



<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 & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
<p>फ़ोन नंबर/ PHONE No.: 079-27544557</p>	<p>फैक्स/ FAX : 079-27544463</p>	<p>E-mail:- oaahmedabad2@gmail.com</p>

निबन्धित पावती डाक द्वारा/By R.P.A.D
फा.सं./F.No. GST/15-06/OA/2023

DIN-20240264WT000000E9A5
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. 89/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 रू. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

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

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

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

- (1) उक्त अपील की प्रति।
- (2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू .5) 00. पांच रूपये (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 No. GEXCOM/AE/INV/GST/1491/2023 dated 31.03.2023 issued to M/s Pashupati Industries, having GSTIN 24ABBPJ6047L1ZN, 169/1/A, Phase-I, Opp. Telephone Exchange, GIDC Naroda, Ahmedabad, Gujarat-382330.

BRIEF FACTS OF THE CASE

M/s. PASUPATI INDUSTRIES, 24ABBPJ6047L1ZN, situated at 169/1/A, PHASE-I, OPP. TELEPHONE EXCHANGE, GIDC NARODA, Ahmedabad, Gujarat, 382330 (hereinafter referred to as "the taxpayer") are engaged in the supply of synthetic organic colouring matter, whether or not chemically defined; preparations as specified in note 3 to this chapter based on synthetic organic colouring matter; synthetic organic products of a kind used as fluorescent brightening agents or as luminophores, whether or not chemically defined - Synthetic organic colouring matter and preparations based there on as specified in Note 3 to this Chapter, falling under Chapter 32. They are registered with GSTIN having registration No. 24ABBPJ6047L1ZN and falls under the jurisdiction of Central GST & Central Excise, Ahmedabad North Commissionerate.

2. INTELLIGENCE:

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

3. EXECUTIVE SUMMARY OF THE CASE:

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

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

"Sub-rule (10) of rule 96 of the CGST Rules seeks to prevent an exporter, who is receiving goods from suppliers availing the benefit of certain specified

notifications under which they supply goods without payment of tax or at reduced rate of tax, from exporting goods under payment of integrated tax. This is to ensure that the exporter does not utilise the input tax credit availed on other domestic supplies received for making the payment of integrated tax on export of goods.”

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

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

(1)

(2) .

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Part II, Section 3, Sub-section (i), vide number G.S.R 1299(E), dated the 13th October, 2017."

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

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

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

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

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

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

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

The subject matter pertaining to Rule 96 (10) of CGST Rules, 2017 was further amended by the issuance of Notification No. 54/2018-Central Tax dated 09.10.2018 and an exception was carved from the restriction imposed by sub-rule 96(10) of rule 96 for those

exporters who are importing capital goods under the EPCG Scheme. This notification was made effective from the date of publication in the Official Gazette i.e. 09.10.2018. The said Notification reads as:

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

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

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

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

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

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

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

In view of the above, The Notification No. 54/2018-Central Tax dated 09.10.2018 is made retrospective, effective from 23rd October 2017.

Further, an Explanation was added to Rule 96(10) of the Rules by Notfn No 16/2020-Central Tax dated 23.3.2020.

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

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

From the above, it appeared that by inserting the Explanation in Rule 96(10) of the Rules, the option for claiming refund under clause (b) to the Rule is only for the exporters who avail the exemption of Basic Customs Duty ('BCD') only and pay IGST on the inputs.

In the instant case, it was gathered that the taxpayer had availed full exemption of IGST at the time of import of raw materials, which have been imported for use in the manufacture of goods to be exported & thereafter, the finished/manufactured goods were exported on payment of IGST & refund was claimed of such IGST paid. The said mechanism adopted by taxpayer is restricted under GST law as discussed above.

4. INVESTIGATION

4.1 Based on the above intelligence, an investigation was initiated against M/s. PASUPATI INDUSTRIES, 24ABBPJ6047L1ZN, by way of Summons proceedings under Section 70 of the CGST Act, 2017. During the investigation, Summons dated 04.02.2021 was issued to record statement and to submit requisite information/details/documents, for the period July 2017 onwards, as per Annexure to the Summons dt. 04.02.2021 (RUD-1). Vide reply letter dated 25.05.2021 (RUD-2), the taxpayer had made detailed submission regarding availment of IGST refunds in respect of exports made under advance licensing scheme. The taxpayer did not

appear before the summoning authority to tender his statement & therefore, the taxpayer was again issued Summons on 15.07.2021 (RUD-3). The taxpayer appeared on 02.09.2021 for statement and a statement of Shri Anubhav Ratanlal Jagnani was recorded as on 02.09.2021 (RUD-4). As per statement dated 02.09.2021, The taxpayer stated as under:

"During the period from 01.07.2017 to 23.10.2017, there was no exemption from IGST for import of raw materials under Customs Act, 1962. Customs exemption for import of raw materials under advance license was introduced vide Notification No. 79/2017-Cus dated 13.10.2017. Notification under GST pertaining to Rule 96(10) [earlier rule 96(9)] was introduced w.e.f. 23.10.2017 vide Notification No. 75/2017-CT dated 29.12.2017. The said notification restricted IGST refund on the export of goods on which the benefit of Notification No. 40/2017-CT and 41/2017-IGST (both related to merchant exports) and Notification No. 48/2017-CT dated 18.10.2017 (deemed exports). The said Rule did not put any restrictions for imports under Notification No. 79/2017-Cus. Thereafter, vide Notification No. 3/2018-CT dated 23.01.2018, Rule 96(9) was substituted with Rule 96(9) and 96(10) with retrospective effect from 23.10.2017. This new substituted Rule 96(10) restricted availment of IGST refund on which benefit of Notification No. 79/2017-Cus was taken by the "supplier". Thereafter, Notification No. 39/2018-CT dated 04.09.2018 was issued to further amend the aforesaid Rule 96(10) with retrospective effect from 23.10.2017, by specifically restricting availment of IGST refund on exported goods by the person who has availed the benefit of Notification No. 79/2017-Cus.

The above legal position made it clear that during the period from 23.10.2017 onwards, any registered persons who had exported goods, on payment of IGST, on which benefit of Notification No. 79/2017-Cus had availed, are not eligible for IGST refunds.

However, again the legal position was changed by issuance of Notification No. 53/2018-CT dated 09.10.2018 which gave retrospective effect from 23.10.2017, to state that the benefit of IGST refund will not be available to the export of goods on which the "supplier" had availed the benefit of Notification No. 79/2017-Cus. On the one hand, this notification gives the effect that the exporter is eligible for IGST refunds even if he has availed the benefit of advance authorisation (as the restriction was only for his suppliers).

Meanwhile, another Notification No. 54/2018-CT dated 09.10.2018 was issued on the same date, which gave prospective effect from 09.10.2018, wherein it is stated that IGST refund is not available to any registered persons who had exported goods, on payment of IGST, on which benefit of Notification No. 79/2017-Cus had availed.

If we consider the legal position after issuance of Notification No. 54/2018-CT, the position would be that the exporters who have availed benefit of advance authorisation (NN 78/2017) are eligible for IGST refund during the period from 23.10.2017 to 08.10.2018, while they are not eligible for such refund w.e.f. 09.10.2018.

In view of the conflicting legal positions as discussed above, CBIC has issued a Circular No. 125/44/2019-GST dated 18.11.2019 which clarified vide Para 52 that the exporters who had imported goods under Notification No. 79/2017-

Cus are eligible for IGST refunds from 23.10.2017 to 08.10.2018, whereas such IGST refund is not available to them w.e.f. 09.10.2018 onwards in terms of Notification No. 54/2018-CT.

In the light of the aforesaid legal provisions, I state that we are eligible for IGST refunds on export of goods on which we had availed the benefit of advance authorisation, for the period till 08.10.2018. Therefore, the issue of wrong availment of IGST refund under rule 96(10) being investigated by you, is applicable only for the period from October-2018 onwards. I request you to kindly consider these facts while deciding the matter."

As per statement dated 02.09.2021, the taxpayer had availed total IGST refund of Rs. 2,43,33,145/- during the period from July-2017 onwards however the taxpayer had availed the total IGST refund of Rs. 2,36,27,545/- from the period 23-10-2017 to 31-03-2020. As per the details submitted by the taxpayer, they have received a total IGST refund of Rs. 2,36,27,545/- which is restricted as per rule 96(10) of CGST Rules, 2017.

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

5. OUTCOME OF INVESTIGATION-

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

The Taxpayer have availed the double benefit, one at the time of procuring IGST free raw material in terms of Notification No.79/2017-Customs dated 13.10.2017 and on the other hand by claiming the refund on the exports made on payment of IGST in terms of Rule 96 of the Central Goods and Services Tax Rules, 2017 as mentioned above.

However, as per the provisions of Rule 96(10) of CGST Rules, the taxpayer can avail either refund of IGST paid on goods exported or exemption of IGST on the goods imported under Customs notification no. 79/2017 dated 13.10.2017. Once exemption of IGST is availed on the input materials, refund of IGST on export good stands prohibited and vice versa.

6. QUANTIFICATION OF GST:

6.1 As per the details submitted by the taxpayer vide their letter dated 25.05.2021, the total amount of wrongly taken IGST refund is to the tune of Rs. 2,36,27,545/- on exports after availing benefit of advance authorization on the inputs procured through import. As per the provision of Rule 96(10) of the CGST Rules, 2017, the said refund of the IGST appeared to be inadmissible.

6.2 Thus, the amount of Rs. 2,36,27,545/- of IGST Refund on finished/final goods exported by the taxpayer, whose raw material/inputs had been procured through import under benefit of advance authorization license is required to be demanded and recovered from the taxpayer under the provisions of Section 74(1) of the CGST Act 2017.

7. LEGAL PROVISIONS:

7 .1 Following are the relevant provisions applicable for payment of GST by the Taxpayer: -

7.1.1 Cross empowerment of Central Tax/CGST officers:

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

(A) Section 6 of CGST Act 2017:

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

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

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

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

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

(B) Section 6 of SGST Act 2017:

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

notification, specify.

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

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

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

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

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

7.2 Section 54 of Central Goods and Services Tax Act, 2017:-

Section 54 of the CGST Act, 2017 provides for provision with respect of Refund. Section 54(8) of the CGST Act, 2017 states with regard to refund on export good that:

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

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

7.3 Section 16 of Integrated Goods and Services Tax Act, 2017:-

This provision of law provide for refund of tax, accumulated on account of Zero rate supply or paid on effecting zero rated supply. The provision states that:

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

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

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

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

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

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

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

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

7.4 Rule 96(10) of the CGST Rules 2017

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

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

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

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

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

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

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

By virtue of the above amendment, the option of claiming refund under

option as per clause (b) is restricted to the exporters who only avails BCD exemption and pays IGST on the Raw materials.

Sec. 59 of CGST Act, 2017

The Government had introduced self-assessment system under a trust-based regime which casts the onus of proper assessment and discharging of the tax on the taxpayer. Section 59 of the Central Goods and Services Tax Act, 2017 provides that every registered person shall self-assess the taxes payable under this Act. Thus, it appeared 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 "Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act;

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

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

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

7.6 Interest on delayed payment of tax

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

7.7 As per Section 20 of the IGST Act, 2017:

"Section 20. Subject to the provisions of this Act and the rules made

thereunder, the provisions of Central Goods and Services Tax Act relating to,

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

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

8. CONTRAVENTION OF VARIOUS PROVISIONS:

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

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

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

(iii) Rule 96 of the CGST Rules, 2017 along with the corresponding entry of the Gujarat State Goods and Services Act, 2017 read with the provisions of Section 20 of Integrated Goods and Service Tax Act, 2017 in as much as they have availed the benefit of said rule although they were not eligible for the same in light of conditions laid down in Rule 96(10) of the CGST Rules, 2017.

(iv) Section 39(9) of the Central Goods and Services Tax Act, 2017 along with the corresponding entry of the Gujarat State Goods and Services Act, 2017 read with the provisions of Section 20 of Integrated Goods and Service Tax Act, 2017 in as much as they have failed to pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return;

9. SUPPRESSION:

9.1 It is pertinent to mention here that the system of self-assessment is specifically incorporated in respect of GST under the provisions of Section 59 of CGST Act' 2017 /Gujarat GST Act'2017 which reads as "59. Every registered person shall self-assess the taxes payable under this Act and furnish a return for the tax period

as specified under section 39". It appeared that the said taxpayer suppressed wrong availment of refund as discussed herein above and thereby it appeared has knowingly failed to correctly self assess tax payable with an intent to evade payment of proper tax. In the scheme of self-assessment, the department comes to know about the supplies made and tax paid during the scrutiny of the statutory returns filed by the taxpayers under the statute. Therefore, it places greater onus on the taxpayer to comply with standards of disclosure of information in the statutory returns.

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

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

9.3 From the Information/ data of the taxpayer, it appeared that the taxpayer 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 deposed on them is outright act in defiance of law by way suppression, concealment & non-furnishing value of erroneous refund with intent to evade payment of tax. The above said erroneous refund of IGST paid on export, is unearthed after investigation was conducted by officers of Central Tax, Ahmedabad North and therefore had the investigation not been initiated by this office, the said facts would have not come to light. All the above facts of contravention on the part of the Taxpayer have been committed with an intention to evade the payment of GST by suppressing the facts. Therefore, the same is required to be demanded from them under Section 74(1) of the CGST Act, 2017/Gujarat GST Act'2017 read with Section 20 of IGST Act'2017 by invoking extended period of five years.

Since the said taxpayer was liable to self-assess the liability to pay tax, they had an obligation to furnish the correct and complete information.

9.4 Further, it appeared that the taxpayer had not paid the tax within the prescribed due dates. Further, it 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. It appeared that short paid/ not paid IGST is to be demanded/ recovered from the said taxpayer under the provisions of Section 74(1) of the CGST Act' 2017 read with the provisions of Section 20 of the IGST Act,2017.

Further, CBIC issued Notification No. 13/2022-Central Tax dated

05.07.2022 vide which time limits prescribed under Sec. 73(9) & 73(10) was extended and reads as under:-

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

(ii) excludes the period from the 1 st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation under sub-section (10) of section 73 of the said Act for issuance of order under subsection (9) of section 73 of the said Act, for recovery of erroneous refund;

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

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

H’ble Supreme Court pronounced that: we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:-

1. “The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings.
- II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

9.5 In view of the above facts, the erroneously refunded amount of Rs 2,36,27,545/- 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.

9.6 Further, Form GST DRC-01A regarding intimation of tax ascertained as being payable under Section 74(5) of CGST Act, 2017 before issuing of Show Cause Notice was issued to the taxpayer on 06/03/2023. There is no submission made by the taxpayer against the above ascertainment.

10. Therefore, Show Cause Notice No. GEXCOM/AE/INV/GST/1491/2023 dated 31.03.2023 was issued to M/s. PASUPATI INDUSTRIES, 24ABBPJ6047L1ZN, situated at 169/1/A, PHASE-I, OPP. TELEPHONE EXCHANGE, GIDC NARODA, Ahmedabad, Gujarat, 382330, called upon to show cause as to why:

(i) Erroneously refunded IGST amount of Rs. 2,36,27,545/- (Rs. Two Crore Thirty Six Lakh Twenty Seven Thousand Five Hundred Forty Five Only) should not be demanded and recovered from them under Section 74(1) of the CGST, 2017 read with Section 20 of the IGST Act, 2017;

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

(iii) Penalty should not be imposed upon them on the proposed demand at (i) above under Section 74(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017.

(iv) IGST of Rs. 28,00,980/- (Rs. Twenty Eight Lakh and Nine Hundred Eighty Only) Paid through cash ledger, should not be appropriated against their outstanding GST tax liability as per para (i) above.

DEFENCE REPLY

11. M/s. Pasupati Industries has filed their defence reply vide letter dated 22.11.2023 received on 23.11.2023 wherein they denied the allegations in the aforesaid SCN. Their reply is as under:-

11.1 M/s Pasupati Industries for the sake of clarity summarized changes made in Rule 96(10) as below:-

Rule 96 of CGST Rules, 2017			
Principal /Amending Notification	Date of Notification and effective date of operation of amendment	Comments	Gist
Notification No. 75/2017-CT.	29.12.2017 (with effect from 23.10.2017)	Rule 96(9) was inserted to impose restriction in claiming refund of IGST paid on export where registered person has received supplies from supplier who has claimed benefit of deemed export or merchant export notification.	The persons claiming refund of integrated tax paid on export of goods or services should not have received supplies on which the supplier has availed benefit of - a) NN. 48/2017-CT dated 18.10.2017 or b) NN. 40/2017-CT (Rate), dated 23.10.2017 or c) NN. 41/2017-IT (Rate), dated 23.10.2017
Notification No. 3/2018-CT.	23.1.2018 (with effect from 23.10.2017)	Rule 96(9) was brought as Rule 96(10) retrospectively. Further, it was additionally provided that the bar	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

		would also apply if supplier to registered person has availed IGST exemption under AA, EPCG or EOU.	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)	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. 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.	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. 40/2017-CT (Rate), dated 23.10.2017 or c) NN. 41/2017-IT (Rate), dated 23.10.2017 d) NN. 78/2017-Cus. dated 13.10.2017 e) NN. 79/2017-Cus. dated 13.10.2017
Notification No. 54/2018-CT.	9.10.2018 (with effect from 9.10.2018)	Another notification provided that amended Rule 96(10) would be applicable from 9.10.2018 (Phase II) This notification provided that during	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

		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.	EPCG scheme or (b) NN. 40/2017-CT (Rate), dated 23.10.2017 or (c) NN. 41/2017-IT (Rate), dated 23.10.2017 (ii) availed the benefit of (a) NN. 78/2017-Cus. dated 13.10.2017 (b) NN. 79/2017-Cus. dated 13.10.2017 except against EPCG scheme
Notification No. 16/2020-CT.	23.10.2020 (with effect from 23.10.2017)	Explanation was inserted in Rule 96(10) to provide that bar would not apply if IGST is paid and BCD is claimed as exemption under said schemes	Explanation- For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.

From the above, Notification No. 54/2018-C.T. dated 09.10.2018 makes Rule 96(10) as amended applicable from 09.10.2018. Thus, the legal position is as under:

- (i) For the period from 23.10.2017 to 08.10.2018 – Rule 96(10) will apply to a person who has received supplies from supplier who has availed IGST exemption;
- (ii) For the period from 9.10.2018 – Rule 96(10) will apply to a person who himself has availed IGST exemption.

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

11.3 They submitted that total IGST refund amounting to Rs. 2,36,27,545/- during period 23.10.2017 to 31.03.2020, pertains to export of goods which are manufactured from inputs imported under Notification No. 79/2017-Cus.

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

11.5 They stated that they have claimed total IGST refund of Rs. 2,36,27,545/- paid on Zero Rated Supplies made during the period 23.10.2017 to 31.03.2020, on which they have also availed the benefit of exemption of Notification No. 79/2017-Cus dated 13.10.2017 and not paid IGST on import of inputs. Out of said amount, they have claimed refund of IGST of Rs. 1,33,30,951/- paid on Zero Rated supplies made during the period 09.10.2018 to 31.03.2020 on which they have also availed the benefit of exemption of Notification No. 79/2017-Cus dated 13.10.2017 and not paid IGST on

import of inputs.

11.6 They submitted that department has raised demand for the total amount of IGST refund received by them during the period July-2017 to March-2020 on the basis of date provided by them, however, as per legal position, they have contravened the provision of Rule 96(10), for the period after 09.10.2018 as per Notification No. 54/2018-CT dated 09.10.2018 and therefore they have availed the refund of IGST of Rs. 1,33,30,951/- only, paid on export, after availing the benefit of Advance Authorisation, in violation of Rule 96(10) of CGST Rules, 2017.

11.7 They also referred Para 52 of Circular No. 125/44/2019-GST dated 18.11.2019, wherein it has been clarified that *"the net effect of these changes is that any exporter who himself/herself imported any inputs/capital goods in terms of notification no. 78/2017-Customs and 79/2017-customs both dated 13.10.2017, before the issuance of the notification No. 54/2018-Central tax dated 09.10.2018, shall be eligible to claim refund of the Integrated tax paid on exports"*. They contested that demand of Rs. 2,36,27,545/- is factually incorrect since department has raised demand for the total amount of IGST refund received by them during the period 23.10.2017 to 31.03.2020.

11.8 They contested that demand can only be raised for the period after 09.10.2018 till 31.03.2019 as per Notification No. 54/2018-CT dated 09.10.2018 and therefore, assuming without admitting, the demand of refund of IGST of Rs. 1,33,30,951/- only can be sustainable instead of Rs. 2,36,27,545/-, paid on export, after availing the benefit of advance authorization and demand of GST refund of Rs. 1,02,96,594/- for the export prior to 09.10.2018 is not sustainable. They also referred judgement of Hon'ble High Court of Gujarat in case of Zaveri and company vs UOI, SCA No. 15091 of 2018.

11.9 Further, they have agreed, without agreeing on merits, and to buy the peace of mind and surrendered amount of IGST refund claimed of Rs. 83,34,540/- against refund claimed for 21 Shipping Bills for the period 09.10.2018 to 31.03.2020 through DRC-03, details of which are as under:-

Sr.No.	DRC-03 ARN	DRC-03 Date	Amount of DRC-03
1.	AD240521007503P	24.05.2021	3,17,880
2.	AD241222044242R	31.12.2022	13,79,520
3.	AD2402230207789	28.02.2023	24,83,100
4.	AD240423022141W	24.04.2023	19,82,880
5.	AD240523010308K	19.05.2023	10,67,760
6.	AD240623003461N	06.06.2023	11,03,400
	GRAND TOTAL		83,34,540

11.10 They further contested that department has assumed that wherever SB contained AA number, it necessarily means violation of Rule 96(10) of CGST Rules. The Department has not verified the fact that inputs which are used in manufacture of export goods are imported without payment of IGST under AA scheme.

11.11 They also contested that order sanctioning the refund claims has attained finality and same being an appealable order, new proceedings cannot be initiated without challenging the said orders. They relied upon the following decisions:-

- (1) CC v. Millat Fibres [2011 (271) E.L.T. 512 (Guj)]
- (2) Doothat Tea Estate Kanoi Plantation (P) Ltd. v. CCE, Shillong [2001 (135) E.L.T. 386 (Tri.-Kol)]
- (3) Commissioner of C.Ex. Shillong v. Jellalpore Tea Estate [2011 (268)

E.L.T. 15 (Gau)]

(4) M/s. Eveready Industries India Ltd. v. CESTAT, Chennai [2016-TIOL-676-HC-MAD-CX = 2016 (337) E.L.T. 189 (Mad)]

(5) CCE, Tirupathi v. Panyam Cements & Minerals Industries Ltd [2016 (331) E.L.T. 206 (A.P.)]

11.12 They further contended that they are duly entitled for refund amounting to Rs. 2,36,27,545/- for the period July-2017 to March-2020, in terms of Rule 96A of CGST Rules, for refund of accumulated ITC, in case if goods were exported without payment of tax, under Bond/LUT. Thus, demand to that extent is not sustainable being "Revenue Neutral". Even otherwise also, they are entitled for refund under Rule 96A of CGST Rules. They relied upon the following decisions:-

(1) Zenith Spinners v. Union of India – 2015 (326) E.L.T. 97 (Guj) affirmed in 2015 (326) ELT 23 (Supreme Court)

(2) In the case of 2021 (378) E.L.T. 406 (Mad) REIL Electricals India Ltd vs Jt. Secretary (Revisionary Authority), New Delhi

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

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

(a) Suvikram Plastex Pvt Ltd v. CCE, Bangalore – III 2008 (225) ELT 282 (T)

(b) Rallis India Ltd v CCE, Surat 2006 (201) ELT 429 (T)

(c) Patton Ltd v CCE, Kolkata – V 2006 (206) ELT 496 (T)

(d) CCE, Tirupati v Satguru Engineering & Consulting Pvt Ltd 2006 (203) ELT 492 (T)

(e) Indian Hume Pipes Co. Ltd. v. CCE, Coimbatore 2004 (163) ELT 273 (T)

(f) Hon'ble Supreme. Court in the case of Akbar Badruddin Jiwani v Collector of Customs reported at 1990 (047) ELT 0161 SC

11.15 In view of the above submission, they requested to drop the demand of Tax of Rs. 2,36,27,545/- along with interest and penalty.

PERSONAL HEARING

12. Personal Hearing in the instant case was held on 21.02.2024 in virtual mode. Ms Madhu Jain, Advocate, duly authorized representative of the Taxpayer appeared for Personal Hearing via virtual mode. She re-iterated their written submission dated 23.11.2023. She further requested to decide the matter on merits.

DISCUSSION AND FINDINGS

13. I have carefully gone through the records of the case, defense reply dated 22.11.2023 received on 23.11.2023, submission made by the Taxpayer during the course of personal hearing and proceed to decide the case.

14. Briefly stated the facts of the case are that M/s Pasupati Industries having registration GSTIN No. 24ABBPJ6047L1ZN is engaged in the supply of *“synthetic organic colouring matter, whether or not chemically defined; preparations as specified in note 3 to this chapter based on synthetic organic colouring matter; synthetic organic products of a kind used as fluorescent brightening agents or as luminophores, whether or not chemically defined - Synthetic organic colouring matter and preparations based there on as specified in Note 3 to this Chapter, falling under Chapter 32”*.

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

16. Based on the above intelligence, an investigation was initiated against the taxpayer and they submitted details regarding the refund of IGST Paid on exports wherein benefit of Advance Authorization License had already been availed at the time of Import of Goods. As per the details submitted by the taxpayer they have claimed total refund of IGST Rs. 2,36,27,545/- for the period 23.10.2017 to 31.03.2020 which is restricted as per Rule 96(10) of CGST Rules, 2017. Accordingly, impugned SCN has been issued to the Taxpayer.

17. It is alleged in the impugned SCN that the Taxpayer had availed the benefit of Notification No. 79/2017-Customs dated 13.10.2017 on imported inputs and thereafter the finished /manufactured goods were exported on payment of IGST & refund of IGST amounting to Rs. 2,36,27,545/- was claimed of such IGST paid during the period from 23.10.2017 to 31.03.2020 in contravention of Rule 96(10) of CGST Rules, 2017. Thus, I find that the issue to be decided is to whether the said Taxpayer is liable to pay erroneously refunded amount of Rs. 2,36,27,545/- during the period from 23.10.2017 to 31.03.2020.

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

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

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

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

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

20. 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.

21. 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.

22. The purpose of introducing the above provision of Rule 96(10) of CGST Rules, 2017 was made clear in the GST council meeting and a clarification in the form of Circular No. 45/19/2018-GST dated 30th May 2018 was issued. Para-7.1 of the above circular, emphasized the objective of introduction of sub-rule (10) of Rule-96 which reads as under:

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

23. 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.

24. 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."

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

26. 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:-

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

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

2. In the Central Goods and Services Tax Rules, 2017, in rule 96, for sub-rule (10), the following sub-rule shall be substituted and shall be

deemed to have been substituted with effect from the 23rd October, 2017, namely:-

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

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

27. 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.

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

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

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

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

“However, it is also made clear that Notification No. 54/2018 is required to be made applicable w.e.f 23rd October, 2017 and not prior thereto from the inception of Rule 96(10) of the CGST Rules. Therefore, in effect Notification No. 39/2018 dated 04.09.2018 shall remain in force as amended by the Notification No. 54/2018 by substituting sub

rule (10) of Rule 96 of CGT Rules, in consonance with subsection (3) of Section 54 of CGST Act and Section 16 of IGST Act. The Notification No. 54/2018 is therefore held to be effective w.e.f 23rd October 2017. Rule is made absolute to the aforesaid extent.”

In view of the above, the Notification No. 54/2018-Central Tax dated 09.10.2018 is made retrospective effective from 23rd October 2017.

30. Further, an Explanation was added to Rule 96(10) of the Rules by Notfn. No. 16/2020-Central Tax dated 23.3.2020 as follows.

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

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

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

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

32. On going through facts of the case, it was noticed that the Taxpayer had imported the inputs under advance authorization license and availed full exemption from payment of IGST on the same. The taxpayer had further exported their final products on payment of IGST and claimed refund of IGST paid as mentioned herein above.

33. I find that the Taxpayer in their reply to SCN has made reference to various notifications issued in respect of Rule 96(10) of CGST Rules, 2017 and para 52 of Circular No. 125/44/2019-GST dated 18.11.2019 and stated that vide Circular No.125/44/2019-GST dated 18.11.2019, it was clarified that any exporter who have imported any input/capital good in terms of Notification No.78/2017-custom and No.79/2017 custom both dated 13.10.2017 before the issuing of Notification No.54/2018 dated 09.10.2018, shall be eligible to claim refund of IGST paid on export. They further

submitted that vide Para 52 of the said circular, once the refund become eligible, retrospective notification in the same would not curtail the benefit that tax payer ought to have. Thus, they did not agree for demand for the period prior to 09.10.2018.

34. Further, I find that the assessee agreed with the demand of erroneous refund of Rs. 1,33,30,951/- for the period from 09.10.2018 to 31.03.2020 and paid back partial amount of refund of Rs. 83,34,540/- erroneously availed by them. They submitted that they have paid the said amount without agreeing on the merits and to buy peace of mind.

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

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

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

38. From the above discussion, I find that the said Taxpayer had availed the benefit of Notification No.79/2017-Customs dated 13.10.2017 and thereafter the finished /manufactured goods were exported on payment of IGST & refund was claimed of such IGST paid. The refund of IGST paid on Zero Rated export supplies will not be available if the claimant of such refund had availed the benefit of Notification No. 79/2017-Customs dated 13.10.2017. As per the provisions of Rule 96(10) of the CGST Rules, 2017, the said refund of IGST of Rs. 2,36,27,545/- is inadmissible to the said Taxpayer. In view of the above, I find that the said taxpayer has contravened the following provisions of law:

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

39. The Taxpayer has further contested that they have not suppressed any fact with an intention to evade payment of tax and hence demand can't be raised under section 74 of CGST Act, 2017 and penalty is also not imposable. On perusal of the reply to SCN, I find that the contention of the said tax payer is not correct as from the facts, it is found that the taxpayer was fraudulently claiming refund of such IGST by filing shipping bills and received such refunds through automatic route, even when such exports were made towards fulfillment of their export obligation. This was nothing but a fraudulent way of encashment of unutilized ITC available in balance, as the exported goods were evidently manufactured out of exempted supplies received. By following such modus operandi, the said taxpayer was able to get refund of such unutilized ITC in the guise of ITC paid on Zero-rated supplies, through automatic mechanism without any conditions, procedures, departmental scrutiny and by dodging the restrictive formula provided under Rule 89(4), 89(4A) 89(4B) or 89 (5), as the case may be. It is, therefore, evident that they had suppressed the erroneous refund of IGST paid on exports and accordingly the taxpayer's liabilities were not properly discharged. The failure to properly discharge their Tax liability is utter disregard to the requirements of law and breach of trust deposed on them is outright act in defiance of law by way of suppression, concealment & non-furnishing value of erroneous refund with intent to evade payment of tax. It is also a fact that the said tax payer did not pay the erroneous refund before proceedings initiated by the Department. It was only when the department had initiated inquiry against them they paid

certain amount of tax. The above said erroneous refund of IGST paid on export, was unearthed after initiating inquiry by the officers of Central Tax, Ahmedabad North and therefore had the investigation not been initiated by this office, the said facts would have not come to light. All the above facts of contravention on the part of the Taxpayer had been committed with an intention to evade the payment of GST by suppressing the facts. Therefore, the same is required to be demanded and confirmed from them under Section 74(1) of the CGST Act, 2017/Gujarat GST Act'2017 read with Section 20 of IGST Act'2017 by invoking extended period of five years.

40. Further, I reproduce provisions of Section 74(5) & (6) of the CGST Act, 2017 which reads as follows:-

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

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

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

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

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

43. Thus, on perusal of the facts of the case and in view of the

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

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

45. I find that the Taxpayer has already deposited IGST amount of Rs. 83,34,540/- through DRC-03 which is tabulated as under:-

Sr. No.	DRC-03 ARN	DRC-03 Date	Amount of DRC-03	Reasons for payment mentioned in DRC-03
1.	AD2405210 07503P	24.05.2 021	3,17,88 0	Payment on account of rejection of IGST refund, in terms of Rule 96(10) of CGST Rules, 2017, claimed on export, for Shipping Bill No. 8363672 dtd 20.10.2018 for goods imported under Advance Licence Scheme
2.	AD2412220 44242R	31.12.2 022	13,79,5 20	Payment on account of rejection of IGST refund, in terms of Rule 96(10) of CGST Rules, 2017, claimed on export of goods with payment of tax for Shipping Bill No. 3222183 dtd 02.04.2019, No. 3264973 dtd 04.04.2019, No. 3580460 dtd 18.04.2019 & No. 3652311 dtd 22.04.2019, against goods imported under the Advance Authorisation Scheme, "under protest".
3.	AD2402230 207789	28.02.2 023	24,83,1 00	Payment on account of rejection of IGST refund, in terms of Rule 96(10) of CGST Rules, 2017, claimed on export of goods with payment of tax for Shipping Bill No. 3399898 dtd 10.04.2019, No. 3793330 dtd 27.04.2019, No. 3793330 dtd 27.04.2019, No. 3819802 dtd 29.04.2019, No. 3873063 dtd 01.05.2019 & No. 4295101 dtd 20.05.2019 against goods imported

				under the Advance Authorisation Scheme, "under protest".
4.	AD2404230 22141W	24.04.2 023	19,82,8 80	Payment on account of the surrender of IGST refund, obtained in contravention of Rule 96(10) of CGST Rules, 2017, claimed on IGST paid export, which is liable to be rejected, with respect to Shipping Bill - SB No. 8314618 dtd 17.10.2018, SB No. 8385957 dtd 22.10.2018, SB No. 9164228 dtd 27.11.2018, SB No. 8748807 dtd 05.11.2018.
5.	AD2405230 10308K	19.05.2 023	10,67,7 60	Payment on account of the surrender of IGST refund, obtained in contravention of Rule 96(10) of CGST Rules, 2017, claimed on IGST paid export, which is liable to be rejected, with respect to Shipping Bill - SB No. 8983433 dtd 19.11.2018, SB No. 9322845 dtd 03.12.2018, SB No. 1181335 dtd 08.01.2019, SB No. 2641601 dtd 11.03.2019.
6.	AD2406230 03461N	06.06.2 023	11,03,4 00	Payment on account of the surrender of IGST refund, obtained in contravention of Rule 96(10) of CGST Rules, 2017, claimed on IGST paid export, which is liable to be rejected, with respect to Shipping Bill - SB No. 1621176 dtd 28.01.2019, SB No. 1648053 dtd 29.01.2019 and SB No. 1718122 dtd 31.01.2019.
	GRAND TOTAL		83,34,5 40	

As the Taxpayer has already deposited amount of Rs. 83,34,540/- in respect of IGST refund received by them in contravention of Rule 96(10) of CGST Rules, 2017 against Shipping Bills mentioned in respective DRC-03, the same needs to be appropriated against said demand of IGST of Rs. 2,36,27,545/-.

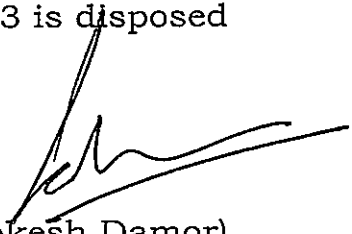
46. From the above facts, I hold that the said amount of IGST of Rs. 2,36,27,545/- is liable to be demanded and recovered from the said Taxpayer under the provisions of Section 74(1) of the CGST Act, 2017 read with the Section 74(1) of the Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 along with applicable interest under the provisions of Section 50 of the Act, *ibid.* I find that the said tax payer has already paid the IGST amount of Rs. 83,34,540/- and the same needs to be appropriated against the said demand. Further, I find that the Taxpayer is also liable for penalty equivalent to the tax under Section 74(1) of the CGST Act, 2017 read with Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017.

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

O R D E R

- (i) I confirm the demand of erroneously refunded IGST amounting to Rs. 2,36,27,545/- (Rs. Two Crore Thirty Six Lakh Twenty Seven Thousand Five Hundred Forty Five Only) and order to recover the same from them under the provisions of sub-section (1) of Section 74 of the CGST Act, 2017 and the corresponding entry of the Gujarat State Goods and Services Tax Act, 2017 and Section 20 of the IGST Act, 2017.
- (ii) I order to appropriate the IGST of Rs.83,34,540/- (Rupees Eighty Three Lakh Thirty Four Thousand Five Hundred Forty Only) paid through Cash Ledger against the demand of IGST liability as per para (i) above;
- (iii) I order to demand interest at the rates prescribed and recover the same from them under the provisions of Section 50(1) of the CGST Act, 2017 and the corresponding entry of the Gujarat State Goods and Services Tax Act, 2017 and Section 20 of the Integrated Goods and Service Tax Act, 2017;
- (iv) I impose a penalty of Rs. 2,36,27,545/- (Rs. Two Crore Thirty Six Lakh Twenty Seven Thousand Five Hundred Forty 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 the taxpayer. In terms of sub section (11) of Section 74 ibid, where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded;

48. Accordingly, the Show Cause Notice No. GEXCOM/AE/INV/GST/1491/2023/86 dated 31.03.2023 is disposed off.


(Lokesh Damor)
Additional Commissioner
Central GST & CE,
Ahmedabad North

F.NO.GST/15-06/OA/2023

DT. 29-02-2024

By RPAD

To,
M/s. PASUPATI INDUSTRIES,
(GSTIN : 24ABBPJ6047L1ZN)
169/1/A, PHASE-I, OPP. TELEPHONE EXCHANGE,,
GIDC NARODA, Ahmedabad, Gujarat, 382330

Copy to:

1. The Commissioner, Central GST & Central Excise, Ahmedabad North.
2. The DC/AC, Central GST & Central Excise, Div- I Ahmedabad North.
3. The Superintendent, Range-IV, Division-I, Central GST & Central Excise, Ahmedabad North with a request to create GST DRC-07 and upload the same alongwith OIO electronically in terms of DSR advisory No.01/2018 dated 26.10.2018 of the ADG, Systems & Data Management, Bengaluru.
4. The Superintendent (System), Central GST & Central Excise Ahmedabad North for uploading the order on website.
5. Guard File.