


<p>आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क, अहमदाबाद - उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा, अहमदाबाद- 380009</p>		<p>GST ONE NATION...ONE TAX...ONE MARKET</p> <p>OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009</p>
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निबन्धित पावती डाक द्वारा/By R.P.A.D
फ़ा.सं./F.No. GST/15-62/OA/23-24

DIN-20240364WT000000AA86

आदेश की तारीख/Date of Order: - 04.03.2024

जारी करने की तारीख/Date of Issue :- 04.03.2024

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 90/ADC/ LD /GST/2023-24

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

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 90 दिन के अन्दर आयुक्त (अपील), 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।

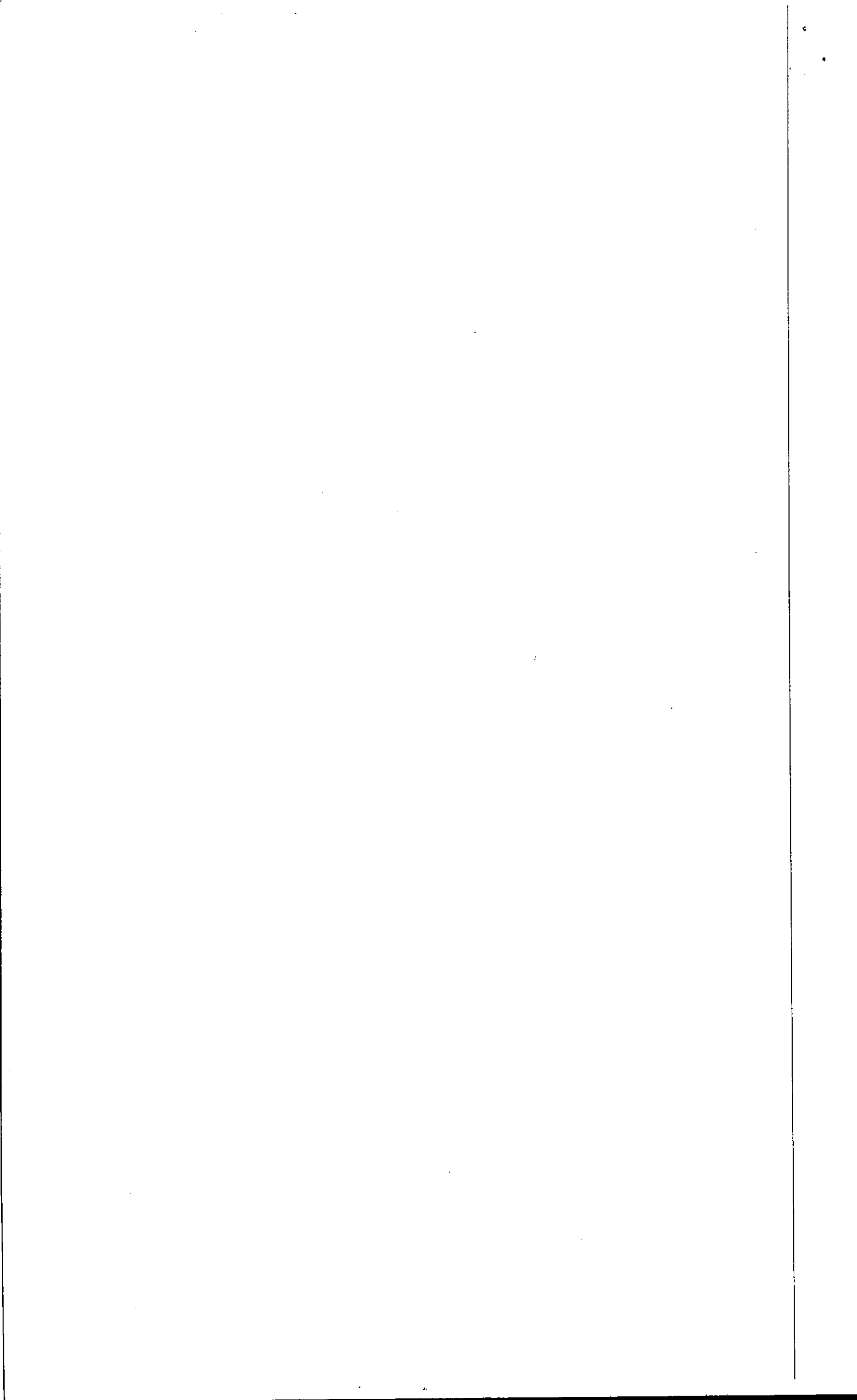
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रू. 5) 00. पांच रूपये (का न्यायालय शुल्क टिकट लगा होना चाहिए।

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. GST/15-62/OA/23-24 dated 27.09.2023 issued to M/s The BTTCO Overseas, having GSTIN: 24AABFT6577C1Z8, 6, Ashirvad Complex, Near Sardar Patel Seva Samaj Hall, Ahmedabad, Gujarat-380009.



BRIEF FACTS OF THE CASE:

M/s The BTTCO Overseas having their principal place of business at 6, Ashirvad Complex, Near Sardar Patel Seva Samaj Hall, Ahmedabad, Gujarat-380009 (hereinafter referred to as "M/s BTTCO" or "the taxpayer" for sake of brevity) are engaged in the supply various taxable goods and they are registered with the department having GSTIN 24AABFT6577C1Z8 and falls under the jurisdiction of Central GST & Central Excise, Ahmedabad North Commissionerate.

2. The Directorate General of Analytics & Risk Management, New Delhi vide report 49 & 49D both issued from F.No.DGARM/TT/BIA/RTP 2022-NTCP dated 19.09.2022 and 06.10.2022 is indulged in violating of Rule 96(10) of CGST Rules, 2017 by way of getting refund of IGST on export of their goods for which inputs/raw material were procured under benefits of Notification No. 48/2017-Central Tax dated 18.10.1017 or 78/2017-Cus or 79/2017-Cus both dated 13.10.2017 or by procuring finished goods as merchant exporter at the concessional rate of tax where suppliers of such finished goods have availed benefits under Notification No.40/2017-CT(R) or 41/2017-IT(R) both dated 23.10.2017. Rule 96(10) of CGST Rules, 2017 provides an express debar to IGST refunds in case the exporter has received inward supplies where benefits of any of these notifications have been availed.

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

Total FOB Value during the period 13.10.2017 - 31.03.2022(Amt in Rs.)	Amount of IGST Refund Claimed in Shipping Bills (Amt in Rs.)
1,21,41,00,000/-	5,35,00,000/-

3. An inquiry was initiated against M/s BTTCO and since they appeared to have availed the benefit of the above said notifications during the period from 13.10.2017 to 31.03.2022, details of exports made by them during the said period were called for under letters bearing F.NO.CGST/WT0701/DGARM-49-A,B,C/26/2022-23 dated 22.12.2022, 11.01.2023, 06.03.2023 and 28.03.2023. In response, the taxpayer vide their letter dated 06.04.2023 submitted that being a merchant exporter with no domestic sales, thereby, they don't fall under the category mentioned in the letters/DGARM Reports. They further added that they have not taken any refund in contravention to Rule 96(10) of the said rules.

3.1. Mere submission given by any taxpayer without backing the same by any documentary evidence can't be considered valid ground for closing any inquiry initiated under any tax law especially keeping in view the fact that the taxpayer, themselves have submitted vide their letter dated 06.04.2023 that they are merchant exporter with nil domestic sales which appeared to be irrelevant in the instant case as they were asked to provide details of their export sales with other supporting documents to check whether any IGST refund has been claimed on export sales of goods for which inputs/raw material have been procured by availing exemption under Notification No. 48/2017-Central Tax dated 18.10.1017 or 78/2017-Cus or 79/2017-Cus both dated 13.10.2017 or such goods have been procured for export purpose at the concessional rate of tax where suppliers of such finished goods have availed the

benefits under Notification No. 40/2017-CT(R) or 41/2017-IT(R) both dated 23.10.2017. Therefore, further letters bearing F.NO.CGST/WT0701/DGARM-49A,D/BITTCO/26/2023 dated 12.04.2023 & 20.04.2023 were also sent to the taxpayer for providing the required details with documentary evidences pertaining to the period in question but the taxpayer has failed in providing the required details or responding to the repeated reminders in a justified manner till the time of issuance of this SCN.

4.1. 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 procured/importer inputs under Notification No. 48/2017-Central Tax dated 18.10.1017or 78/2017-Cus or 79/2017-Cus both dated 13.10.2017 and availed full exemption from payment of tax 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 procured under the said notifications 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.

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

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

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

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

(1).

(2).

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

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

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

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

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

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

4.4. 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/finished goods procured by them have enjoyed benefits of certain notifications mentioned therein in the Rule 96(10) including the Advance Authorization benefits with retrospective effect from 23.10.2017.

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

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

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

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

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

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

Thus, from the perusal of above notification, it can be observed that sub-clause (a) and (b) of sub-rule 10 of Rule 96 are merged and this notification 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 under the heading Restrictions imposed by sub rule (10) of Rule 96 of the CGST Rules, it was clarified in the para 52 of the said Circular that:

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

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

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

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

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

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

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

From the above, it appears 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 inputs.

In the instant case, the taxpayer appeared to have availed full exemption of tax at the time of procuring inputs/raw material under Notification No. 48/2017-Central Tax dated 18.10.1017 or 78/2017-Cus or 79/2017-Cus both dated 13.10.2017 which have been used in the manufacture of exported goods

or by procuring finished goods at the concessional rate of tax under Notification No. 40/2017-CT(R) or 41/2017- IT(R) both dated 23.10.2017 & 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.

5. Since the Tax Payer had failed in furnishing the required information called for by the department as discussed at Para No. 03 & 3.1 above despite repeated reminders, it was not possible to quantify the actual amount of refund taken by them by availing full exemption under the notifications discussed here-in-above, no option has left at this juncture except to rely upon figures/data provided by DGARM under Report No.49 & 49D as detailed in the table appearing at Para No.2.1 above.

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

The Taxpayer appeared to have availed the double benefit, one at the time of procuring/importing tax free inputs in terms of Notification No.48/2017-Central Tax dated 18th October, 2017 or 78/2017-Cus or 79/2017-Cus both dated 13.10.2017 or by procuring finished goods for export purpose as merchant exporter at the concessional rate of tax from the suppliers availing benefits of Notification No. 40/2017-CT(R) or 41/2017- IT(R) both dated 23.10.2017 and on the other hand by claiming the refund on the exports made on payment of IGST in terms of Rule 96 of Central Goods and Services Tax Rules, 2017 as mentioned above.

However, as per the provisions of Rule 96(10) of CGST Rules, the taxpayer can avail either refund of IGST paid on goods exported or exemption of tax on the goods procured/imported under Notification No.48/2017-Central Tax dated 18th October, 2017 or 78/2017-Cus or 79/2017-Cus both dated 13.10.2017. Similarly, if any merchant exporter procures finished goods at the concessional rate of tax under Notification No. 40/2017-CT(R) or 41/2017- IT(R) both dated 23.10.2017 for further export of the same, such export should be made without payment of IGST and even if IGST has been paid on such merchant export no refund of such IGST paid suo moto by the merchant exporter can be claimed under the provisions of Rule 96(10) of CGST Rules, 2017. Once exemption of tax is availed on the input materials/raw materials/finished goods (for merchant export), refund of IGST on export good stands prohibited and vice versa.

6.1 As no details had been submitted by the taxpayer till the time of issuance of SCN, the total amount of IGST refund taken to the tune of Rs.5,35,00,000/- appeared to have been taken on exports after availing benefits of Notification No.48/2017-Central Tax dated 18th October, 2017 or 78/2017-Cus or 79/2017-Cus both dated 13.10.2017 or 40/2017-CT(R) or 41/2017- IT(R) both dated 23.10.2017 which is contrary to and inadmissible under the provisions of Rule 96(10) of the CGST Rules, 2017.

6.2. Thus, the amount of Rs.5,35,00,000/- of IGST Refund on finished/final goods exported by the taxpayer, for which raw material/inputs/finished/final goods appeared to have been procured under the benefits of Notification No.48/2017-Central Tax dated 18th October, 2017 or 78/2017-Cus or 79/2017-Cus both dated 13.10.2017 or 40/2017-CT(R) or 41/2017- IT(R) both

dated 23.10.2017, was required to be demanded and recovered from the taxpayer under the provisions of Section 74(1) of the CGST Act, 2017.

7. LEGAL PROVISIONS:

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

7.1.1 Cross empowerment of Central Tax/CGST officers:

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

(A) Section 6 of CGST Act 2017:

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

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

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

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

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

(B) Section 6 of SGST Act 2017:

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

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

(a) where any proper officer issues an order under this Act, he shall also issue an order under the Central Goods and Services

Tax Act, as authorised by the said Act under intimation to the jurisdictional officer of central tax;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.4 Rule 96(10) of the CGST Rules 2017

As per Rule 96(10) of the CGST rules, 2017 the taxpayer availing refund of IGST paid on Zero rated Outward Supplies should not have availed the benefit of Notification No.48/2017-Central Tax dated 18th October, 2017 or 78/2017-Cus or 79/2017-Cus both dated 13.10.2017.

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

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

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

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

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

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

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

Sec. 59 of CGST Act, 2017

The Government had introduced self-assessment system under a trust-based regime which casts the onus of proper assessment and discharging

of the tax on the taxpayer. Section 59 of the Central Goods and Services Tax Act, 2017 provides that every registered person shall self-assess the taxes payable under this Act. Thus, it appears that the taxpayer had failed to self-assess the eligibility of the refund thereby contravening the provisions of Section 59 of the Central Goods and Service Tax Act, 2017.

Sec. 39(7) of CGST Act 2017

[(7) Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:

Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month, in such form and manner, and within such time, as may be prescribed:

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

Sec. 39(9) of CGST Act 2017

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

"Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act;

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

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

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

7.6 Interest on delayed payment of tax

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

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

"Section 20. Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax 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 had contravened the following provisions of the CGST Act, 2017 and Rules made thereunder and 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 had fraudulently claimed the refund of IGST paid on export of Goods.
- (ii) Section 16 of the IGST Act, 2017 in as much as they had 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 had availed the benefit of said rule although they were not eligible for the same in light of conditions laid down in Rule 96(10) of the CGST Rules, 2017.
- (iv) Section 39(7) & 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 had failed to pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return.

9.1 It is pertinent to mention here that the system of self-assessment is specifically incorporated in respect of GST under the provisions of Section 59 of CGST Act' 2017 /Gujarat GST Act'2017 which reads as "59. Every registered person shall self-assess the taxes payable under this Act and furnish a return for the tax period as specified under section 39". It appeared that the said taxpayer had suppressed wrong availment of refund as discussed herein above and thereby it appeared that they had 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 provided under DGARM Report No.49 & 49D as well as from the failure of the taxpayer in furnishing the required information despite repeated reminders given by the department, it appeared that the taxpayer had suppressed the erroneous refund of IGST paid on exports and their tax liabilities had not been discharged properly. The failure to properly discharge their Tax liability is utter disregard to the requirements of law and breach of trust deposited on them, is outright act in defiance of law by way suppression, concealment & non-furnishing value of erroneous refund with intent to evade payment of tax. The above said erroneous refund of IGST availed/taken on exports, is unearthed after investigation was conducted by officers of Central Tax, Ahmedabad North in pursuance of DGARM Report No.49 and therefore had the investigation not been initiated by the department, the said facts would have not come to light. All the above facts of contravention on the part of the Taxpayer have been committed with an intention to evade the payment of tax by suppressing the facts. Therefore, the same is required to be demanded from them under Section 74(1) of the CGST Act, 2017/Gujarat GST Act'2017 read with Section 20 of IGST Act, 2017 by invoking extended period of five years. Since 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 and also refund of IGST has been availed/taken erroneously. These non-payments of Tax had not been shown in their statutory GST returns. It, therefore, appeared that there was a case of suppression of facts with intent to evade the payment of tax. It appeared that short paid/ not paid IGST was to be demanded/ recovered from the said taxpayer under the provisions of Section 74(1) of the CGST Act' 2017 read with the provisions of Section 20 of the IGST Act,2017.

Further, CBIC issued Notification No. 13/2022-Central Tax dated 05.07.2022 vide which time limits prescribed under Sec. 73(9) & 73(10) was extended and reads as under:-

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

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

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

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

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

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

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

9.5. In view of the above facts, the erroneously refunded amount of Rs.5,35,00,000/- 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 Act and the Rules made there under. Further, by such acts of omission and commission, the Taxpayer appeared have also rendered themselves liable for penal action under Section 74(1) of CGST Act, 2017 for contravention of provision of CGST Act, 2017 /IGST Act, 2017 and rules made thereunder. Further, they also appear to be liable for penal action under Section 122(1)(xvii) of CGST Act, 2017 for their failure in furnishing the required information despite repeated reminders/correspondence made by the department in this regard.

9.6. Further, Form GST DRC-01A regarding intimation of tax ascertained as being payable under Section 74(5) of CGST Act, 2017 before issuing of Show Cause Notice was issued to the taxpayer on 18.09.2023, however, till date of issuance of Show Cause Notice, this office had not received any response from the taxpayer.

10. Therefore, a Show Cause Notice F.No. GST/15-62/OA/23-24 dated 27.09.2023 was issued to M/s. BTTCO Overseas having their principal place of business at 6, Ashirvad Complex, Near Sardar Patel Seva Samaj Hall,

Ahmedabad, Gujarat-380009 by the Additional Commissioner, CGST Ahmedabad North, calling upon them to show cause as to why:-

- (i) The erroneously refunded IGST amount of Rs. 5,35,00,000/- (Rs. Five Crores Thirty Five Lacs only) should not be demanded and recovered from them under Section 74(1) of the Central Goods & Service Tax Act, 2017 read with Section 20 of the IGST Act, 2017;
- (ii) Interest at the appropriate rate should not be demanded and recovered from them on the proposed demand mentioned at (i) above, under the provisions of Section 50(1) of the Central Goods & Service Tax Act, 2017 read with Section 20 of the IGST Act, 2017;
- (iii) Penalty should not be imposed upon them on the proposed demand at (i) above under Section 74(1) of the CGST Act, 2017 read with corresponding Section of Gujarat GST Act, 2017 read with Section 20 of the IGST Act, 2017;&
- (iv) Penalty should not be imposed upon them under Section 122(1)(xvii) of CGST Act, 2017.

DEFENSE REPLY:-

11. M/s BTTCO had filed a reply dated 22.09.2023, wherein, they furnished annexure containing details of export invoices and details of purchases shipping bill-wise, however, they did not provide any supporting documents, viz. Shipping Bills, Purchase Invoice, etc. in this regard.

PERSONAL HEARING

12. Adhering to the principal of natural justice, personal hearing was provided to M/s BTTCO on 09.02.2024. Shri Dinesh Lunkad, Partner of M/s BTTCO appeared for personal hearing. He outright stated that the Show Cause Notice was wrong and the turnover mentioned in the SCN does not pertain to their company M/s. The BTTCO Overseas.

DISCUSSION AND FINDINGS

13. I have carefully gone through the records of the case, defense reply dated 22.09.2023 and submission made by M/s BTTCO during the course of personal hearing and proceed to decide the case. As per Annexure-A to their reply, they had paid IGST of Rs.1,56,91,484.47 on goods exported by them, i.e. refund claimed by them on goods exported on payment of IGST, during the period from July 2017 to March 2022. However, M/s BTTCO did not provide any supporting documents, viz. Shipping Bills, Purchase Invoice, etc. in this regard.

14. It is alleged in the SCN that M/s BTTCO had received refund of IGST amounting to Rs. 5,35,00,000/- paid on exports (Zero Rated Supplies) made during period from 13.10.2017 to 31.03.2022. The moot point to be decided is as to whether the noticee had violated any of the provisions of Rule 96(10) of the CGST Rules, 2017 or otherwise and the refund of IGST paid on the exported goods is erroneous or not.

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

have noted that Section 54 of the CGST Act, 2017 deals with the provisions related to refund, which also includes refund of tax paid on zero rated supplies of goods or services or both. Zero rated supplies have been defined in Section 16 (1) of the IGST Act, 2017 as (a) export of goods or services or both and, (b) supply of goods or services or both to a SEZ developer or a SEZ unit. I have also noted that Section 16(3) of the IGST Act, 2017 provides for a registered person making zero rated supplies to claim refund under the following two options:-

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

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

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

(a) received supplies on which the benefit of the Government of India, Ministry of Finance notification No. 48/2017-Central Tax, dated the 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. 40/2017Central 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.”

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

18. The procedure regarding claiming of refund is 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 of the CGST Rules, 2017. For refund of IGST paid on goods exported out of India, as mentioned supra, the shipping bill itself is deemed to be an application for refund. In such cases, the IGST module has an inbuilt mechanism to

automatically grant refund after validating the shipping bill data available in ICES against the GST returns data transmitted by GSTN. If the necessary matching is successful, ICES processes the claim for refund and the relevant amount of IGST paid with respect to each shipping bill is electronically credited to the exporter's bank account. Thus, in terms of the restriction imposed under Rule 96(10) of the CGST Rules, the exporter ought to have exported the goods under LUT instead of payment of IGST because once the export is made under payment of IGST, the filing of the shipping bill is treated as filing of refund claim as 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 notifications specified in the rule is availed.

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

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

(x) with effect from 23rd October, 2017, in rule 96,
"(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have received supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 48/2017-Central Tax dated the 18th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 (E) dated the 18th October, 2017 or notification No. 40/2017-Central Tax (Rate) 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3 Sub-section (i), vide number G.S.R 1320 (E) dated the 23rd October, 2017 or any notification No. 41/2017-Integrated Tax (Rate) dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E) dated the 23rd October, 2017 or notification No. 78/2017-Customs dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E) dated the 13th October, 2017 or notification No. 79/2017-Customs dated the 13th October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E) dated the 13th October, 2017."

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

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

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

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

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

Integrated Tax (Rate), dated the 23rd October, 2017 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rd October, 2017 has been availed; or

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

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

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

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

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

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

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

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

publication in the Official Gazette i.e. 09.10.2018. The said Notification reads as:-

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

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

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

19. As per the records of the case, the department had received an DGARM report that M/s BTTCO had availed erroneous refund of Rs. 5,35,00,000/- on goods exported with payment of IGST and had also availed benefits of notifications specified in Rule 96(10) of the CGST Rules, 2017. Thus, they had violated the provisions of Rule 96(10) of the CGST Rules. As a result of which, the SCN was issued for the period 13.10.2017 to 31.03.2022 for the total amount of IGST of Rs. 5,35,00,000/- paid on the exported goods in contravention of Rule 96(10) of the CGST Rules, 2017. I find that the amount of refund was arrived at on the basis of DGARM report, however, M/s BTTCO have challenged the said amount, however, they did not provide any supporting documents in this regard. Accordingly, to arrive at correct amount of refund of IGST paid on exported goods, I consider the amount of IGST paid on zero rated supplies shown in GSTR-3B Returns for the concerned months, i.e. for the period from October 2017 to March 2022 (Column 3.1(b) of GSTR-3B Return). As per the GSTR-3B Returns, M/s BTTCO have paid IGST of Rs.1,43,49,269/- on Zero Rated Supplies. In absence of any other details, I consider this as the amount of refund availed by M/s BTTCO during the period from October 2017 to March 2022 and proceed to decide the issue on the basis of material available on record and on merits.

20. Firstly, I take up the defense reply submitted by BTTCO. I find that in the defense reply, M/s BTTCO have only provided details of goods exported by them and details of goods purchased by them in tabular format without any supporting document. They have nowhere provided details of benefits availed by them, nor have they stated that they have not availed benefits of any notification specified in Rule 96(10) of the CGST Rules, 2017.

21. During the course of personal hearing, Partner of M/s BTTCO stated that the turnover mentioned in the SCN does not pertain to their firm. He did not

dispute the merits of the case or denied having availed benefits of any notification specified in Rule 96(10) of the CGST Rules, 2017.

22. I find that M/s BTTCO was given ample opportunities to provide documents pertaining to exports done by them and benefits availed by them vide letters dated 22.12.2022, 11.01.2023, 06.03.2023, 28.03.2023, 12.04.2023 & 20.04.2023 by the Jurisdictional Authorities even before issuance of Show Cause Notice. However, the taxpayer did not provide any documents which would establish that they had not availed benefits of any notification specified in Rule 96(10) of the CGST Rules, 2017. Further, they never challenged the SCN on merits in their defense reply or during the course of personal hearing. Their only contention was that turnover mentioned in the SCN does not pertain to their firm. M/s BTTCO failed to provide documents that would establish that they have not availed any benefit under notifications specified in Rule 96(10) of the CGST Rules, 2017, though they were given opportunities for furnishing the same. I find that Hon'ble High Court of Kerala in the case of United Mills vs. Collector of Customs & C.Ex., Cochin (reported in 2000 (124) E.L.T. 53 (Ker.) has held that where full opportunity is given to produce evidence, principle of natural justice is not violated. Relevant portion of the said decision is reproduced below:-

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

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

24. Further, I find that effective date of application of Notification No. 54/2018-CT is already settled by The Hon'ble Gujarat High Court in the case of Cosmo Films Ltd. v. UOI (reported in 2020 (43) GSTL 577 (Guj)) wherein Hon'ble Gujarat High Court has held that - Rule 96(10) as substituted w.e.f. 09.10.2018 vide Notification No. 54/2018-CT, shall apply retrospectively from 23.10.2017. A relevant text of the said judgment is reproduced below.

“8.5 Rule 96 of the CGST Rules provides for procedure of refund of Integrated Tax paid on goods or services exported out of India, as per Section 54 of the CGST Act. Rule 96(10) as it originally existed, when the Rules came into force provided that the persons claiming refund of Integrated Tax paid on export of goods or services should not have received supplies on which the supplier has availed the benefit from Government of India, Ministry of Finance, under Notification No. 48/2017, dated 18th October, 2017 or Notification No. 40 of 2017, dated 23rd October, 2017 or Notification No. 41 of 2017-Integrated Tax (Rate), dated 23rd October, 2017 or Notification No. 78 of 2017-Customs, dated 30th October, 2017 or the Notification No. 79 of 2017-Customs, dated 13th October, 2017.

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

“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. 1305I, 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. 1320I, 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. 1321I, 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. 1299I, dated the 13th October, 2017.”

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

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

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

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

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

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

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

2. In the Central Goods and Services Tax Rules, 2017, in rule 96, for sub-rule (10), the following sub-rule shall be substituted and shall be deemed to have been substituted with effect from the 23rd October, 2017, namely:- “(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have received supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 48/2017-Central Tax, dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 I, 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 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 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 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.”

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

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

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

8.11 Section 16 of IGST Act provides for 'Zero Rated Supply' and sub-clause (b) of sub-section (3) of Section 16 provides that, a registered person making zero rated supply shall be eligible to claim refund, if he has supplied the goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied.

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

8.13 Notification No. 48/2017-C.T., dated 18th October, 2017 has declared the following goods and the explanation thereto states that, "Advance Authorization" means an authorization issued by the Director General of Foreign Trade under Chapter-4 of the Foreign Trade Policy 2015-20 for import or domestic procurement of inputs on pre-import basis for physical exports. Therefore, as the petitioner has availed the benefits of AA License as per Notification No. 40/2017-C.T. (Rate), dated 23rd October, 2017 and has enjoyed the exemption of GST on the supply of the goods from the registered supplier for the purpose of export on fulfilling the conditions prescribed therein. It appears that, thereafter, by Notification No. 39/2018-C.T., dated 4th September, 2018 has substituted the sub-rule (10) of Rule 96 w.e.f. 23rd October, 2017, however, by Notification No. 54/2018, the application of the substituted sub-rule (10) of Rule 96 is not made effective from 23rd October, 2017, but it was made applicable from the inception. Therefore, the petitioner who has availed the benefit of the Notification No. 39/2018 from 23rd October, 2017 to 4th September, 2018 would not be able to get the refund of the IGST paid or the input tax credit balance in the accounts of the petitioner, in view of the Notification No. 54/2018.

8.14 Considering the effect of the Notification No. 54/2018, the contentions raised on behalf of the respondents that there is no discrimination qua the petitioner is tenable in law, as by the amendment made by Notification No.

54/2018 it clearly denied the benefit which is granted to the petitioner by the Notification No. 39/2018 was withdrawn as the same was not made applicable from 23rd October, 2017.

8.15 Recently, vide Notification No. 16/2020-C.T., dated 23-3-2020 an amendment has been made by inserting following explanation to Rule 96(10) of CGST Rules, 2017 as amended (with retrospective effect from 23-10-2017).

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

By virtue of the above amendment, the option of claiming refund under option as per clause (b) is not restricted to the Exporters who only avails BCD exemption and pays IGST on the raw materials thereby exporters who wants to claim refund under second option can switch over now. The amendment is made retrospectively thereby avoiding the anomaly during the intervention period and exporters who already claimed refund under second option need to payback IGST along with interest and avail ITC.

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

25. As discussed in above para, I find that the judgment in the case of *Cosmo Films Ltd. v. UOI* (reported in 2020 (43) GSTL 577 (Guj)) validates the retrospective application of Rule 96(10) under Notification Number 54/2018-CT **from 23 October 2017**. Since the Hon'ble Gujarat High Court has held that Notification No. 54/2018 is effective w.e.f. 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.48/2017-CT dated 18.10.2017 or Notification No. 40/2017-CT (Rate), dated the 23rd October, 2017 or Notification No. 41/2017-IT (Rate), dated the 23rd October, 2017 or Notification No. 78/2017-Customs or Notification No. 79/2017-Customs dated 13.10.2017 are taken.

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

27. In the present case, the taxpayer has did not provide any details/documents which would establish that they have not contravened provisions of Rule 96(10) of the CGST Rules, 2017 by wrongly availing refund of IGST paid on goods exported in contravention of the said rule by receiving

supplies/availing benefit under the notifications specified therein. During the course of personal hearing also, they never stated that they have not contravened provisions of Rule 96(10) of CGST Rules, 2017. Accordingly, I hold that they have availed benefit of Notification No.48/2017-CT dated 18.10.2017 or Notification No. 40/2017-CT (Rate), dated the 23rd October, 2017 or Notification No. 41/2017-IT (Rate), dated the 23rd October, 2017 or Notification No. 78/2017-Customs or Notification No. 79/2017-Customs dated 13.10.2017 while procuring goods. I find that they have wrongly availed IGST Refund of Rs.1,43,49,269/- in contravention of provisions of Rule 96(10) of the CGST Rules, 2017. As per the provisions of Rule 96(10) of the CGST Rules, 2017, the said refund of IGST is inadmissible to the said noticee. In view of the above, I find that the said taxpayer has contravened the following provisions of law:

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

28. I have already discussed hereinabove about the procedures with respect to claiming of refund mentioned in Rule 89(1) of the CGST Rules, 2017, wherein a refund claim in Form RFD-01 has to be filed. However, this procedure is not applicable for refund of integrated tax paid on goods exported out of India, which are dealt with separately in Rule 96(1) of the CGST Rules, 2017. For refund of IGST paid on goods exported out of India, the Shipping Bill itself is deemed to be an application for refund. In such cases, the IGST module has an inbuilt mechanism to automatically grant refund after validating the Shipping Bill data available in ICES against the GST returns data transmitted by the GSTN. If the necessary matching is successful, ICES processes the claim for refund and the relevant amount of IGST paid with respect to each Shipping Bill is electronically credited to the exporter's bank account. Thus, in terms of the restriction imposed under Rule 96(10) of the CGST Rules, the exporter have to export the goods under LUT instead of payment of IGST because once the export is made under payment of IGST, the filing of the Shipping Bill is treated as filing of refund claim as mentioned in Rule 96(1) of the CGST Rules, 2017 and the claim gets automatically processed by ICES without any manual intervention from the Customs Authorities. Rule 96(10), thus, in essence, bars the payment of IGST during the export of goods where the benefit of

Notification No.48/2017-CT dated 18.10.2017 or Notification No. 40/2017-CT (Rate), dated the 23rd October, 2017 or Notification No. 41/2017-IT (Rate), dated the 23rd October, 2017 or Notification No. 78/2017-Customs or Notification No. 79/2017-Customs dated 13.10.2017 has been availed. Since the fact of receiving inputs under these notifications and consequent ineligibility from claiming IGST refund are known to the taxpayer and yet, in the anonymity of online processing of refund claims which is automatic in nature, the Noticee has claimed refund which amounted to suppression of facts and at the same time, wilful mis-statement also. The noticee has clearly violated the provisions of Rule 96(10) of the CGST Rules, 2017. It is also a fact that the taxpayer did not pay the erroneous refund till date. The above said erroneous refund of IGST paid on export, was unearthed after initiating inquiry by the officers of Central Tax, Ahmedabad North and therefore had the investigation not been initiated by this office, the said facts would have not come to light. In view of the above, the proposal to recover the erroneously sanctioned refund under Section 74 of the CGST Act, 2017 is correctly made and requires to be sustained.

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

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

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

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

31. It is a fact that in the instant matter the noticee obtained the erroneous refund in contravention of the provisions of Rule 96(10) of the CGST Rules, 2017 in order to avail unjust advantages. Therefore, as per the aforesaid provision of law, the interest under section 50 of the act becomes recoverable from the noticee.

32. Once when it is established that the noticee has received refund erroneously on account of fraud, mis-statement with a malafide intention, penalty under Section 74 of the CGST Act, 2017 becomes imposable. In the case in hand it is sufficiently proved that the intention of the taxpayer was to

obtain unjust advantages by way of making of payment of IGST at the time of export and encash it by way of refund which, in fact, was without the authority of law. Thus on the one hand, the noticee was availing benefit of Notification No.48/2017-CT dated 18.10.2017 or Notification No. 40/2017-CT (Rate), dated the 23rd October, 2017 or Notification No. 41/2017-IT (Rate), dated the 23rd October, 2017 or Notification No. 78/2017-Customs or Notification No. 79/2017-Customs dated 13.10.2017 and on the other, making of payment of IGST on export of goods clearly with a motive to encash it in the form of refund clearly shows the ill intention on the part of the taxpayer which was against the very object of the scheme and its spirit as well. Thus, in terms of the restriction imposed under Rule 96(10) of the CGST Rules, the noticee ought to have exported the goods under LUT instead of payment of IGST, however, because of aforesaid ill-intention they acted in defiance of the provision of law. Further the said noticee was engaged in the business activities of export of goods, therefore, they were very well aware about the statutory provision of law which governs the exports and refund of tax paid thereon. The taxpayer despite being aware of the fact that Rule 96(10) of the CGST Rules, 2017 which bars the refund of such IGST, availed refund of IGST paid on goods exported. I find that they have deliberately paid the IGST on the goods exported in order to obtain unjust advantage as discussed above and liable to impose penalty under Section 74 of the CGST Act, 2017.

33. I find that the taxpayer were asked to provide documents pertaining to exports done by them and benefits availed by them vide letters dated 22.12.2022, 11.01.2023, 06.03.2023, 28.03.2023, 12.04.2023 & 20.04.2023 by the Jurisdictional Authorities, however, they did not provide the required details/documents. This constitutes offence in the nature specified in Section 122(1)(xvii) and owing to which they have rendered themselves liable for penalty under Section 129(1)(xvii).

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

ORDER

- (i) I confirm the demand of erroneously refunded IGST amounting to Rs. 1,43,49,269/- (Rupees One Crore Forty Three Lakh Forty Nine Thousand Two Hundred Sixty Nine Only) and order to recover the same from M/s. The BTTCO Overseas, under the provisions of sub-section (1) of Section 74 of the CGST Act, 2017 and the corresponding entry of the Gujarat State Goods and Services Tax Act, 2017 and Section 20 of the IGST Act, 2017;
- (ii) I drop the demand of IGST refund amounting to Rs. 3,91,50,731/- (Rupees Three Crore Ninety One Lakh Fifty Thousand Seven Hundred Thirty One Only);
- (iii) I order to demand interest at the rates prescribed and recover the same from them under the provisions of Section 50(1) of the CGST Act, 2017 and the corresponding entry of the Gujarat State Goods and Services Tax Act, 2017 and Section 20 of the Integrated Goods and Service Tax Act, 2017 on demand confirmed at (i) above;
- (iv) I impose a penalty of Rs. 1,43,49,269/- (Rupees One Crore Forty Three Lakh Forty Nine Thousand Two Hundred Sixty Nine Only) (IGST) under

Section 74(1) of the CGST Act, 2017 read with the Section 74(1) of the Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 on M/s The BTTCO Overseas. In terms of sub section (11) of Section 74 ibid, where M/s. The BTTCO Overseas pay the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent of such tax within thirty days of communication of this order, all proceedings in respect of the said notice shall be deemed to be concluded;

- (v) I impose a penalty of Rs. 1,43,49,269/- (Rupees One Crore Forty Three Lakh Forty Nine Thousand Two Hundred Sixty Nine Only) (IGST) under Section 122(1)(xvii) of the CGST Act, 2017 read with the Section 122(1)(xvii) of the Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 on M/s. The BTTCO Overseas.

35. Accordingly the Show Cause Notice No. Show Cause Notice No.- GST/15-62/OA/23-24 dated 27.09.2023 is disposed off.

(Lokesh Damor)

Additional Commissioner
Central GST & CE
Ahmedabad North

F.NO. GST/15-62/OA/23-24

Dated 04.03.2024

By RPAD/hand delivery

To,
M/s. The BTTCO Overseas (GSTIN 24AABFT6577C1Z8)
6, Ashirvad Complex,
Near Sardar Patel Seva Samaj Hall,
Ahmedabad, Gujarat-380009

Copy to:

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

