



आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER

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

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निबन्धित पावती डाक द्वारा/By R.P.A.D

DIN-20240364WT0000116470

फा.सं./F.No. GST/15-63/OA/23-24

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. 102/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 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 बताओ सूचना/ Proceeding initiated against Show Cause Notice F.No. GST/15-63/OA/23-24 dated 27.09.2023 issued to M/s Toshi Jain(Toshibba Impex), having GSTIN:24AMPLP3833B1ZF, 3<sup>rd</sup> Floor, Shop No.09, Vandematram Arcade, Near Vandematram Cross Road, New S G Road, Gota, Ahmedabad, Gujarat-382481.





## **BRIEF FACTS OF THE CASE:**

M/s. Toshi Jain (Toshibba Impex) having their principal place of business at 3rd Floor, Shop No.09, Vandematram Arcade, Near Vandematram Cross Road, New SG Road, Gota, Ahmedabad, Gujarat-382481 (hereinafter referred to as "M/s. Toshibba" or "the taxpayer" for sake of brevity) are engaged in the supply of various taxable goods and they are registered with the department under GSTIN 24AMLJP3833B1ZF and falls under the jurisdiction of Central GST & Central Excise, Ahmedabad North Commissionerate.

2. The Directorate General of Analytics & Risk Management, New Delhi vide report 49D both issued from F.No.DGARM/TT/BIA/RTP 2022-NTCP dated 06.10.2022, had informed that M/s. Toshibba were indulged in violating of Rule 96(10) of CGST Rules, 2017 by way of getting refund of IGST on export of their goods which were originally procured as merchant exporter at the concessional rate of tax under Notification No.40/2017-CT(R) or 41/2017-IT(R) both dated 23.10.2017. Rule 96(10) of CGST Rules, 2017 provides an express debar to IGST refunds in case the exporter has received inward supplies where benefits of any of these notifications have been availed.

2.1. The details of such refunds as provided under the DGARM Report No. 49D are as per the table given below:

Total FOB Value during the period 23.10.2017 - 31.03.2022(Amt in Rs.)	Amount of IGST Refund Claimed in Shipping Bills (Amt in Rs.)
2,13,30,00,000/-	4,00,00,000/-

3. An inquiry was initiated against M/s. Toshibba and since they appeared to have availed the benefit of the above said notifications during the period from 23.10.2017 to 31.03.2022, details of exports made by them during the said period were called for under letter bearing F.NO.CGST/WT0701/DGARM-49-A,B,C,D/26/2022-23 dated 28.03.2023 and 28.03.2023 followed by reminder issued under F.No.CGT/WT0701/DGARM-49D/TOSHI/26/2023 dated 19.07.2023 & 06.09.2023 but M/s. Toshibba had not submitted the required details which were called for under the above said letters.

4. Relevant provisions of GST Law:-

4.1. The Provisions of Rule 96(10) of CGST Rules, 2017 are as under:

***"RULE 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.]”

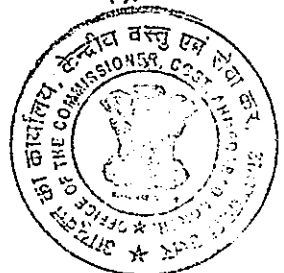
4.2. From the plain reading of above provision, it can be construed that Rule 96 of the CGST Rules, 2017 deals with the procedure for refund of taxes paid on export of goods and services. Rule 96 (10) restricts the eligibility to claim refund of taxes paid on export in those cases where the merchant exporter has received goods to be exported at the concessional/reduced rate of tax under Notification No.40/2017-Central Tax (Rate) or 41/2017-Integrated Tax (Rate) both dated 23.10.2017 notified under sub-rule (10) of Rule 96 of the said rules.

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.

4.3. 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/finished goods 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.

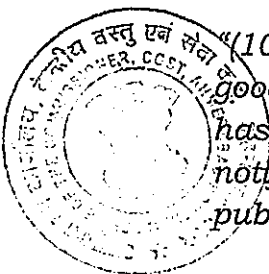
Further, vide Notification No. 53/2018-Central Tax dated 09.10.2018, the Rule 96(10) was further amended with effect from 23.10.2017 which reads as:-

*"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, 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 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 has been 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.

In the instant case, the taxpayer appeared to have procured finished goods at the concessional rate of tax from the suppliers availing benefits under Notification No. 40/2017-CT(R) or 41/2017- IT(R) both dated 23.10.2017 & thereafter, these finished goods were exported on payment of IGST& refund was claimed of such IGST paid. The said mechanism adopted by taxpayer is restricted under GST law as discussed above.

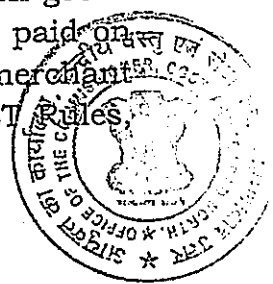
#### 5. Outcome of Inquiry:

Since M/s. Toshibba had failed in furnishing the required information called for by the department as discussed above despite repeated reminders, it was not possible to quantify the actual amount of refund taken by them by procuring such finished goods at the concessional rate from the suppliers availing exemption of reduced rate of tax on such outward supply under Notification No. 40/2017-CT(R) or 41/2017- IT(R) both dated 23.10.2017 discussed here-in-above, no option was left except to rely upon figures/data provided by DGARM under Report No.49D as detailed in the table appearing at Para No.2.1 above.

#### 5.1. From the inquiry of case, the following facts have emerged:

M/s. Toshibba appeared to have availed the double benefit, one at the time of procuring finished goods for export purpose as merchant exporter at the concessional rate of tax from the suppliers availing benefits of Notification No. 40/2017-CT(R) or 41/2017- IT(R) both dated 23.10.2017 and on the other hand by claiming the refund on the exports made on payment of IGST in terms of Rule 96 of 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 either refund of IGST paid on goods exported or exemption of tax on the goods procured at the concessional rate of tax under Notification No. 40/2017-CT(R) or 41/2017- IT(R) both dated 23.10.2017. Further export of such goods should be made without payment of IGST and even if IGST has been paid on such merchant export no refund of such IGST paid suo-moto by the merchant exporter can be claimed under the provisions of Rule 96(10) of CGST Rules.



2017. Once exemption of tax is availed on the input materials/raw materials/finished goods (for merchant export), refund of IGST on export good stands prohibited and vice versa.

## 6. QUANTIFICATION OF GST:

6.1 As no details were submitted by M/s. Toshibba till the time of issuance of SCN, the total amount of IGST refund taken to the tune of Rs.4,00,00,000/- appeared to have been taken on exports of goods procured at the concessional rate of tax from the suppliers availing benefits of reduced rate of tax on such outward supplies under Notification no.40/2017-CT(R) or 41/2017- IT(R) both dated 23.10.2017, which was contrary to and inadmissible under the provisions of Rule 96(10) of the CGST Rules, 2017.

6.2 Thus, the amount of Rs.4,00,00,000/- of IGST Refund on the goods exported by the taxpayer which were originally procured from the suppliers availing benefits of the concessional rate of tax under Notification No.40/2017-CT(R) or 41/2017- IT(R) both dated 23.10.2017 on such supplies, is required to be demanded and recovered from the taxpayer under the provisions of Section 74(1) of the CGST Act 2017.

## 7. LEGAL PROVISIONS:

**7.1 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 authorized 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 State Goods and Services Tax 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 authorized 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.*

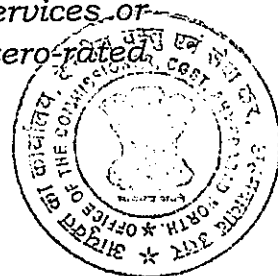
*(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act, shall not lie before an officer appointed under the Central Goods and Services Tax Act. "*

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 Officer 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 unutilised 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.

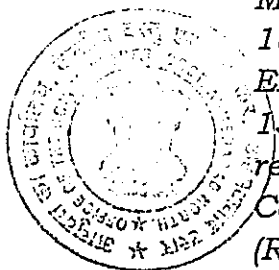
#### **7.4 Rule 96(10) of the CGST Rules 2017**

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.48/2017-Central Tax dated 18th October, 2017 or 78/2017-Cus or 79/2017-Cus both dated 13.10.2017.

**"96. 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.

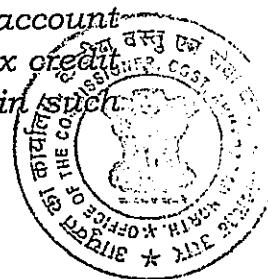
### **Sec. 59 of CGST Act, 2017**

*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.**

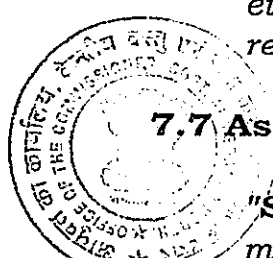
*"Section 74 (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or any willful-misstatement or suppression of facts to evade tax, he shall serve notice on the 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 As per Section 20 of the IGST Act, 2017:**

*"Section 20. Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax*





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."*

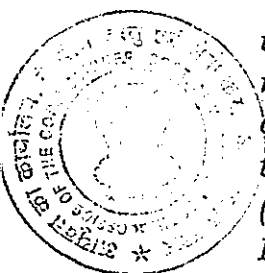
9.3 From the Information/ data provided under DGARM Report No.49D as well as from the failure of the taxpayer in furnishing the required information despite repeated reminders given by the department, it appeared that M/s. Toshibba had suppressed the erroneous refund of IGST paid on exports and their tax liabilities had not been discharged properly. 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 suppression, concealment & non-furnishing value of erroneous refund with intent to evade payment of tax. The above said erroneous refund of IGST availed/taken on exports, was unearthed after investigation was conducted by officers of Central Tax, Ahmedabad North in pursuance of DGARM Report No.49D and therefore had the investigation not been initiated by the department, 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 tax 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 M/s. Toshibba were 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 M/s. Toshibba had not paid the tax within the prescribed due dates and also refund of IGST had been availed/taken erroneously. These non-payments of Tax had not been shown in their statutory GST returns. It, therefore, appeared that there was a case of suppression of facts with intent to evade the payment of tax. It appeared that short paid/ not paid IGST was 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 1st 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, Hon'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. Hon'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 quasi-judicial proceedings.*

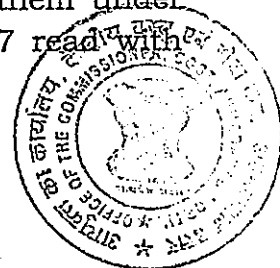
*II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.”*

9.5. In view of the above facts, the erroneously refunded amount of Rs.4,00,00,000/- 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 Act and the Rules made there under. Further, by such acts of omission and commission, the Taxpayer appeared to 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. Further, they also appear to be liable for penal action under Section 122(1)(xvii) of CGST Act, 2017 for their failure in furnishing the required information despite repeated reminders/correspondence made by the department in this regard.

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 18.09.2023, however, till date of issuance of Show Cause Notice, this office had not received any response from the taxpayer.

10. Therefore, a Show Cause Notice F.No. GST/15-63/OA/23-24 dated 27.09.2023 was issued to M/s. Toshi Jain (Toshibba Impex) having their principal place of business at 3rd Floor, Shop No.09, Vandematram Arcade, Near Vandematram Cross Road, New SG Road, Gota, Ahmedabad, Gujarat-382481, by the Joint Commissioner, CGST, Ahmedabad North, calling upon them to show cause as to why:-

- (i) The erroneously refunded IGST amount of Rs. 4,00,00,000/- (Rs. Four Crores only) should not be demanded and recovered from them under Section 74(1) of the Central Goods & Service Tax Act, 2017 read with Section 20 of the IGST Act, 2017;



(ii) Interest at the appropriate rate should not be demanded and recovered from them on the proposed demand mentioned at (i) above, under the provisions of Section 50(1) of the Central Goods & Service Tax Act, 2017 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 read with Section 20 of the IGST Act, 2017;&

(iv) Penalty should not be imposed upon them under Section 122(1)(xvii) of CGST Act, 2017.

### **DEFENSE REPLY:-**

11.1. M/s. Toshibba furnished their written submission during the course of personal hearing on 18.03.2024, wherein, they have inter alia stated that:-

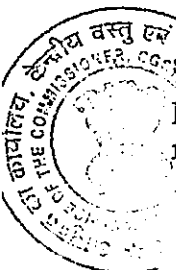
- They are merchant exporter engaged mainly in export of natural stones.
- FOB value of goods exported during the period from 23.10.2017 to 31.03.2022 was Rs.30.73.58.990/- (export under LUT and with payment of IGST) and IGST of Rs.46,72,604/- was paid on goods exported with payment of IGST.
- They had followed all applicable rules and regulations governing the procurement and export of goods. They had availed benefit of Notification No. 40/2017-CT(R) or Notification No. 41/2017-IT(R), however, they had not claimed any refund under IGST route for goods procured at concessional rate of 0.1%. Hence, there is no violation of Rule 96(10) of the CGTS Rules, 2017.
- For goods procured at concessional rate of 0.1%, they used LUT route and not IGST route.
- There is no suppression of facts, wilful misstatement or fraud.
- They also relied upon various case laws.
- Since they are not liable to pay tax during the period in question, they are also not liable to make payment of interest too.
- They also provided (i) details of goods exported and goods purchased against these exports, (ii) Year-wise details of goods exported on payment of IGST and under LUT.

### **PERSONAL HEARING**

12. Adhering to the principal of natural justice, personal hearings were provided to M/s. Toshibba on 09.02.2024, 28.02.2024, 11.03.2024 and 18.03.2024. M/s. Toshibba sought three adjournments which were granted to them and personal hearing on 18.03.2024 was attended by Shri Kutubuddin Shaikh, Advocate and duly authorised representative of M/s. Toshibba. During the course of hearing, Shri Kutubuddin Shaikh submitted their written submission dated 18.03.2024 and requested to decide the matter on merits.

### **DISCUSSION AND FINDINGS**

13. I have carefully gone the material evidence available on record. Written submission of M/s. Toshibba and submission made during the course of personal hearing. Accordingly, I proceed to decide the case on the basis of material evidence available on record and merits of the case.



14. It is alleged in the SCN that M/s. Toshibba have received refund of IGST amounting to **Rs. 4,00,00,000/-** paid on exports (Zero Rated Supplies) made during period from 23.10.2017 to 31.03.2022. The moot point to be decided is as to whether M/s. Toshibba have violated any of the provisions of Rule 96(10) of the CGST Rules, 2017 or otherwise and the refund of IGST paid on the exported goods is erroneous or not.

15. Before taking into consideration the submission made by the noticee, firstly I reiterate the legal provisions related to Rule 96(10) of the CGST Rules. 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 16(3) 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.

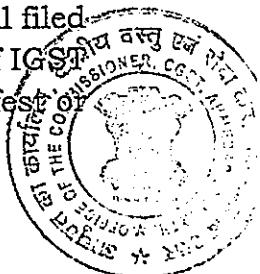
16. Rule 96(10) of the CGST Rules, 2017 makes an exception in respect of refund of IGST paid during the export of goods on which certain benefits have been availed by exporter. The relevant portion of Rule 96(10) is reproduced below:-

*"(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 18<sup>th</sup> 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 18<sup>th</sup> 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 23<sup>rd</sup> 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 23<sup>rd</sup> October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23<sup>rd</sup> 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 23<sup>rd</sup> October, 2017 has been availed; or*

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

17. 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





export report covering the number and date of shipping bill, and a valid return in GSTR 3B is filed.

18. The procedure regarding claiming of refund is prescribed 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 of the CGST Rules, 2017. For refund of IGST paid on goods 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 prescribed 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 notifications specified in the rule is availed.

18.1. 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).

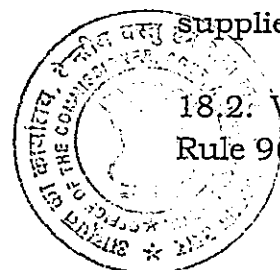
Notification No. 03/2018-Central Tax dated 23.01.2018 reads as:-

(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 the 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.

18.2. 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."*

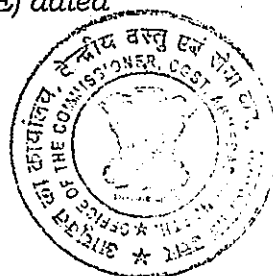
18.3. Thus, from the perusal of above notification, it can be construed that refund on exports cannot be availed by the exporter if the inputs procured by them have enjoyed benefits of certain notifications mentioned therein, i.e. in the Rule 96(10). Further, vide Notification No. 53/2018-Central Tax 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, 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 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.

18.4. 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:-

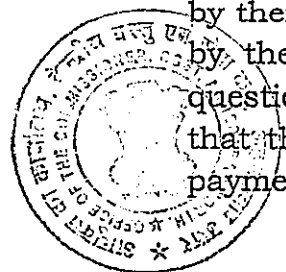
*“(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have –*

*(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.”*

19. As per the records of the case, the department had received an DGARM report that M/s. Toshiba have availed erroneous refund of Rs. 4,00,00,000/- on goods exported with payment of IGST and had also availed benefits of notifications specified in Rule 96(10) of the CGST Rules, 2017. Thus, they have violated the provisions of Rule 96(10) of the CGST Rules. As a result of which, the SCN was issued for the period 23.10.2017 to 31.03.2022 for the total amount of IGST of Rs. 4,00,00,000/- paid on the exported goods in contravention of Rule 96(10) of the CGST Rules, 2017.

20. Firstly, I take up the defense reply submitted by M/s. Toshiba. I find that in the defense reply, M/s. Toshiba have provided details of goods exported by them and IGST paid on goods exported by them. As per the details provided by them, they have paid IGST of Rs.46,72,604/- during the period under question. However, on going through the GSTR-3B returns filed by them, I find that they have paid IGST of Rs. 47,98,383/- on goods exported by them on payment of IGST. Accordingly, I consider amount declared in GSTR-3B, i.e



Rs.47,98,383/-, as the amount of refund claimed by them in respect of goods exported by them on payment of IGST.

21. In their written reply submitted during the course of personal hearing, M/s. Toshibba have stated that they have availed benefit of Notification No.40/2017-CT(R) or 41/2017-IT(R) both dated 23.10.2017 by procuring goods at concessional rate, however, they have not claimed refund under the IGST route for such goods and that they have exported goods procured at concessional rate under LUT route. They also provided details of goods exported by them and details of goods purchased by them against goods exported by them. However, they have not provided any supporting document, viz. Shipping Bill and Purchase invoice in support of their claim. In absence of any supporting document regarding their claim that they have not claimed refund in respect of goods exported on payment of IGST, which were procured by availing benefit of Notification No.40/2017-CT(R) or 41/2017-IT(R), it cannot be ascertained that they have not claimed IGST refund in respect of export of such goods on payment of IGST.

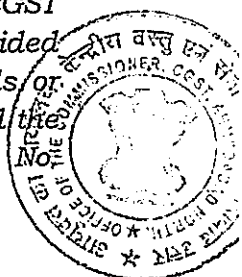
22. I find that M/s Toshibba were given ample opportunities to provide documents pertaining to exports done by them and benefits availed by them vide letters dated 19.07.2023 and 06.09.2023 by the Jurisdictional Authorities even before issuance of Show Cause Notice. Further, they had already been granted three adjournments requested by them during the course of adjudication proceedings on their request. However, M/s. Toshibba did not provide any documents which would establish that they had not availed benefits of any notification specified in Rule 96(10) of the CGST Rules, 2017, though they were given opportunities for furnishing the same. I find that Hon'ble High Court of Kerala in the case of United Mills vs. Collector of Customs & C.Ex., Cochin (reported in 2000 (124) E.L.T. 53 (Ker.) has held that where full opportunity is given to produce evidence, principle of natural justice is not violated. Relevant portion of the said decision is reproduced below:-

*"Natural justice - Petitioner given full opportunity before Collector to produce all evidence on which he intends to rely but petitioner not prayed for any opportunity to adduce further evidence - Principles of natural justice not violated.*

23. I find that provisions of Rule 96(10) are very clear that the person claiming refund should not have availed benefit of notifications specified therein, i.e. Notification No.40/2017-CT(R) or 41/2017-IT(R) both dated 23.10.2017 or 78/2017-Cus or 79/2017-Cus both dated 13.10.2017.

24. Further, I find that effective date of application of Notification No. 54/2018-CT is already settled by The Hon'ble Gujarat High Court in the case of Cosmo Films Ltd. v. UOI (reported in 2020 (43) GSTL 577 (Guj)) wherein Hon'ble Gujarat High Court 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. A relevant text of the said judgment is reproduced below.

*"8.5 Rule 96 of the CGST Rules provides for procedure of refund of Integrated Tax paid on goods or services exported out of India, as per Section 54 of the CGST Act. Rule 96(10) as it originally existed, when the Rules came into force provided that 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 from Government of India, Ministry of Finance, under Notification*



48/2017, dated 18<sup>th</sup> October, 2017 or Notification No. 40 of 2017, dated 23<sup>rd</sup> October, 2017 or Notification No. 41 of 2017-Integrated Tax (Rate), dated 23<sup>rd</sup> October, 2017 or Notification No. 78 of 2017-Customs, dated 30<sup>th</sup> October, 2017 or the Notification No. 79 of 2017-Customs, dated 13<sup>th</sup> October, 2017.

8.6 Thereafter, sub-rule (10) of Rule 96 of the CGST Rules was amended by the Notification No. 39/2018 dated 4<sup>th</sup> September 2018 w.e.f. 23<sup>rd</sup> October, 2017 and substitute Rule 10 as under :

"6. In the said rules, with effect from the 23<sup>rd</sup> 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 18<sup>th</sup> October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1305I, dated the 18<sup>th</sup> October, 2017 or Notification No. 40/2017-Central Tax (Rate), dated the 23<sup>rd</sup> October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1320I, dated the 23<sup>rd</sup> October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23<sup>rd</sup> October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 1321I, dated the 23<sup>rd</sup> October, 2017 has been availed; or

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

8.7 Thus, sub-rule (10) of Rule 96 was subdivided in two parts for the person claiming refund of integrated tax paid on exports of goods or services should not have received supplies on which the benefit of the Notification No. 48/2017 and availed benefit under Notification No. 78/2017 or 79/2017, dated 13<sup>th</sup> October, 2017.

8.8 It appears that, thereafter, again both the clauses which were substituted by Notification No. 39/2018 were merged by Notification No. 53/2018, dated 9<sup>th</sup> October, 2018 which reads as under :

"Notification : 53/2018-C.T., dated 9-Oct-2018

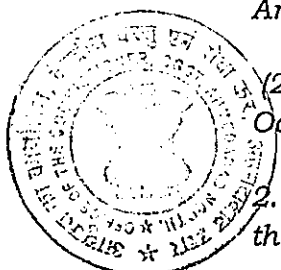
Central Goods and Services Tax Rules, 2018 – Eleventh Amendment of 2018

In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:-

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 23<sup>rd</sup> 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 23<sup>rd</sup> 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 18<sup>th</sup> 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 18<sup>th</sup> October, 2017 or notification No. 40/2017-Central Tax (Rate) dated the 23<sup>rd</sup> 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 23<sup>rd</sup> October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23<sup>rd</sup> 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 23<sup>rd</sup> October, 2017 or notification No. 78/2017-Customs, dated the 13<sup>th</sup> October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272I, dated the 13<sup>th</sup> October, 2017 or notification No. 79/2017-Customs, dated the 13<sup>th</sup> 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 13<sup>th</sup> October, 2017."

[Notification No. 53/2018-C.T., dated 9-10-2018]"

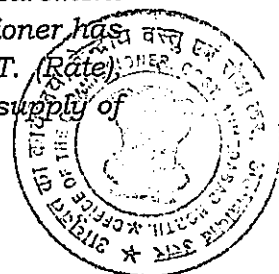
8.9 Thereafter, by Notification No. 54/2018, dated 9<sup>th</sup> October, 2018 again sub-rule (10) of Rule 96 was amended by substituting the same, wherein, it is provided that the persons claiming refund of integrated tax paid on exports of goods or services should not have received supplies (a) on which the benefits of Notification No. 48/2017, dated 18<sup>th</sup> October, 2017, Notification No. 40/2017, dated 23<sup>rd</sup> October, 2017 or Notification No. 41/2017, dated 23<sup>rd</sup> October has been availed or (b) availed the benefit under Notification No. 78/2017 or Notification No. 79/2017.

8.10 It is pertinent to note that the Notification No. 54/2018 is made applicable retrospectively from the date when Rule 96(10) of the CGST Rules came into force and not with effect from 23<sup>rd</sup> October, 2017, as was amended in the previous Notifications.

8.11 Section 16 of IGST Act provides for 'Zero Rated Supply' and sub-clause (b) of sub-section (3) of Section 16 provides that, a registered person making zero rated supply shall be eligible to claim refund, if he has supplied the 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.

8.12 Thus on conjoint readings of the provision of Section 16 of the IGST Act, Section 54 of CGST Act and Rule 96(10) of CGST Rules, which is substituted by Notification No. 54/2018, dated 9<sup>th</sup> October, 2018, it is apparent that the person who has availed the benefits of Notification No. 48/2017, dated 18<sup>th</sup> October, 2017 and other Notifications as stated in sub-rule (10) shall not have the benefit of claiming refund of integrated tax paid on exports of goods or services. The petitioner has availed benefits under Advance Authorization License scheme as per the Notification No. 18/2015 which was amended by Notification No. 79/2017, dated 13<sup>th</sup> October, 2017 and paid integrated tax on the goods procured by the petitioners for the export purpose.

8.13 Notification No. 48/2017-C.T., dated 18<sup>th</sup> October, 2017 has declared the following goods and the explanation thereto states that, "Advance Authorization" means an authorization issued by the Director General of Foreign Trade under Chapter-4 of the Foreign Trade Policy 2015-20 for import or domestic procurement of inputs on pre-import basis for physical exports. Therefore, as the petitioner has availed the benefits of AA License as per Notification No. 40/2017-C.T. (Rate) dated 23<sup>rd</sup> October, 2017 and has enjoyed the exemption of GST on the supply of



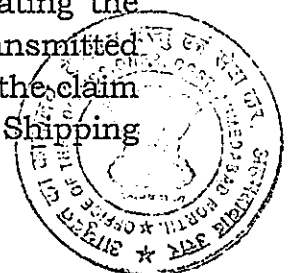


26. I also take note of the letter F. No. CBEC-20/10/14/2020-GST dated 26.03.2021 issued by the GST Policy Wing of CBEC regarding "Standard Comments on issues raised in Writ Petitions challenging the legality, constitutionality and vires of provision of Rule 96(10) of the CGST Rules, 2017". It is clarified 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. 23<sup>rd</sup> October 2017.

27. In the present case, the taxpayer did not provide any details/documents which would establish that they have not contravened provisions of Rule 96(10) of the CGST Rules, 2017 by wrongly availing refund of IGST paid on goods exported in contravention of the said rule by receiving supplies/availing benefit under the notifications specified therein. Accordingly, I hold that they have availed benefit of Notification No. 40/2017-CT (Rate), dated the 23<sup>rd</sup> October, 2017 or Notification No. 41/2017-IT (Rate), dated the 23<sup>rd</sup> October, 2017. I find that they have wrongly availed IGST Refund of Rs. 47,98,383/- in contravention of provisions of Rule 96(10) of the CGST Rules, 2017. As per the provisions of Rule 96(10) of the CGST Rules, 2017, the said refund of IGST is inadmissible to M/s. Toshibba. In view of the above, I find that the said taxpayer has contravened the following provisions of law:

- (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) and 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;

28. I have already discussed hereinabove about the procedures with respect to claiming of refund 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 exported out of India, 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 the 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 have to export 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 Notification No.48/2017-CT dated 18.10.2017 or Notification No. 40/2017-CT (Rate), dated the 23rd October, 2017 or Notification No. 41/2017-IT (Rate), dated the 23rd October, 2017 or Notification No. 78/2017-Customs or Notification No. 79/2017-Customs dated 13.10.2017 has been availed. Since the fact of receiving inputs under these notifications and consequent ineligibility from claiming IGST refund are known to the taxpayer and yet, in the anonymity of online processing of refund claims which is automatic in nature, the Noticee has claimed refund which amounted to suppression of facts and at the same time, wilful mis-statement also. The noticee has clearly violated the provisions of Rule 96(10) of the CGST Rules, 2017. It is also a fact that the taxpayer did not pay the erroneous refund till date. 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. In view of the above, the proposal to recover the erroneously sanctioned refund under Section 74 of the CGST Act, 2017 is correctly made and requires to be sustained.

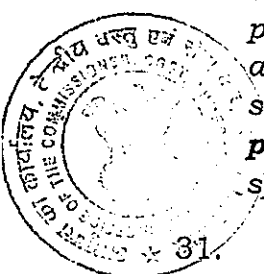
29. Further, M/s. Toshibba are engaged in the business activities of export of goods, therefore, they are very well aware about the statutory provision of law which governs the exports and refund of tax paid thereon. The taxpayer despite being aware of the fact that Rule 96(10) of the CGST Rules, 2017 bars the refund of such IGST, I find that they have deliberately paid the IGST on the goods exported with an intention to en-cash the unutilized ITC. The erroneous refund obtained by M/s. Toshibba needs to be demanded from them.

30. As discussed above, when the demand raised under SCN is maintained under section 74 of the said act the interest liability under Section 50 of the act automatically comes into play. As per section 74 of the said act it is stipulated as under.

*"74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.-*

*(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.."*

31. It is a fact that in the instant matter M/s. Toshibba have obtained the erroneous refund in contravention of the provisions of Rule 96(10) of the CGST



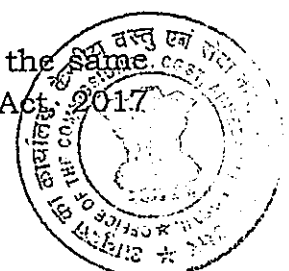
Rules, 2017 in order to avail unjust advantages. Therefore, as per the aforesaid provision of law, the interest under section 50 of the act becomes recoverable from the noticee.

32. Once when it is established that the noticee has received refund erroneously on account of fraud, mis-statement with a malafide intention, penalty under Section 74 of the CGST Act, 2017 becomes imposable. In the case in hand it is sufficiently proved that the intention of the taxpayer was to obtain unjust advantages by way of making of payment of IGST at the time of export and encash it by way of refund which, in fact, was without the authority of law. Thus on the one hand, the noticee was availing benefit of Notification No.48/2017-CT dated 18.10.2017 or Notification No. 40/2017-CT (Rate), dated the 23rd October, 2017 or Notification No. 41/2017-IT (Rate), dated the 23rd October, 2017 or Notification No. 78/2017-Customs or Notification No. 79/2017-Customs dated 13.10.2017 and on the other, making of payment of IGST on export of goods clearly with a motive to encash it in the form of refund clearly shows the ill intention on the part of the taxpayer which was against the very object of the scheme and its spirit as well. Thus, in terms of the restriction imposed under Rule 96(10) of the CGST Rules, the noticee ought to have exported the goods under LUT instead of payment of IGST, however, because of aforesaid ill-intention they acted in defiance of the provision of law. Further the said noticee was engaged in the business activities of export of goods, therefore, they were very well aware about the statutory provision of law which governs the exports and refund of tax paid thereon. The taxpayer despite being aware of the fact that Rule 96(10) of the CGST Rules, 2017 which bars the refund of such IGST, availed refund of IGST paid on goods exported. I find that they have deliberately paid the IGST on the goods exported in order to obtain unjust advantage as discussed above and liable to impose penalty under Section 74 of the CGST Act, 2017. Further, I find that in the Show Cause Notice, it has also been proposed to impose penalty under Section 122(1)(xvii) of the CGST Act 2017. However, as per provisions of subsection 13 of Section 75 of CGST Act 2017, where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act. Accordingly, I refrain from imposing penalty under Section 122(1)(xvii) of the CGST Act 2017.

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

### ORDER

- (i) I confirm the demand of erroneously refunded IGST amounting to Rs. 47,98,383/- (Rupees Forty Seven Lakh Ninety Eight Thousand Three Hundred Eighty Three Only) and order to recover the same from M/s. Toshi Jain (Toshibba Impex), 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 drop the demand of IGST refund amounting to Rs.3,52,01,617/- (Rupees Three Crore Fifty Two Lakh One Thousand Six Hundred Seventeen Only);
- (iii) I order to demand interest at the rates prescribed and recover the same from them 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 on demand confirmed at (i) above;

- (iv) I impose a penalty of Rs. 47,98,383/- (Rupees Forty Seven Lakh Ninety Eight Thousand Three Hundred Eighty Three Only) (IGST) 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 M/s. Toshi Jain (Toshibba Impex). In terms of sub section (11) of Section 74 ibid, where M/s. Toshi Jain (Toshibba Impex) pay 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 this order, all proceedings in respect of the said notice shall be deemed to be concluded;
- (v) I do not impose penalty under Section 122(1)(xvii) of the CGST Act, 2017 read with the Section 122(1)(xvii) of the Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 on M/s. Toshi Jain (Toshibba Impex).

34. Accordingly the Show Cause Notice No. Show Cause Notice No. GST/15-63/OA/23-24 dated 27.09.2023 is disposed off.

(Lokesh Damor)

Additional Commissioner  
Central GST & CE,  
Ahmedabad North

F.NO. GST/15-63/OA/23-24

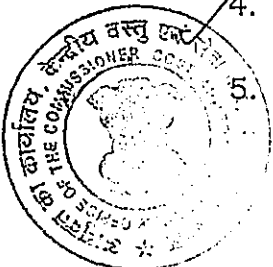
Dated:19.03.2024

By RPAD/hand delivery

To,  
M/s. Toshi Jain (Toshibba Impex),  
GSTIN: 24AML PJ3833B1ZF  
3rd Floor, Shop No.09, Vandematram Arcade,  
Near Vandematram Cross Road, New SG Road,  
Gota, Ahmedabad, Gujarat-382481.

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-IV, Division-VII, Central GST & Central Excise, Ahmedabad North **for generating and uploading DRC- 07 on the portal in terms of DSR advisory No.01/2018 dated 26.10.2018 and Instruction No. 04/2023-GST dated 23.11.2023.**
4. The Superintendent (System), Central GST & Central Excise Ahmedabad North for uploading the order on website.
5. Guard File.



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