.2018. Thus, Notification No. 54/2018-CT dated 09.10.2018 would not be retrospective effect and therefore demand for the period prior to 09.10.2018 would not be sustainable in law. Thus, a registered person shall be eligible to claim refund of IGST paid on export of goods till 09.10.2018, if the said registered person has imported goods under Advance Authorisation Scheme, by availing benefit under Notification No. 79/2017-Cus dated 13.10.2017.

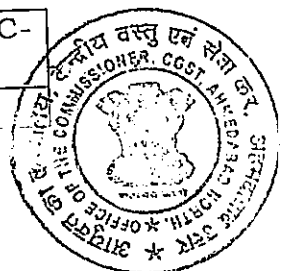
13.5 They stated that they have claimed total IGST refund of Rs. 3,85,46,395/- paid on Zero Rated Supplies made during the period 23.10.2017 to 31.03.2020, on which they have also availed the benefit of exemption of Notification No. 79/2017-Cus dated 13.10.2017 and not paid IGST on import of inputs. Out of said amount, they have claimed refund of IGST of Rs. 2,55,32,962/- paid on Zero Rated supplies made during the period July, 2017 to 31.03.2020 on which they have also availed the benefit of exemption of Notification No. 79/2017-Cus dated 13.10.2017 and not paid IGST on import of inputs.

13.6 They also referred Para 52 of Circular No. 125/44/2019-GST dated 18.11.2019, wherein it has been clarified that *"the net effect of these changes is that any exporter who himself/herself imported any inputs/capital goods in terms of notification no. 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"*. They contested that demand of Rs. 3,85,46,395/- is factually incorrect since department has raised demand for the total amount of IGST refund received by them during the period 23.10.2017 to 31.03.2020.

13.7 They contested that demand can only be raised for the period after 09.10.2018 till 31.03.2019 as per Notification No. 54/2018-CT dated 09.10.2018 and therefore, assuming without admitting, the demand of refund of IGST of Rs. 3,59,06,918/- only can be sustainable instead of Rs. 3,85,46,395/-, paid on export, after availing the benefit of advance authorization and demand of GST refund of Rs. 26,39,477/- for the export prior to 09.10.2018 is not sustainable. They also referred judgement of Hon'ble High Court of Gujarat in case of Zaveri and company vs UOI, SCA No. 15091 of 2018.

13.8 Further, they have agreed, without agreeing on merits, and to buy the peace of mind and surrendered amount of IGST refund claimed of Rs. 2,55,32,962/- against refund claimed for 41 Shipping Bills for the period July-2017 to March-2020 through DRC-03, details of which are as under :-

Sr. No.	DRC-03 ARN	DRC-03 Date	Amount of DRC-03
1.	AD240120002346Y	07.01.2020	1,29,384/-



2.	AD24022002172W	28.02.2020	42,06,038/-
3	AD2411200020926	05.11.2020	54,08,116/-
4	AD240221013465P	24.02.2021	1,03,09,142/-
5	AD240322037703H	31.03.2022	54,80,282/-
	GRAND TOTAL		2,55,32,962/-

13.9

They submitted that department has raised demand for the total amount of IGST refund received by them during the period July-2017 to March-2020 on the basis of date provided by them, however, as per legal position, they have contravened the provision of Rule 96(10), for the period after 09.10.2018 as per Notification No. 54/2018-CT dated 09.10.2018 and therefore they have availed the refund of IGST of Rs. 3,59,06,918/- only, paid on export, after availing the benefit of Advance Authorisation, in violation of Rule 96(10) of CGST Rules, 2017 and the demand for the period 13.10.2017 to 08.10.2019 of refund of IGST of Rs. 26,39,477/- was not sustainable in law, in term of Notification No. 54/2018-CT dated 09.10.2018. The taxpayer have further submitted that there was no thing suppressed from the department in relation to availment of refund of IGST on export of goods by simultaneously availing benefit of Advance Authorization Scheme on import of goods.

13.10 They further contended that they are duly entitled for refund amounting to Rs. 3,12,29,898/- for the period July-2017 to March-2020, in terms of Rule 89(4) of CGST Rules, 2017 for refund of accumulated ITC, in case if goods were exported without payment of tax, under Bond/LUT. Thus, demand of interest should not be levied. Even otherwise also, they are entitled for refund under Rule 96A of CGST Rules. They relied upon the following decisions:-

- (1) Zenith Spinners v. Union of India – 2015 (326) E.L.T. 97 (Guj) affirmed in 2015 (326) ELT 23 (Supreme Court)
- (2) In the case of 2021 (378) E.L.T. 406 (Mad) REIL Electricals India Ltd vs Jt. Secretary (Revisionary Authority), New Delhi

13.12 Further they stated that there is no suppression at all, all the details have been clearly disclosed in shipping bill. Shipping Bill clearly shows that advance license number and also shows that IGST is paid, and refund is available. Hence there is no case for invoking demand under section 74.

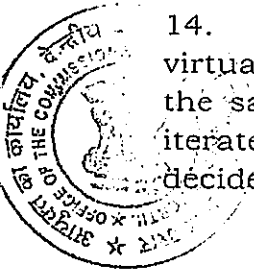
11.13 They also contested that for imposing penalty under Section 122 of the Act, there should be an intention to evade payment of tax, or wrong availment of any refund, or there should be suppression or concealment of material facts. They have provided all the details as and when desired by the Department. They placed reliance upon the following decisions:-

- (a) Suvikram Plastex Pvt Ltd v. CCE, Bangalore – III 2008 (225) ELT 282 (T)
- (b) Rallis India Ltd v CCE, Surat 2006 (201) ELT 429 (T)
- (c) Patton Ltd v CCE, Kolkata – V 2006 (206) ELT 496 (T)
- (d) CCE, Tirupati v Satguru Engineering & Consulting Pvt Ltd 2006 (203) ELT 492 (T)
- (e) Indian Hume Pipes Co. Ltd. v. CCE, Coimbatore 2004 (163) ELT 273 (T)
- (f) Hon'ble Supreme Court in the case of Akbar Badruddin Jiwani v Collector of Customs reported at 1990 (047) ELT 0161 SC

13.14 In view of the above submission, they requested to drop the demand of Tax of Rs. 3,85,46,395/- along with interest and penalty.

PERSONAL HEARING

14. Personal Hearing in the instant case was held on 07.03.2024 in virtual mode. Ms. Madhu Jain, Advocate, duly authorized representative of the said taxpayer appeared for Personal Hearing via virtual mode. She reiterated their written submission dated 23.11.2023. She further requested to decide the matter on merits.



DISCUSSION AND FINDINGS

15. I have carefully gone through the show cause notice, defense reply dated 04.04.2023, submission made by the taxpayer during the course of personal hearing and other records available in the files and proceed to decide the case.

16. Briefly stated the facts of the case are that M/s Narayan Organics Pvt. Ltd. having registration GSTIN No. 24AAACN5297K1Z5 is engaged in the supply of "synthetic organic colouring matter, whether or not chemically defined; preparations as specified in note 3 to this chapter based on synthetic organic colouring matter; synthetic organic products of a kind used as fluorescent brightening agents or as luminophores, whether or not chemically defined - Synthetic organic colouring matter and preparations based there on as specified in Note 3 to this Chapter, falling under Chapter 32".

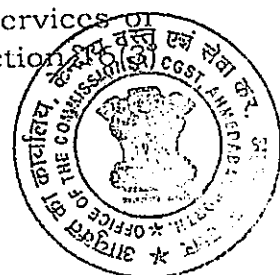
17. An intelligence was received that the said taxpayer has wrongly claimed refund of IGST paid on zero rated export supplies by availing benefit of Advance Authorization issued under Chapter-4 of the Exim Policy and for the goods made for deemed exports thus contravening Rule 96(10) of the CGST Rules, 2017 readwith No. 48/2017-Central Tax dated 18.10.2017 readwith Notification No. 79/2017-Customs dated 13.10.2017 for the period Sep-2018 to July, 2019.

18. Based on the above intelligence, an investigation was initiated against the taxpayer and during the course of investigation, the said taxpayer had accepted the ineligibility of the IGST Refund claimed by them and initiated making payment alongwith applicable interest through DRC-03. They had 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. 3,85,46,395/- which is restricted as per Rule 96(10) of CGST Rules, 2017. Accordingly, impugned SCN has been issued to the Taxpayer.

19. It is alleged in the impugned SCN that the Taxpayer had availed the benefit of Notification No. 79/2017-Customs dated 13.10.2017 on imported inputs and thereafter the finished /manufactured goods were exported on payment of IGST & refund of IGST amounting to Rs. 3,85,46,395/- was claimed of such IGST paid during the period from Sep-2018 to July, 2019 in contravention of Rule 96(10) of CGST Rules, 2017.

Accordingly, I find that the issue to be decided is to whether the said taxpayer is liable to pay the amount of Rs. 3,85,46,395/- refunded erroneously during the period from Sep-2018 to July,2019 in contravention of Rule 96(10) of CGST Rules, 2017 read with Notification No. 48/2017-Central Tax dated 18.10.2017 and read with Notification No. 79/2017-Customs dated 13.10.2017.

20. Before taking in to consideration the submission made by the Taxpayer, firstly I reiterate the legal provisions related to Rule 96(10) of the CGST Rules, 2017. I have noted that Section 54 of the CGST Act, 2017 deals with the provisions related to refund, which also includes refund of tax paid on zero rated supplies of goods or services or both. Zero rated supplies have been defined in Section 16 (1) of the IGST Act, 2017 as (a) export of goods or services or both and, (b) supply of goods or services or both to a SEZ developer or a SEZ unit. I have also noted that Section



of the IGST Act, 2017 provides for a registered person making zero rated supplies to claim refund under the following two options:-

- (i) supply of goods or services or both under LUT without payment of IGST and claim refund of unutilized input tax credit.
- (ii) supply of goods or services or both on payment of IGST and claim refund on goods or services or both on payment of IGST.

21. Rule 96(10) of the CGST Rules, 2017 makes an exception in respect of refund of IGST paid during the export of goods on which certain benefits have been availed by exporter, one of them being availment of benefit of Notification No. 79/2017-Customs dated 13.10.2017. A relevant text of Rule 96(10) is reproduced below:-

“(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 I, 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 I, 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 I, 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 1272I, 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 I, dated the 13th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme.”

22. Further, as per Rule 96(1) of the CGST Rules, 2017, the shipping bill filed by the exporter of goods shall be deemed to be an application for refund of IGST paid on the exported goods if both the departure manifest or export manifest or export report covering the number and date of shipping bill and a valid return in GSTR 3B is filed.

23. The procedure regarding claiming of refund is mentioned in Rule 89(1) of the CGST Rules, 2017, wherein a refund claim in Form RFD-01 has to be filed. However, this procedure is not applicable for refund of integrated tax paid on goods exported out of India, which are dealt with separately in Rule 96(1) of the CGST Rules, 2017. For refund of IGST paid on goods or service exported out of India, as mentioned supra, the shipping bill itself is deemed to be an application for refund. In such cases, the IGST module has an inbuilt mechanism to automatically grant refund after validating the shipping bill data available in ICES against the GST returns data transmitted by GSTN. If the necessary matching is successful, ICES processes the claim for refund and the relevant amount of IGST paid with respect to each shipping bill is electronically credited to the exporter's bank account. Thus, in terms of the restriction imposed under Rule 96(10) of the CGST Rules, the exporter ought to have exported the goods under LUT instead of payment of IGST because once the export is made under



payment of IGST, the filing of the shipping bill is treated as filing of refund claim as mentioned in Rule 96(1) of the CGST Rules, 2017 and the claim gets automatically processed by ICES without any manual intervention from the Customs authorities. Rule 96(10), thus, in essence, bars the payment of IGST during the export of goods where the benefit of the advance authorization and other benefits mentioned in the rule is availed.

24. The purpose of introducing the above provision of Rule 96(10) of CGST Rules, 2017 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.”

25. 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 any 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.

26. 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."

27. 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.

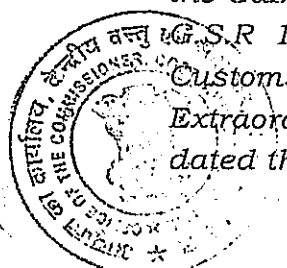
28. Further, vide Notification No. 53/2018-Central Tax dated 09.10.2018, the Rule 96(10) was further amended with effect from 23.10.2017 which reads as:-

"(1) 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, Subsection (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, Subsection (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.

29. 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 18thOctober, 2017,published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i),vide number G.S.R 1305 (E), dated the 18thOctober, 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 23rdOctober, 2017,published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i),vide number G.S.R 1320 (E), dated the 23rdOctober, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rdOctober, 2017,published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rdOctober, 2017 has been availed; or

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

Thus, above notification no. 54/2018-Central Tax dated 09.10.2018 provides that the person claiming refund of IGST paid on exports of goods or services should not have availed the benefit of Notification No. 79/2017-Customs dated 13.10.2017 and other exemptions mentioned therein.

30. 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 said notification No. 54/2018-Central Tax dated 09.10.2018, should not be eligible for refund of IGST paid on exports of goods or services.”



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.”

31. 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.

32. 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.”

Thus, 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') 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.

In view of the above discussion, it is clear that, with effect from 23.10.2017, a person claiming refund of IGST paid on exports of goods or Services should not have availed the benefit of Notification No. 79/2017-Customs dated 13.10.2017.



34. On going through facts of the case, it was noticed that the Taxpayer 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.

35. I find that the said taxpayer in their reply to SCN has made reference to various notifications issued in respect of Rule 96(10) of CGST Rules, 2017 and para 52 of Circular No. 125/44/2019-GST dated 18.11.2019 and stated that 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. They further submitted that vide Para 52 of the said circular, once the refund become eligible, retrospective notification in the same would not curtail the benefit that tax payer ought to have. Thus, they did not agree for demand for the period prior to 09.10.2018.

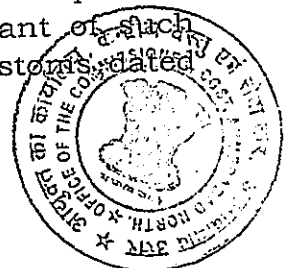
36. Further, I find that the assessee agreed with the demand of erroneous refund of Rs. 3,59,06,918/- for the period from 09.10.2018 to 31.03.2020 and paid back partial amount of refund of Rs. 2,55,32,962/- erroneously availed by them. They submitted that they have paid the said amount without agreeing on the merits and to buy the peace of mind.

37. In this regard, I have gone through detailed reply submitted by the said taxpayer, Notifications issued in respect of Rule 96(10) of CGST Rules, 2017 from time to time and judgement of Hon'ble Gujarat High Court in the case of Cosmo Films Ltd. v. UOI (reported in 2020 (43) GSTL 577 (Guj)) and find that the Hon'ble Gujarat High Court in the case of Cosmo Films Ltd. v. UOI (reported in 2020 (43) GSTL 577 (Guj)) has held that - Rule 96(10) as substituted w.e.f. 09.10.2018 vide Notification No. 54/2018-CT, shall apply retrospectively from 23.10.2017.

38. I also take note of the letter F. No. CBEC-20/10/14/2020-GST dated 26.03.2021 issued by the GST Policy Wing of CBEC regarding "Standard Comments on issues raised in Writ Petitions challenging the legality, constitutionality and vires of provision of Rule 96(10) of the CGST Rules, 2017". It is clarified vide Para 3 (XVI) that in view of judgement of Hon'ble High Court of Gujarat in the matter of M/s. Cosmo Films Ltd. Vs. UOI has held the Notification No. 54/2018 is effective w.e.f. 23rd October 2017.

39. Thus, I find that above judgment of Hon'ble Gujarat High Court in the case of Cosmo Films Ltd. v. UOI validates the retrospective application of Rule 96(10) under Notification Number 54/2018-CT with effect from 23rd October 2017. Since the Hon'ble Gujarat High Court has held that Notification No. 54/2018 is effective w.e.f. 23rd October, 2017, it naturally follows that from 23.10.2017, persons claiming refund of integrated tax paid on export of goods should not have received supplies on which the benefit of Notification No. 79/2017-Customs dated 13.10.2017 (provide exemption from IGST upon import of goods in case of Export Oriented Units "EOUs") is availed.

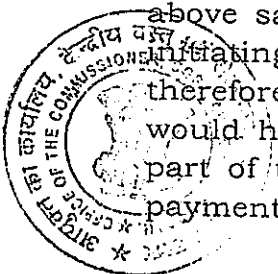
40. From the above discussion, I find that the said Taxpayer had availed the benefit of Notification No.79/2017-Customs dated 13.10.2017 and thereafter the finished /manufactured goods were exported on payment of IGST & refund was claimed of such IGST paid. The refund of IGST paid on Zero Rated export supplies will not be available if the claimant of such refund had availed the benefit of Notification No. 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 of Rs. 3,85,46,395/- is inadmissible to the said Taxpayer. In view of the above, I find that the said taxpayer has 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.
- 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.
- 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.
- 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;

41. The Taxpayer has further contested that they have not suppressed any fact with an intention to evade payment of tax and hence demand can't be raised under section 74 of CGST Act, 2017 and penalty is also not imposable. 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 is found 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 before proceedings initiated by the Department. It was only when the department had initiated inquiry against them they paid certain amount of tax. 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.

42. Further, I reproduce provisions of Section 74(5) & (6) of the CGST Act, 2017 which 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.

43. 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 appeared 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.

44. 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, however, they failed to avail the said opportunity.

45. Thus, 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 Taxpayer. The Taxpayer 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. 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



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 under Section 50(1) of the CGST Act, 2017 read with Gujarat GST Act, 2017.

47. I find that the Taxpayer has already deposited IGST amount of Rs. 2,55,32,962/- through DRC-03 which is tabulated as under:-

Sr. No.	DRC-03 ARN	DRC-03 Date	Amount of DRC-03
1.	AD240120002346Y	07.01.2020	1,29,384/-
2.	AD24022002172W	28.02.2020	42,06,038/-
3	AD2411200020926	05.11.2020	54,08,116/-
4	AD240221013465P	24.02.2021	1,03,09,142/-
5	AD240322037703H	31.03.2022	54,80,282/-
	GRAND TOTAL		2,55,32,962/-

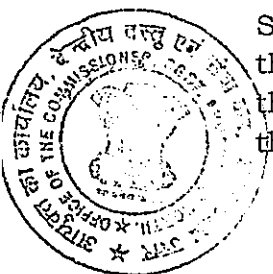
Since, the amount of Rs. 2,55,32,962/- as detailed herein above have already been paid by the said taxpayer without agreeing on the merit, the same needs to be appropriated and adjusted by vacating the claim of protest against said the total demand amounting to Rs. 3,85,46,395/- refunded erroneously in contravention of Rule 96(10) of CGST Rules, 2017.

48. From the above facts, I hold that the said amount of IGST of Rs. 3,85,46,395/- is liable to be demanded and recovered from the said taxpayer 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.

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

O R D E R

- (i) I confirm the demand of erroneously refunded IGST amounting to Rs. 3,85,46,395/- (Rs. Three Crores Eighty Five Lakhs Forty Six Thousand Three Hundred Ninety Five Only) and order to recover the same from them under the provisions of Section 74(9) 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) Since the amount of Rs. 2,55,32,962/- (Rupees Two Crores Fifty Five Lakhs Thirty Two Thousand Nine Hundred and Sixty Two only) has already been paid by the said taxpayer, I order to appropriate and adjust the said amount against the confirmed demand as per para (i) above by vacating the claim of protest;
- (iii) I hold the demand of interest at the rates prescribed against the confirmed demand as per para (i) above under the provisions of 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 and order to recover the same from them;



- (iv) I impose a penalty of Rs. 3,85,46,395/- ((Rs. Three Crores Eighty Five Lakhs Forty Six Thousand Three Hundred Ninety Five Only) under Section 74(9) 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 said 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;

48. Accordingly, the Show Cause Notice No. IV/10-04/Gr.V/IGST/Narayan Organics/2019-20 dated 31.03.2022 is disposed off.

(Lokesh Damor)

Additional Commissioner
Central GST & CE,
Ahmedabad North

F.NO.GST/15-14/OA-AE/2022

DT. 19-03-2024

By RPAD

To,

M/s. NARAYAN ORGANICS PVT.LTD, (GSTIN 24AAACN5297K1Z5)
having its principal place of business located at A-1101, 11TH FLOOR,
SANKALP SQUARE-3, BESIDES HOTEL TAJ SKYLINE,
SINDHU BHAVAN ROAD, SHILAJ, Ahmedabad, Gujarat, 380059.

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, Central GST & Central Excise, Div- VI Ahmedabad North.
3. The Superintendent, Range-II, Division-VI, Central GST & Central Excise, Ahmedabad North with a request to create GST DRC-07 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.

