



<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		 <p>OFFICE OF COMMISSIONER CENTRAL GST &amp; CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1<sup>ST</sup> FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D  
फा.सं./F.No. GST/15-68/OA/2022

DIN-20240264WT0000497284  
आदेश की तारीख/Date of Order: - 29.02.2024  
जारी करने की तारीख/Date of Issue :- 29.02.2024

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

अपर आयुक्त / Additional Commissioner

**मूल आदेश संख्या / Order-In-Original No. 88/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।  
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इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 90 दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप GST-APL-01 में दाखिल कर सकता है। इस अपील पर 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.

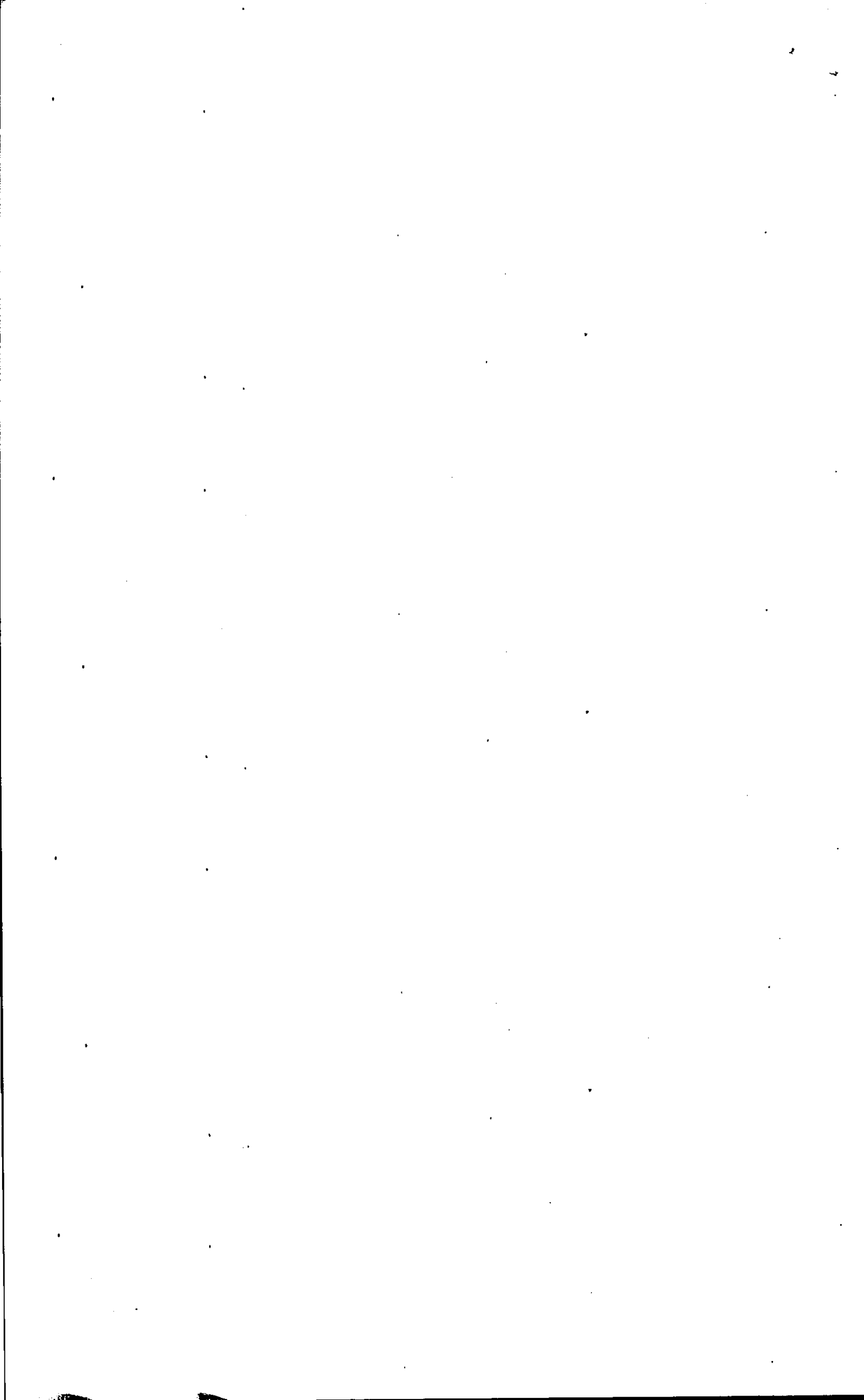
उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या GST-APL-01 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय जी. एस. टी. नियमावली, 2017 के नियम 108 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

- (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 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. GST/15-68/OA/2022 dated 04.05.2023 issued to M/s. Amneal Pharmaceuticals Private Limited, Plot No. 882/1-871, Near Hotel Kankavati, Village Rajoda, Taluka Bavla, Dist. Ahmedabad - 382220



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

M/s Anneal Pharmaceuticals Private Limited, situated at plot No. 882/1-871, Near Hotel Kankavati, Village Rajoda, Taluka Bavla, Dist. Ahmedabad-382 220 (hereinafter referred to as "the said assessee/the noticee") is registered with the Central Goods and Service Tax Department, Ahmedabad North and having registration GSTIN No. 24AAGCA0781K1ZP with effect from 01.07.2017. Prior to that the said assessee was having Central Excise and Service Tax Registration bearing No.AAGCA0781KXM001 and AAGCA0781KST001 respectively. The said assessee is engaged in the manufacture and supply of pharmaceutical products falling under GST Tariff Heading 3004. The said assessee is also registered with the Development Commissioner, Special Economic Zone, Gandhidham, Kutchh-370230 as a "100% Export Oriented Unit" vide permission letter F. No. KASEZ/100%EOU/II/45/2007-08 dated 25.04.2008 for establishment of Abbreviated New Drug Application (ANDA) Research Project. The said permission is extended valid upto 31.12.2023 as per the Development Commissioner, Gandhidham, Kutchh's letter F. No. KASEZ/100%EOU/II/45/2007-08/Vol.IV dated 19.12.2018.

2. The Directorate General of Analytics & Risk Management, New Delhi vide report 49 issued from F.No.DGARM/TT/BIA/RTP 2022-NTCP dated 19.09 2022 had indicated that the Taxpayer was exporting their finished/manufactured goods out of India under payment of Integrated Goods and Services Tax (in short "IGST") and availing benefit of refund in terms of Rule 96 of the Central Goods & Services Tax Rules, 2017 (in short "CGST Rules, 2017") although they were not eligible to claim such refund under the said rules.

3. Under the Central Goods and Services Tax Act, 2017 (CGST Act, 2017) and Rules made thereunder, an exporter can avail of refund borne on inputs either under LUT (Rules 89 to 94 of the CGST Act, 2017) or under the IGST route in terms of Rule 96 of the said Rules. However, the said Rule 96, vide sub clause 10 provides an express debar to IGST refunds in case the exporter has received supplies on which the benefit of Notification No.48/2017-CT dated 18.10.17, or Notification No.78/2017-Customs or Notification No.79/2017-Customs, both dated 13.10.2017 has been availed.

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

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

**The Provisions of Rule 96(10) of CGST Rules 2017 are as under:**

**"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.]

5. From the plain reading of above provisions, it can be construed that Rule 96 of the CGST Rules, 2017 deals with the procedure for refund of taxes paid on export of goods and services. Rule 96 (10) restricts the eligibility to claim refund of taxes paid on export in those cases where the exporter has received raw material under any of the scheme notified under sub-rule 96(10) like deemed export, Advance Authorization/License, reduced rate of procurement by the merchant exporter etc.

This restriction was first introduced vide Notification No. 03/2018-Central Tax dated 23.01.2018, which got subsequently modified and amended by way of Notifications issued from time to time (as discussed below).

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

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

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

6. 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.”

7. Thus, from the perusal of above notification, it can be construed that refund on exports cannot be availed by the exporter if the inputs procured by them have enjoyed benefits of certain notifications mentioned therein in the Rule 96(10) including the Advance 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 subclause (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.

8. 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.”.

9. Further, CBIC issued a Circular No. 125/44/2019-GST dated 18.11.2019, wherein under the heading Restrictions imposed by sub rule (10) of Rule 96 of the CGST Rules, it was clarified in the para 52 of the said Circular that:

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

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

*“However, it is also made clear that Notification No. 54/2018 is required to be made applicable w.e.f 23 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 23 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.

11. In the instant case, it was found that the taxpayer had availed the benefit of Notification No.48/2017-CT dated 18.10.2017 and Notification No.78/2017Customs dated 13.10.2017 at the time of procurement of inputs and thereafter the finished /manufactured goods were exported on payment of IGST & refund was claimed of such IGST paid. The said mechanism adopted by taxpayer is prohibited under GST law as discussed above. Notification No.48/2017-CT dated 18.10.2017 and Notification No.78/2017-Customs dated 13.10.2017 are reproduced below for ready reference.

**Notification No. 48/2017-Central Tax dated 18.10.2017**

Deemed Exports — Supply of goods against advance authorization, EPCG or supply to EOU or by Banks/PSUs against advance authorization notified as deemed exports:

G.S.R. (E).- In exercise of the powers conferred by section 147 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central

Government, on the recommendations of the Council, hereby notifies the supplies of goods listed in column (2) of the Table below as deemed exports, namely:-

Table

S.No.	Description of supply
(1)	(2)
1.	Supply of goods by a registered person against Advance Authorisation.
2.	Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation
3.	<b>Supply of goods by a registered person to Export Oriented Unit</b>
4.	Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated the 30 <sup>th</sup> June, 2017 (as amended) against Advance Authorization.

Explanation -

For the purposes of this notification, -

1. "Advance Authorisation" means an authorisation 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.
2. Export Promotion Capital Goods Authorisation means an authorisation issued by the Director General of Foreign Trade under Chapter 5 of the Foreign Trade Policy 2015- 20 for import of capital goods for physical exports.
3. "Export Oriented Unit" means an Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-Technology Park Unit approved in accordance with the provisions of Chapter 6 of the Foreign Trade Policy 2015-20.

**Notification No. 78 /2017-Customs dated 13.10.2017**

Goods Imported or Procured from Public or Private Warehouse or from International Exhibition by Hundred Per cent EOU, STP or EHTP Units exempted from IGST till 31 March, 2018 — Amendment to Notification No. 52/2003-Cus.

In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 52/2003-Customs, dated the 31st March, 2003, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 274 (E), dated the 31st March, 2003, namely:-

1. In the said notification, for the words, brackets and figures "from the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty, if any, leviable thereon under sub-sections (1), (3) and (5) of section 3 of the said Customs Tariff Act, subject to the following conditions, namely:-",

the following shall be substituted, namely:-

"from -



(A) the whole of the duty of customs leviable thereon under the First-Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty, if any, leviable thereon under sub-sections (1), (3) and (5) of section 3 of the said Customs Tariff Act; and

(B) the integrated tax and compensation cess leviable thereon under sub-sections (7) and (9), respectively of section 3 of the said Customs Tariff Act:

Provided that nothing contained in clause (B) above shall apply on or after the 1st day of April, 2018, subject to the following conditions, namely:-”.

12. Rule 96 (10) of CGST Rules, 2017 (effective from 23.10.2017) states that the persons claiming refund of Integrated Tax paid on Export of goods or Services should not have received the supplies against an advance authorization, EPCG, EOUs, Merchant Exports etc. in terms of Notification No. 48/2017-CT dated 18.10.2017, or availed the benefit under notification No. 78/2017-Customs, dated the 13th October, 2017, as the case may be. In other words, refund of IGST paid on Zero Rated export supplies will not be available if the claimant of such refund had received supplies of inputs or input services availing the benefit of Notification No. 48/2017-ST being EOU unit and availing the benefit of Notification No. 78/2017-Customs dated 13.10.2017 being imported the inputs as NIL rate of duty (Exemption Notification No. 52/2003-Customs dated 31.03.2003 as amended by Notification No. 78/2017-Customs dated 13.10.2017).

13. Whereas, the details regarding export of goods on payment of IGST for the period from July 2017 and onwards were called for from the said assessee by the Tax Assessing Officer vide letter dated 30.09.2022. The said assessee vide their letter dated 21.11.2022 furnished the details i.e. a worksheet in respect of the goods manufactured and exported by them during the period from July 2017 to September-2018 on payment of IGST. The said worksheet is containing details of Name of the party, Invoice No./Date, Shipping Bill No./Date, FOB Value of Exported goods and amount of IGST paid. On scrutiny of the said worksheet, it appears that during the said period, they shown the total IGST details as under:

**TABLE-A**

**Year 2017-18 (Period 01.07.2017 to 08.02.2018) :**

Sr. No.	Particulars	Amount of IGST (Rs.)
01	Total IGST	25,03,74,243.00
02	(-) Total IGST for SEZ supply	00,00,95,988.00
03	Total IGST for export of goods	24,90,01,190.00
04	(-) Total Export of service( Refund not taken)	00,12,77,065.00
05	(-) Total IGST for export of goods (before 13 October-2017)	01,68,55,859.00
06	<b>Total IGST for export of goods (after 13 October-2017</b>	<b>23,21,45,331.00</b>

**TABLE-B**

**Year 2018-19 (Period 01.04.2018 to 12.03.2019) :**

Sr. No.	Particulars	Amount of IGST (Rs.)
01	Total IGST	24,27,64,149.00
02	(-) Total IGST for SEZ supply	00,00,05,415.00
<b>03</b>	<b>Total IGST for export of goods</b>	<b>24,27,58,734.00</b>

14. Whereas, from the above facts, it appears that during the period from 13.10.2017 to 12.03.2019, the said assessee has granted the refund of IGST paid by them on the exported goods as under:

**TABLE-C**

Sr. No.	Period	Refund amount of IGST paid (Rs.)
01	13.10.2017 to 08.02.2018 (2017-18)	23,21,45,331.00
02	01.04.2018 to 12.03.2019	24,27,58,734.00
<b>TOTAL</b>		<b>47,49,04,065.00</b>

15. Whereas, the Tax Assessing Officer, had vide his letter dated 24.01.2023, informed the said assessee to pay/ reverse the amount of refund of IGST erroneously claimed and granted to them along with interest and penalty. The said assessee vide their letter dated 13.02.2023 informed that during the material period, export of goods on payment of IGST and seeking refund under Section 16 of IGST Act, 2017 read with Rule 96 (10) of CGST Rules, 2017 was permissible.

16. Whereas, it appears that the said taxpayer had availed the benefit of Notification No.48/2017-CT dated 18.10.2017 and Notification No.78/2017Customs dated 13.10.2017 at the time of procurement of inputs and thereafter the finished /manufactured goods were exported on payment of IGST & refund was claimed of such IGST paid. The refund of IGST paid on Zero Rated export supplies will not be available if the claimant of such refund had received supplies of inputs or input services availing the benefit of Notification No. 48/2017-ST dated 18.10.2017 being EOU unit and availing the benefit of Notification No. 78/2017-Customs dated 13.10.2017 being imported the inputs as NIL rate of duty. As per the provisions of Rule 96(10) of the CGST Rules, 2017, the said refund of IGST appears to be inadmissible.

17. Thus, the amount of Rs.47,49,04,065/- of IGST refund on finished/final goods exported by the taxpayer, whose raw materials / inputs had been procured availing the benefits of Notification No. 48/2017-ST dated 18.10.2017 and Notification No. 78/2017-Customs dated 13.10.2017 is required to be demanded and recovered from the taxpayer under the provisions of Section 74(1) of the CGST Act, 2017.

## 18. LEGAL PROVISIONS:-

**18.1 Section 54 of CGST ACT 2017:-** Section 54 of CGST ACT 2017 provides provision with respect of Refund. Section 54(8) of the CGST Act 2017 stated 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 <sup>2</sup>[export] of goods or services or both or on inputs or input services used in making such <sup>1</sup>[exports];*

**18.2 Section 16 of IGST ACT 2017:-** This provision of law provide for refund of tax, accumulated on account of zero rated supply or paid on effective zero rate supply. The provision state 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 <sup>1</sup>[for authorised operations] 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 of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:*

***Provided** that the registered person making zero rated supply of goods shall, in case of non- realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 (42 of 1999.) for receipt of foreign exchange remittances, in such manner as may be prescribed.*

*4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify-*

*(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;*

*(ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.]*

### **18.3 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-ST dated 18.10.2017 and Notification No. 78/2017-Customs dated 13.10.2017.

#### **Rule 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(9) of CGST Act 2017**

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

*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 subsection (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."*

### **18.4 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.*

### **18.5 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.*

### **18.6 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 Act relating to,*

*(i) scope of supply; (ii) composite supply and mixed supply; (iii) time and value of supply; (iv) input tax credit; (v) registration; (vi) tax invoice, credit and debit notes; (vii) accounts and records; (viii) returns, other than late fee; (ix) payment of tax; (x) tax deduction at source; (xi) collection of tax at source; (xii) assessment; (xiii) refunds; (xiv) audit; (xv) inspection, search, seizure and arrest; (xvi) demands and recovery; (xvii) liability to pay in certain cases; (xviii) advance ruling; (xix) appeals and revision; (xx) presumption as to documents; (xxi) offences and penalties; (xxii) job work, (xxiii) electronic commerce; (xxiv) transitional provisions; and (xxv)*

*miscellaneous provisions including the provisions relating to the imposition of interest and penalty.*

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

**19. CONTRAVENTION OF VARIOUS PROVISIONS:**

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

- (i) Section 54 of the CGST Act, 2017 along with the corresponding entry of the Gujarat State Goods and Services Act, 2017 read with the provisions of Section 20 of Integrated Goods and Service Tax Act, 2017 in as much as they have fraudulently claimed the refund of IGST paid on export of Goods.
- (ii) Section 16 of the IGST Act, 2017 in as much as they have fraudulently claimed the refund of IGST without being eligible for the same.
- (iii) Rule 96 of the CGST Rules, 2017 along with the corresponding entry of the Gujarat State Goods and Services Act, 2017 read with the provisions of Section 20 of Integrated Goods and Service Tax Act, 2017 in as much as they have availed the benefit of said rule although they were not eligible for the same in light of conditions laid down in Rule 96(10) of the CGST Rules, 2017.
- (iv) Section 39(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.

**20. SUPPRESSION**

**20.1** It is pertinent to mention here that the system of self-assessment is specifically incorporated in respect of GST under the provisions of Section 59 of CGST Act' 2017 /Gujarat GST Act'2017 which reads as "59. Every registered person shall self-assess the taxes payable under this Act and furnish a return for the tax period as specified under section 39". It appears that the said taxpayer suppressed wrongful availment of refunds discussed herein above and thereby it appears has knowingly failed to correctly self assess tax payable with an intent to evade payment of proper tax. In the scheme of self-assessment, the department comes to know about the supplies made and tax paid during the scrutiny of the statutory returns filed by the taxpayers' under the statute. Therefore, it places greater onus on the taxpayer to comply with standards of disclosure of information in the statutory returns.

**20.2** 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.*

**20.3** From the Information/ data of the taxpayer, it appeared that the taxpayer was fraudulently claiming refund of such IGST by filing shipping bills in the manner as provided under Rule 96(10) of the CGST Rules, 2017 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 ITR available in balance, as the exported goods were evidently manufactured out of exempted supplies received. It appeared that 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 therefore appeared that they have suppressed the erroneous refund of IGST paid on exports, it appeared that the taxpayer's liabilities are not properly discharged. The failure to properly discharge their Tax liability is utter disregard to the requirements of law and breach of trust deposited on them is outright act in defiance of law by way suppression, concealment & non-furnishing value of erroneous refund with intent to evade payment of tax. The above said erroneous refund of IGST paid on export, is unearthed after report of DGARM dated 19.09.2022 and investigation conducted by officers of Central Tax, Ahmedabad North and therefore had the investigation not been initiated by this office, the said facts would have not come to light. All the above facts of contravention on the part of the Taxpayer have been committed with an intention to evade the payment of GST by suppressing the facts. Therefore, the same is required to be demanded from them under Section 74(1) of the CGST Act, 2017/Gujarat GST Act'2017 read with Section 20 of IGST Act'2017 by invoking extended period of five years. Since the said taxpayer was liable to self-assess the liability to pay tax, they had an obligation to furnish the correct and complete information.

**20.4** Further, it appeared that the taxpayer had not paid the tax within the prescribed due dates. Further, it appeared they had erroneously availed refund of IGST. These non-payments of Tax were not shown in their statutory GST returns. It, therefore, appeared that there is a case of suppression of facts with intent to evade the payment of tax.

**20.5** In view of the above facts, the erroneously refunded amount of Rs 47,49,04,065/- is liable to be recovered from them under Section 74(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 and the Rules made there under along with interest as applicable under Section 50(1) of the said Acts and the Rules made there under. Further, by such acts of omission and commission, the Taxpayer have also rendered themselves liable for penal action under Section 74(1) of CGST Act, 2017 for contravention of provision of CGST Act, 2017 /IGST Act, 2017 and rules made thereunder.

**20.6** 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 13.04.2023 to file any submission against the above ascertainment in Part B of DRC- 01A on or before 21.04.2023. The taxpayer vide their letter dated 03.05.2023 filed their reply wherein they stated that the said liability was not acceptable and the submissions in this regard were submitted by them to the jurisdictional range

vide letter dated 13.02.2023. They further requested to keep the matter in abeyance till the Hon'ble Gujarat high Court decides the matter in the case of M/s Zaveri & Co. Pvt. Ltd. In light of the above discussion, the contention of the taxpayer is not tenable.

21. Therefore, a Show Cause Notice No.- GST/15-68/OA/2022 dated 04.05.2023 was issued to M/s. Amneal Pharmaceuticals Pvt. Ltd., 882/1-871, Near Hotel Karnavati, Sarkhej Bavla Highway, Village Rajoda, Bavla, Ahmedabad-382220 by the Additional Commissioner, CGST, Ahmedabad North as to why :

(i) The erroneously refunded IGST amount of Rs.47,49,04,065.00 (Rupees Forty Seven Crore Forty Nine Lakh Four Thousand Sixty Five 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 under the provisions of Section 74(1) read with Section 20 of the IGST Act, 2017.

**DEFENSE REPLY:-**

22. M/s Amneal Pharmaceuticals Private Limited has filed their defence reply vide letter dated 21.08.2023 wherein they denied the allegations in the aforesaid SCN. Their reply is as under:-

22.1 M/s Amneal Pharmaceuticals Private Limited for the sake of clarity summarized changes made in Rule 96(10) as below:-

<b>Rule 96 of CGST Rules, 2017</b>			
<b>Principal /Amending Notification</b>	<b>Date of Notification and effective date of operation of amendment</b>	<b>Comments</b>	<b>Gist</b>
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.	The persons claiming refund of integrated tax paid on exports of



		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.	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 No. 53/2018-CT.	9.10.2018 (with effect from 23.10.2017)	<b>Two notifications were 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.</b>	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 a) NN. 48/2017-CT dated 18.10.2017 or b) NN.

		<p>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.</p>	<p>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</p>
<p>Notification No. 54/2018-CT.</p>	<p>9.10.2018 (with effect from 9.10.2018)</p>	<p>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.</p>	<p>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</p>
<p>Notification No. 16/2020-CT.</p>	<p>23.10.2020 (with effect from 23.10.2017)</p>	<p>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</p>	<p>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.</p>

From the above that 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 8.10.2018 – 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.

**22.2** Further they submitted that they are a 100 % EOU and have exported the goods manufactured by their EOU unit on payment of IGST, as applicable. Further, the vendor of the Noticee, Integrated Cleanroom Technologies Pvt. Ltd. (bearing GSTIN: 24AABCIO328R1ZH), voluntarily made the payment of the refund amount against supplies made to the Noticee under Notification No. 48/2017-CT dated 18<sup>th</sup> October, 2017, thus, surrendering the benefits availed by them on account of supplies made to the Noticee. Thus, there has been no violation of the conditions prescribed in Rule 96 (10) of CGST Rules, 2017. Copies of Form GST DRC-03 and Challan dated 28<sup>th</sup> July, 2023 are enclosed.

**22.3** Further, Notification No. 54/2018-C.T. expressly makes the amended Rule 96(10) applicable from the date of its publication in the Official Gazette i.e., 9.10.2018. Relevant extract of the said notification is as under:

*“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 (Twelfth Amendment) Rules, 2018.*

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

*(emphasis supplied)*

**22.4** Vide Circular No. 70/44/2018-GST dated 26.10.2018, the Board clarified that an exporter who himself imported inputs by claiming exemption from IGST in terms of Notification No. 79/2017-Cus dated 13.10.2017 shall be eligible to claim refund of IGST paid on exports till the date of issuance of Notification No. 54/2018-C.T. dated 9.10.2018. Relevant portion from the aforesaid Circular is reproduced below:

**“3.2 For removal of doubts, it is clarified that the net effect of these changes would be 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 13th October, 2017 shall be eligible to claim refund of the IGST paid on exports till the date of the issuance of the notification No. 54/2018-Central Tax, dated the 9th October, 2018 referred to above.**

*3.3 Further, after the issuance of notification No. 54/2018-Central Tax, dated the 9th October, 2018, exporters who are importing goods in terms of notification Nos. 78/2017-Customs and 79/2017-Customs, both dated 13th October, 2017 would not be eligible for refund of IGST paid on exports as provided in the said sub-rule.....”*

*(emphasis supplied)*

**22.5** In view of the above, the noticees submitted that all allegations made in the show cause notice do not survive. Therefore, Rule 96(10) will not be applicable to the noticees for the disputed period from 23.10.2017 to 8.10.2018

and the demand sought to be raised in the present show cause notice is entirely unsustainable. Hence, the show cause notice deserves to be dropped in its entirety on this ground alone.

**22.6** Further, they submitted that Show cause notice failed to consider that vide Circular No. 125/44/2019-GST dated 18.11.2019, CBIC clarified that the exporters who are receiving supplies in terms of Notification No. 78/2017-Cus dated 13.10.2017 or Notification No. 48/2017-CT shall continue to be eligible for refund as per Rule 96 (10) of CGST Rules, 2017. The Noticees submit that Rule 96 (10) of CGST Rules as introduced provided that the bar on claiming refund of IGST would also apply if the supplier to the registered person claiming refund has availed benefit of IGST exemption under Notification No. 78/2017-Customs dated 13.10.2017 (EOU Scheme) or Notification No. 79/2017-Customs dated 13.10.2017 (Advance Authorisation and EPCG Schemes).

**22.7** In view of substitution of sub-rule (10) of Rule 96, CBIC issued a clarification vide Circular No. 45/19/2018-GST dated 30.05.2018 wherein at Para 7 of the circular it has been clarified that Rule 96(10) seeks to prevent an exporter from exporting goods under payment of integrated tax, if he was receiving the goods from suppliers availing the benefit of certain specified Notifications under which they supplied goods without payment of tax, or at reduced rate of tax. Rule 96(10) of CGST Rules was further amended vide Notification No. 39/2018-C.T. dated 04.09.2018 with retrospective effect from 23.10.2017. The amended Rule 96 (10) of CGST Rules provided that bar under the said rule would apply when registered person himself avails IGST exemption benefit under EOU scheme (Notification No. 78/2017-Customs dated 13.10.2017), Advance Authorisation and EPCG Schemes (Notification No. 79/2017-Customs dated 13.10.2017) and shall not apply when the supplier to registered person avails the same.

**22.8** Thereafter, vide Notification No. 53/2018-CT dated 09.10.2018, Rule 96(10) of CGST Rules was restored to its original position as introduced [vide Notification No. 03/2018-C.T. dated 23.01.2018], providing that for the period between 23.10.2017 to 08.10.2018 ("Phase I"), the bar on a registered person to claim refund would apply only if supplier to registered person has availed benefit of IGST exemption under schemes such as EOU, AA and EPCG. In other words, no restriction would apply if the registered person himself avails IGST exemption benefit under the said schemes in Phase I.

**22.9** Simultaneously, vide Notification No. 54/2018-CT dated 09.10.2018, Rule 96(10) of CGST Rules was again amended, however, prospectively with effect from 09.10.2018. The amended Rule 96(10) reads as under:

*"(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.”*

**22.10** On a conjoint reading of above notifications, it can be understood that unlike Notification No. 53/2018-C.T. which was applicable retrospectively with effect from 23.10.2017, Notification No. 54/2018-C.T dated 09.10.2018 has carried out prospective amendment to Rule 96(10) of the CGST Rules, providing that for the period from 09.10.2018 onwards (“Phase II”), the bar on claiming refund of IGST would apply in all the cases where the registered person himself avails IGST exemption benefit under the said schemes, except EPCG scheme and the same would not apply when supplier to the registered person avails the said benefit.

**22.11** Further, vide Circular No. 125/44/2019-GST dated 18.11.2019, CBIC clarified that the exporters who are receiving supplies in terms of Notification No. 78/2017-Cus dated 13.10.2017 or Notification No. 48/2017-CT shall continue to be eligible for refund as per Rule 96 (10) of CGST Rules, 2017. The Noticees further submitted that even after insertion of Explanation to Rule 96 (10) (b) vide Notification No. 16/2020-CT dated 23.03.2020, the earlier Notifications shall remain effective and the refund claim of the Noticee is not prohibited in terms of Rule 96 (10) of CGST Rules, 2017.

**22.12** The Noticee states that the effect of the Circulars and Notifications can be summarised as under:

- a. For the period from 23.10.2017 to 08.10.2018, the restriction under rule 96(10) of the CGST Rules shall apply only if the Assessee has purchased goods from a supplier who has availed the benefit of specified notifications;
- b. For the period on or after 09.10.2018, the restriction under rule 96(10) of the CGST Rules shall apply if the Assessee has purchased goods:
  - i. from suppliers who have availed the benefit of notifications specified in rule 96(10)(a) of the CGST Rules, or
  - ii. by themselves availing the benefit of notifications specified in rule 96(10)(b) of the CGST Rules.

**22.13** Further, they submitted that the demand is not sustainable on the ground of its being revenue neutral. The Noticee is eligible to claim refund of unutilized ITC in terms of Rule 89 (4) of CGST Rules, 2017. The Noticee submitted that, in terms of Section 16 of the IGST Act. *as discussed supra*, there are 2 routes available to them on the export of goods/services whereby, they can; (i) Either export the goods/services under bond/LUT, without payment of IGST and claim refund of the unutilized ITC; (ii) Or export the goods

on payment of IGST and claim refund such tax paid. The option to follow whichever route under Section 16(3) is up to the discretion of the Noticee.

**22.14** The Noticee submitted that in case goods are exported under bond/LUT, no IGST is liable to be paid. The exporter is required to furnish an undertaking, submitting that the goods are being exported, without payment of IGST. Along with the LUT, the exporter is required to furnish the necessary export documents for clearances of the goods from the territory of India. Upon furnishing the LUT and the relevant documents for export of goods/services, and proof of export being obtained, the exporter can proceed to claim refund of unutilized ITC in terms of Rule 89 of the CGST Rules. Alternatively, the exporter may decide to export the goods/services on payment of IGST and thereafter, once the goods have been exported, the exporter can claim refund of IGST paid at the time of export.

**22.15** Thus, in view of above, the Noticee submitted that the refund of unutilized credit eligible to a party under LUT on the export of goods, is not hit by the restriction under Rule 96(10), which only applies to cases where goods have been exported on payment of IGST and thereafter refund of the same is being claimed. Accordingly, the demand quantified by the Respondents in the Impugned Notice is erroneous inasmuch as, had the Noticee availed the LUT route, the eligible refund amount comes to Rs. 54,26,70,016/- as has been certified by the Chartered Accountant vide Letter dated 16<sup>th</sup> August, 2023.

**22.16** Therefore, the Noticee submitted that the demand in respect of refund as quantified in the Impugned Notice is liable to be dropped, as the said amount of refund would have been eligible to the Noticee had they proceeded to follow export under LUT. Thus, the demand is liable to be re-quantified keeping in mind the refund eligible to the Noticee on goods exported under LUT.

**22.17** Further, they submitted that Hon'ble Supreme Court in number of judgements that the departmental officers are bound by the Circular issued by CBEC and the assessee can argue that the department cannot take a stand contrary to the Circular issued by the Board. Some of these judgements are as under:

- (i) CCE Vs. Dhiren Chemical Industries  
2002 (139) ELT 3 (SC)
- (ii) Dabur India Vs. CCE  
2003 (157) ELT 129 (SC)
- (iii) Union of India Vs. Arviva Industries  
2007 (209) ELT 5 (SC)
- (iv) Paper Products Vs. CCE  
2000 (112) ELT 765 (SC)
- (v) UCO Bank Vs. CIT  
1999 (111) ELT 673 (SC).

**22.19** In the landmark judgment of **CCE Vs. Dhiren Chemical Industries 2002 (139) ELT 3 (SC)**, the Supreme Court has given the decision that the CBEC Circular are binding on the Revenue even if different interpretation has been placed by the Supreme Court. The relevant case extract is as under:

*"However, it held that, regardless of the interpretation placed by it on that phrase, if there were circulars which had been issued by the Central Board of Excise and Customs which placed a different interpretation upon that phrase,*

*that interpretation would be binding on the Revenue. It is not disputed that there are circulars issued by the Central Board of Excise and Customs which place a different interpretation upon that phrase and which apply to the facts of these two appeals. For that reason these appeals are dismissed. No order as to costs."*

**22.20** In the above case, the Constitution Bench interpreted the phrase "on which the appropriate amount of duty of excise has already been paid" in favour of the Revenue. However, it held that, regardless of the interpretation placed by it on that phrase, if there were circulars which had been issued by the Central Board of Excise and Customs which placed a different interpretation upon that phrase, that interpretation would be binding on the Revenue. The Apex Court has clarified in the above case that Department or Revenue is bound to follow the Circular issued by the Central board of Excise & Customs. (CBEC) even if any contradictory judgment has been given by the Supreme Court.

**22.21** Further, they submitted that Rule 96(10) of the CGST Rules is ultra vires the provisions of Section 16(3)(b) of the IGST Act. It is submitted that Rule 96(10) of the CGST Rules debars or disentitles a person claiming refund of integrated tax paid on export of goods if they have received benefit of Notifications as enumerated thereunder. In other words, Rule 96(10) is more in the nature of a restriction and not a condition in as much as the refund claim of integrated tax paid on exports is not dependent on subjective fulfilment of any positive or negative condition per se. The noticees therefore submit that Rule 96(10) of the CGST Rules inasmuch as it disentitles the supplier from claiming refund of integrated tax paid on exports of goods available under Section 16(3)(b) of the IGST Act is a delegated legislation overreaching the statutory mandate of Section 16(3)(b) of the IGST Act by curtailing the benefit granted thereunder is *ultra vires* provisions of the CGST Act. It is submitted that to read the 'conditions, safeguards and procedures' as appearing in Section 16(3)(b) of the IGST Act as a 'restriction' as envisaged under Rule 96(10) of the CGST Rules would not only be anomalous but would lead to absurdity as well. In fact, it would defeat the very purpose of grant of refund on integrated tax paid on export of goods and accordingly lead to invidious discrimination and arbitrary results.

**22.22** The noticees reiterate that it has been a consistent judicial view that rule making power by the executive authorities should not travel beyond the Act and that subordinate legislation can be struck down on being *ultra vires* or in conflict with parent Act or being unreasonable or wholly arbitrary or irrational. Reliance is placed on the decision of **Kunj Behari Lal Butail Vs. State of H.P. – 2000 (1) SCR 1054**, wherein the Hon'ble Supreme Court observed that the delegated power to legislate Rules cannot be used to bring within its purview/ambit a subject that has been specifically excluded by the statute itself, or to bring into existence disabilities/prohibitions not contemplated by the provisions of the Act. In the case of **State of Mysore and Ors. Vs. Mallick Hashim & Co. – (1974) 3 SCC 251**, the Hon'ble Supreme Court held that once a person is eligible to claim refund in terms of the parent Act, the Rule cannot impose a condition which would disentitle such person from claiming refund. The noticees also rely on the following decisions wherein various rules arbitrary and not in consonance with the parent provision were struck down as arbitrary and irrational:

- i) UOI Vs. S Srinivasan – 2012 (281) ELT 3 (S.C.);

ii) Intercontinental Consultants and Technocrats Vs. UOI – 2013 (29) STR 9 (Del.)  
Affirmed by the Supreme Court at 2018 (10) GSTL 401 (S.C.); and

iii) Indian Association of Tour Operators Vs. UOI – 2017 (5) GSTL 4 (Del.)

**22.23** Further, they submitted that demand is not sustainable as the situation is revenue neutral. Accordingly, no interest can also be charged. The Noticees further submit that even assuming that the Noticees were in fact granted the refund of IGST erroneously and the same is liable to be demanded and recovered, the Noticees would be entitled for re-credit of the same in terms of provisions of CGST Rules, 2017. Thus, the entire exercise is revenue neutral as the Noticees would be entitled to avail re-credit to the extent the refund claim is disallowed.

**22.24** In view of the submissions made above, they submitted that as they are not liable to pay the amount demanded in the show cause notice. It is settled principle of law that where there is no demand of duty, penalty cannot be imposed. Reliance is placed on the decision of Coolade Beverages Ltd. Vs. CCE – 2004 (172) ELT 451 (All.). It is further submitted that the Courts have consistently held that penalty can be levied only if an intentional act is committed and not otherwise. The following illustrative cases are relied upon in support of this submission:

- **Tamil Nadu Housing Board Vs. CCE – 1994 (74) E.L.T. 9 (S.C.)**
- **DCW Ltd. Vs. Asst. Collector of Central Excise – 1996 (88) ELT 31 (Mad.)**

**22.25** The Noticee have maintained regular books of account and duly filed all GST returns. In fact, the show cause notice has been issued entirely on the basis of books of account maintained by the Noticee and GST returns filed by the Noticee. There cannot be any fraud or wilful misstatement or suppression of facts to evade tax in such a scenario. Therefore, ingredients of Section 74 are not fulfilled and hence, penalty is not imposable.

**22.26** The Noticee submitted that it is a settled principle of law that in cases where the demand is not sustainable, interest cannot be levied. In view of the aforesaid submissions, it is clear that the demand itself is not sustainable and hence, the question of recovering interest does not arise. Moreover, recovery of interest by virtue of machinery provision alone is not sustainable if there is no corresponding substantive provision for levy of interest in first place. The Noticee submits that it is a well settled principle that unless there is a charging provision by which a liability is created or fixed, there cannot be a machinery provision for recovery of that liability. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of **JK Synthetics Ltd. [1994 (4) SCC 276]** wherein it was held as under:

*"16. It is well-known that when a statute levies a tax it does so by inserting a charging section by which a liability is created or fixed and then proceeds to provide the machinery to make the liability effective. It, therefore, provides the machinery for the assessment of the liability already fixed by the charging section, and then provides the mode for the recovery and collection of tax, including penal provisions meant to deal with defaulters. Provisions is also made for charging interest on delayed payments, etc."*



**22.27** The Noticee submitted that Section 50 of the CGST Act shall not be applicable in case of erroneous refund. It is submitted that Section 50(1) gets attracted only when tax has been short paid or not paid or paid belatedly. This situation can arise only when the assessee has defaulted in payment of their output tax liability. For ease of reference, Section 50(1) of the CGST Act, 2017 is extracted below:

*“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.”*

**22.28** In the present case, the SCN proposes recovery of amount sanctioned as refund along with interest. They submitted that the proceedings are not pertaining to belated payment of tax. As a result, the conditions mentioned above will not be cumulatively satisfied. Further, they submitted that Section 50 (3) of CGST Act provides for interest in cases where a taxable person makes an undue or excess claim of ITC or where a taxable person makes an undue or excess reduction in output tax liability and present proceedings pertain to recovery of alleged erroneous refund granted. The Noticee submitted that from a plain reading of Section 50(3) of CGST Act, 2017, it is clear that the instant case does not fall under either of the two scenarios and therefore, cannot be made applicable.

### **PERSONAL HEARING**

**23.** Adhering to the principal of natural justice, personal hearings have been provided to the noticee on 09.02.2024. Shri Jigar Shah and Ambarish Pandey, Authorized Representatives of the noticee have appeared for personal hearing and reiterated their defence submission dated 21.08.2023. Further, they requested for time till 19.02.2024 for submission of additional submission. He further requested to decide the matter on merit.

### **ADDITIONAL SUBMISSION DATED 19.02.2024**

**24.1** The Noticees stated that in identical facts and circumstances Ld. Commissioner(Appeals) CGST Vadodara vide Order-in-Appeal dated 26.12.2023 passed in the case of Alstom Rail Transportation India Pvt. Ltd. has dropped the demand and allowed the assesses' Appeal. Further in the case of Torrent Pharmaceuticals vide Order-in-Original dated 26.05.2023 Ld. Assistant Commissioner CGST Baddi also dropped the demand in identical facts and circumstances.

**24.2** In the Order dated 26.12.2023, following observations were made by the Ld. Commissioner (Appeals), CGST, Vadodara:-

- A. Notification No. 54/2018-CT dated 09.10.2018 is effective from 09.10.2018 itself i.e. prospectively and not for period prior to that;
- B. The above aspect has been clarified vide Circular dated 26.10.2018 issued by CBIC;
- C. Thus, for the period prior to 09.10.2018, restriction under Rule 96 (10) of CGST Rules, 2017 was not applicable;

D. In view of the above, the Company is eligible to claim the refund of IGST paid on the goods exported out of India in terms of Rule 96 (10) of CGST Rules, 2017;

E. Consequently, no liability of interest and imposition of penalty can be fastened against the Company.

**24.3** In view of the above Order-in-Appeal, the Noticees submit that in the present Case also, the demand is required to be set aside as the entire period involved is prior to October, 2018 inasmuch as the vendor of the Noticee, Integrated Cleanroom Technologies Pvt. Ltd. (bearing GSTIN: 24AABCI0328R1ZH) voluntarily made the payment of the refund amount against supplies made to the Noticee under Notification No. 48/2017-CT dated 18<sup>th</sup> October, 2017, thus, surrendering the benefits availed by them on account of supplies made to the Noticee.

**24.4** The Noticees further stated that in the case of Torrent Pharmaceuticals, vide, Order-in-Original dated 26.05.2023, Ld. Assistant Commissioner, CGST, Baddi also dropped the demand in identical facts and circumstances, by relying upon Circular No. 70/44/2018-GST dated 26.10.2018 issued by CBIC. The Noticees further stated that have stopped claiming refund of IGST under Rule 96 (10) of CGST Rules with effect from October, 2018. The Noticees have opted for LUT route and claim refund of Unutilized ITC under Rule 89 (4) of CGST Rules. The same is evidenced by Form GSTR-1 for the period October 2018 to March 2019 (disputed period post October 2018), wherein, no IGST has been paid in cash on the exports. Copy of Form GSTR-1 for the period October 2018 to March 2019 is enclosed.

#### **DISCUSSION AND FINDINGS**

**25.** I have carefully gone through the records of the case, defense reply dated 21.08.2023, 19.02.2024 and submission made by the noticee during the course of personal hearing and proceed to decide the case.

**26.** Briefly stated the facts of the case is that M/s Amneal Pharmaceuticals Private Limited having registration GSTIN No. 24AAGCA0781K1ZP is engaged in the manufacture and supply of pharmaceutical products falling under GST Tariff Heading 3004. The said assessee is also registered with the Development Commissioner, Special Economic Zone, Gandhidham, Kutchh-370230 as a "100% Export Oriented Unit" vide permission letter F. No. KASEZ/100%EOU/II/45/2007-08 dated 25.04.2008 for establishment of Abbreviated New Drug Application (ANDA) Research Project. Further as per the internal report(s), the noticee had procured inputs under Notification No. 48/2017-CT dated 18.10.2017(Deemed Export) and Notification No. 78/2017-Customs dated 13.10.2017(provide exemption from IGST upon import of goods in case of Export Oriented Units "EOUs") without payment of Integrated Tax/IGST and thereafter finished /manufactured goods were exported on payment of IGST & refund was claimed of such IGST paid. The noticee had claimed and received refund of IGST paid against the goods exported despite the fact that they have claimed the benefit of said notifications during procurement of inputs i.e. at the time of import for imported inputs under Notification No. 78/2017-Customs dated 13.10.2017 and during procurement of inputs from their supplier by availing benefits of 48/2017-CT dated 18.10.2017.

27. It is alleged in the impugned SCN that the noticee had received refund of IGST amounting to **Rs. 47,49,04,065/-** paid on exports (Zero Rated Supplies) made during period from 13.10.2017 to 12.03.2019. The moot point to be decided is as to whether the noticee had 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.

28. Before taking in to 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.

29. 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. 48/2017-CT dated 18.10.2017 and Notification No. 78/2017-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 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. 40/2017Central 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.”***

30. 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.

31. 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.

32.1 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 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.

32.2. 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.”

**32.3.** 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 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 subclause (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.

**32.4.** 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."*

**33.** As per the records of the case, the department had received an internal report(s) that the noticee had procured inputs under Notification No. 48/2017-CT dated 18.10.2017(Deemed Export) and Notification No. 78/2017-Customs dated 13.10.2017 without payment of Integrated Tax/IGST and thereafter finished /manufactured goods were exported on payment of IGST & refund was claimed of such IGST paid. Thus, they had violated the provisions of Rule 96(10) of the CGST Rules. As a result of which, the impugned SCN was issued **for the period 13.10.2017 to 12.03.2019** for the total amount of IGST of Rs. 47,49,04,065/- paid on the exported goods in contravention of Rule 96(10) of the CGST Rules, 2017. Details of which are as under:-

Sr. No.	Period	Refund amount of IGST paid (Rs.)
01	13.10.2017 to 08.02.2018 (2017-18)	23,21,45,331.00
02	01.04.2018 to 12.03.2019	24,27,58,734.00
<b>TOTAL</b>		<b>47,49,04,065.00</b>

34. Firstly, I take up the defense reply made by the noticee that that have stopped claiming refund of IGST under Rule 96 (10) of CGST Rules with effect from October, 2018 and opted for LUT route and claim refund of Unutilized ITC under Rule 89 (4) of CGST Rules. In brief said noticee stated that disputed period in SCN should be till 30.09.2018 instead of 12.03.2019. For evidence, they submitted Form GSTR-1 for the period October 2018 to March 2019. In this regard, I have gone through copy of GSTR-1 for the period October 2018 to March 2019 and calculation sheet of refund verified by concerned Divisional Officer and Range Superintendent and find that said noticee had not claimed/exported goods with payment of IGST under Rule 96 (10) of CGST Rules after September 2018. Therefore, disputed period in SCN is 23.10.2017 to 30.09.2018. As per records, total IGST claimed for export of goods from 23.10.2017 to 08.02.2018 (2017-18) comes to Rs. 23,21,45,331/- and from 01.04.2018 to 30.09.2018 is Rs. 24,27,58,734/-. Details of which are as under:-

Sr. No.	Period	Refund amount of IGST paid (Rs.)
01	23.10.2017 to 08.02.2018 (2017-18)	23,21,45,331.00
02	01.04.2018 to 30.09.2018	24,27,58,734.00
<b>TOTAL</b>		<b>47,49,04,065.00</b>

35. Further, as per records available, I find that the said noticee had availed the benefit of Notification No.48/2017-CT dated 18.10.2017(deemed export) and Notification No: 78/2017-Customs dated 13.10.2017 (provide exemption from IGST upon import of goods in case of Export Oriented Units "EOUs") and 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. For ready reference, I reproduced below Notification No.48/2017-CT dated 18.10.2017 and Notification No. 78/2017-Customs dated 13.10.2017:-

**Notification No. 48/2017-Central Tax dated 18.10.2017**

Deemed Exports — Supply of goods against advance authorization, EPCG or supply to EOU or by Banks/PSUs against advance authorization notified as deemed exports:

*G.S.R. (E).- In exercise of the powers conferred by section 147 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the supplies of goods listed in column (2) of the Table below as deemed exports, namely:-*

Table

S.No.	Description of supply
(1)	(2)
1.	Supply of goods by a registered person against Advance Authorisation
2.	Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation

3.	<b>Supply of goods by a registered person to Export Oriented Unit</b>
4.	<i>Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated the 30<sup>th</sup> June, 2017 (as amended) against Advance Authorization.</i>

*Explanation -*

*For the purposes of this notification, -*

1. *"Advance Authorisation" means an authorisation 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.*
2. *Export Promotion Capital Goods Authorisation means an authorisation issued by the Director General of Foreign Trade under Chapter 5 of the Foreign Trade Policy 2015-20 for import of capital goods for physical exports.*
3. *"Export Oriented Unit" means an Export Oriented Unit or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-Technology Park Unit approved in accordance with the provisions of Chapter 6 of the Foreign Trade Policy 2015-20.*

**Notification No. 78 /2017-Customs dated 13.10.2017**

Goods Imported or Procured from Public or Private Warehouse or from International Exhibition by Hundred Per cent EOU, STP or EHTP Units exempted from IGST till 31 March, 2018 — Amendment to Notification No. 52/2003-Cus.

*In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 52/2003-Customs, dated the 31st March, 2003, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R. 274 (E), dated the 31st March, 2003, namely:-*

1. *In the said notification, for the words, brackets and figures "from the whole of the duty of customs leviable thereon under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty, if any, leviable thereon under sub-sections (1), (3) and (5) of section 3 of the said Customs Tariff Act, subject to the following conditions, namely:-",*

*the following shall be substituted, namely:-*

*"from -*

*(A) the whole of the duty of customs leviable thereon under the First-Schedule to the Customs Tariff Act, 1975 (51 of 1975) and the additional duty, if any, leviable thereon under sub-sections (1), (3) and (5) of section 3 of the said Customs Tariff Act; and*

*(B) the integrated tax and compensation cess leviable thereon under sub-sections (7) and (9), respectively of section 3 of the said Customs Tariff Act;*

*Provided that nothing contained in clause (B) above shall apply on or after the 1st day of April, 2018, subject to the following conditions, namely:-"*

In brief, Notification No. 48/2017-Central Tax dated 18.10.2017 read with Rule 96(10) of CGST Rules 2017 lays down that if the supplier has supplied goods/services to the exporter and claimed benefits under said



notification, the exporter shall not be eligible to claim a refund of IGST Paid on Export of Goods. Further, Notification No. 78 /2017-Customs dated 13.10.2017 read with Rule 96(10) of CGST Rules 2017 lays down that if any exporter who himself/herself imported any inputs/raw material without payment of IGST under said notification, the exporter shall not be eligible to claim a refund of IGST Paid on Export of Goods.

**36.1** In contention of allegation made regarding availment of Notification No. 48/2017-CT dated 18.10.2017 and Notification No. 78 /2017-Customs dated 13.10.2017, the noticee has submitted that Rule 96(10) will not be applicable to the noticees for the disputed period from 23.10.2017 to 8.10.2018. Further, they submitted that Notification No. 54/2018-C.T dated 09.10.2018 has carried out prospective amendment to Rule 96(10) of the CGST Rules, i.e. said notification is not applicable before 09.10.2018. Further, they relied upon Circular No. 125/44/2019-GST dated 18.11.2019 wherein CBIC clarified that the exporters who are receiving supplies in terms of Notification No. 78/2017-Cus dated 13.10.2017 or Notification No. 48/2017-CT shall continue to be eligible for refund as per Rule 96 (10) of CGST Rules, 2017,

**36.2** Further, said noticee in their defence reply dated 19.02.2024 has submitted Copy of OIA No.- No. VAD-CGST-001-APP-COMMR- 358/12-2023-24 dated 26.12.2023 passed by the Commissioner(Appeal), Vadodara and OIO No. dated 26.05.2023 passed by the AC, CGST, Baddi wherein demand on similar case has been dropped. Further, said noticee also submitted that their vendor, Integrated Cleanroom Technologies Pvt. Ltd. (bearing GSTIN: 24AABCI0328R1ZH), voluntarily made the payment of the refund amount against supplies made to the Noticee under Notification No. 48/2017-CT dated 18<sup>th</sup> October, 2017.

**37.** In this regard, I have gone through detailed reply submitted by said noticee dated 21.08.2023 ,19.02.2024 and Circular No. 125/44/2019-GST dated 18.11.2019 issued by CBIC, New Delhi and find that CBIC issued a Circular No. 125/44/2019-GST dated 18.11.2019, wherein under the heading Restrictions imposed by sub rule (10) of Rule 96 of the CGST Rules, it was clarified in the para 52 of the said Circular that:

*"52. The net effect of these changes is that in terms of **notification Nos. 78/2017-Customs and 79/2017-Customs both dated 13.10.2017**, before the issuance of the notification No. 54/2018 – Central Tax dated 09.10.2018, shall be eligible to claim refund of the Integrated tax paid on exports. Further, exporters who have imported inputs in terms of notification Nos. 78/2017-Customs dated 13.10.2017, after the issuance of notification No. 54/2018 – Central Tax dated 09.10.2018, would not be eligible to claim refund of Integrated tax paid on exports.."*

**38.** I find that said circular dated 18.11.2019 has clarified that exporters who have imported inputs in terms of notification Nos. 78/2017-Customs dated 13.10.2017 and 79/2017-Customs both dated 13.10.2017 would be eligible to claim refund of the Integrated tax paid on exports till 09.10.2018 i.e. these benefit is available to those exporter only who availed benefit of notification Nos. 78/2017-Customs dated 13.10.2017 and 79/2017-Customs both dated 13.10.2017 not other notification like 48/2017-CT dated 18.10.2017 or 40/2017-CT (Rate), dated 23.10.2017 or 41/2017-IT (Rate), dated 23.10.2017. However, in present case, said noticee availed benefit of Notification

No.48/2017-CT dated 18.10.2017(deemed export) and Notification No. 78/2017-Customs dated 13.10.2017. Therefore, said circular dated 18.11.2019 is not applicable in present case. Further, said noticee submitted that their vendor, Integrated Cleanroom Technologies Pvt. Ltd. (bearing GSTIN: 24AABCIO328R1ZH), voluntarily made the payment of the refund amount against supplies made to the Noticee under Notification No. 48/2017-CT dated 18th October, 2017. However, I find that there is no notification, circular or any clarification has been issued by CBIC or GST Counsel that anybody can avail benefit of refund of IGST under Rule 96(10) of CGST Rules 2017 if their supplier made payment of refund against supplies made under Notification No. 48/2017-CT dated 18th October, 2017.

39. 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 the benefit from Government of India, Ministry of Finance, under Notification No. 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 the goods from the registered supplier for the purpose of export on fulfilling the conditions prescribed therein. It appears that, thereafter, by Notification No. 39/2018-C.T., dated 4<sup>th</sup> September, 2018 has substituted the sub-rule (10) of Rule 96 w.e.f. 23<sup>rd</sup> October, 2017, however, by Notification No. 54/2018, the application of the substituted sub-rule (10) of Rule 96 is not made effective from 23<sup>rd</sup> October, 2017, but it was made applicable from the inception. Therefore, the petitioner who has availed the benefit of the Notification No. 39/2018 from 23<sup>rd</sup> October, 2017 to 4<sup>th</sup> September, 2018 would not be able to get the refund of the IGST paid or the input tax credit balance in the accounts of the petitioner, in view of the Notification No. 54/2018.

8.14 Considering the effect of the Notification No. 54/2018, the contentions raised on behalf of the respondents that there is no discrimination qua the petitioner is tenable in law, as by the amendment made by Notification No. 54/2018 it clearly denied the benefit which is granted to the petitioner by the Notification No. 39/2018 was withdrawn as the same was not made applicable from 23<sup>rd</sup> October, 2017.

8.15 Recently, vide Notification No. 16/2020-C.T., dated 23-3-2020 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 not restricted to the Exporters who only avails BCD

*exemption and pays IGST on the raw materials thereby exporters who wants to claim refund under second option can switch over now. The amendment is made retrospectively thereby avoiding the anomaly during the intervention period and exporters who already claimed refund under second option need to payback IGST along with interest and avail ITC.*

*9. In view of above amendment, the grievance of the petitioner raised in this petition is therefore taken care of. However, it is also made clear that Notification No. 54/2018 is required to be made applicable w.e.f. 23<sup>rd</sup> October, 2017 and not prior thereto from the inception of the Rule 96(10) of the CGST Act. Therefore, in effect Notification No. 39/2018, dated 4<sup>th</sup> September, 2018 shall remain in force as amended by the Notification No. 54/2018 by substituting sub-rule (10) of Rule 96 of CGST Rules, in consonance with sub-section (3) of Section 54 of the CGST Act and Section 16 of the IGST Act. The Notification No. 54/2018 is therefore held to be effective w.e.f. 23<sup>rd</sup> October, 2017. Rule is made absolute to the aforesaid extent, with no order as to costs."*

40. As discussed in above para, I find that the judgment in the case of *Cosmo Films Ltd. v. UOI* (reported in 2020 (43) GSTL 577 (Guj)) validates the retrospective application of Rule 96(10) under Notification Number 54/2018-CT **from 23 October 2017**. Since the Hon'ble Gujarat High Court has held that Notification No. 54/2018 is effective w.e.f. 23<sup>rd</sup> 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.48/2017-CT dated 18.10.2017(deemed export) and Notification No. 78/2017-Customs dated 13.10.2017 (provide exemption from IGST upon import of goods in case of Export Oriented Units "EOUs") are taken. In the present case, the Noticee has availed the benefit of Notification No.48/2017-CT dated 18.10.2017 and Notification No. 78/2017-Customs dated 13.10.2017 from 23.10.2017 to 30.09.2018 and hence, the refund of IGST amount of Rs.47,49,04,065/- (Rupees Forty Seven Crore Forty Nine Lakh Four Thousand Sixty Five Only) for said period is not admissible to the said noticee as per order of Hon'ble Gujarat High Court in the case of *Cosmo Films Ltd. v. UOI*.

41. 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.

42. From the above discussion, I find that the said noticee had availed the benefit of Notification No.48/2017-CT dated 18.10.2017 and Notification No. 78/2017-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.48/2017-CT dated 18.10.2017 and Notification No. 78/2017-Customs dated 13.10.2017. As per the provisions of Rule 96(10) of the CGST Rules, 2017, the said refund of IGST is inadmissible to the said noticee. In view of the above, I find that 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(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;

43. 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 and Notification No. 78/2017-Customs dated 13.10.2017 has been availed. Since the fact of receiving inputs under Notification No.48/2017-CT dated 18.10.2017 and Notification No. 78/2017-Customs dated 13.10.2017 and consequent ineligibility from claiming IGST refund are known to the Noticee 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 said tax payer 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.

44. Further, the said noticee was engaged in the business activities of export of goods since long, therefore, they were very well aware about the statutory provision of law which governs the exports and refund of tax paid thereon. The noticee 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 such intention of the noticee tantamount to wrong utilization of ITC with a intention to encash it by way of refund. The erroneous refund obtained by the noticee needs to be demanded from the said noticee.

45. 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.

*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 willful-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..*

46. It is a fact that in the instant matter the noticee obtained the erroneous refund in contravention of the provisions of Rule 96(10) of the CGST Rules, 2017 by wrong utilization of ITC on account of fraud and mis-statement on their part 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.

47. 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 noticee was to obtain unjust advantages by way of making of payment of IGST at the time of export and en-cash 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 and Notification No. 78/2017-Customs dated 13.10.2017 and on the other, making of payment of IGST on export of goods clearly with a motive to en-cash it in the form of refund clearly shows the ill intention on the part of noticee 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 but because of aforesaid ill

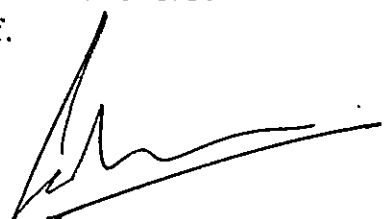
intention they acted in defiance of the provision of law. Further the said noticee was engaged in the business activities of export of goods since long, therefore, they were very well aware about the statutory provision of law which governs the exports and refund of tax paid thereon. The noticee despite being aware of the fact that Rule 96(10) of the CGST Rules, 2017 which bars the refund of such IGST, 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.

48. 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.47,49,04,065/- (Rupees Forty Seven Crore Forty Nine Lakh Four Thousand Sixty Five Only) and order to recover the same from M/s Amneal Pharmaceuticals Private Limited under the provisions of sub-section (1) of Section 74 of the CGST Act, 2017 and the corresponding entry of the Gujarat State Goods and Services Tax Act, 2017 and Section 20 of the IGST Act, 2017.
- (ii) I order to 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;
- (iii) I impose a penalty of Rs.47,49,04,065/- (Rupees Forty Seven Crore Forty Nine Lakh Four Thousand Sixty Five Only) under Section 74(1) of the CGST Act, 2017 read with the Section 74(1) of the Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 on M/s Amneal Pharmaceuticals Private Limited. 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;

49. Accordingly the Show Cause Notice No. Show Cause Notice No.- GST/15-68/OA/2022 dated 04.05.2023 is disposed off.

  
(Lokesh Damor)

Additional Commissioner  
Central GST & CE,  
Ahmedabad North

F.NO.GST/15-68/OA/2022

Dated 29.02.2024

By RPAD/hand delivery



To,  
M/s Amneal Pharmaceuticals Private Limited,  
Plot No. 882/1-871, Near Hotel Kankavati,  
Village Rajoda, Taluka Bavla,  
Dist. Ahmedabad-382220

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, Central GST & Central Excise, Div- V Ahmedabad North.
3. The Superintendent, Range-V, Division-V, 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.

