



आयुक्त का कार्यालय

OFFICE OF THE COMMISSIONER

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

पहली मंजिल, कस्टम हाउस, नवरंगपुरा, अहमदाबाद - 380009

FIRST FLOOR, CUSTOM HOUSE, NAVRANGPURA, AHMEDABAD - 380009

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निबन्धित पावती डाक द्वारा/By R.P.A.D  
फा.सं./F.No. GST/15-12/OA-AE/2022

DIN- 20240364WT000000B387

आदेश की तारीख/Date of Order: - 19.03.2024

जारी करने की तारीख/Date of Issue :- 19.03.2024

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

अपर आयुक्त / Additional Commissioner

**मूल आदेश संख्या / Order-In-Original No. 97/ADC/LD/GST/2023-24**

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

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 90 दिन के अन्दर आयुक्त (अपील), केंद्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केंद्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप GST-APL-01 में दाखिल कर सकता है। इस अपील पर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

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

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

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

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

- (1) उक्त अपील की प्रति।
- (2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

The appeal should be filed in form GST-APL-01 in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 108 of CGST Rules, 2017. It should be accompanied with the following:

- (1) Copy of accompanied Appeal.
- (2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय:- कारण बताओ सूचना/ Proceeding initiated against Show Cause Notice F. No. RFND/GST/CTP/OTH/160/2020 dated 31.03.2022 issued to M/s. Raviraj Foils Limited, Survey No. 169 & 179, PO Chharodi, Farm opp. Tata Nano, Tal. Sanand, Ahmedabad - 382170.





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

M/s. Raviraj Foils Limited, having its principal place of business located at Survey No.169 & 179, PO Chharodi, Farm opp. Tata Nano, Tal. Sanand, Ahmedabad-382170 (hereinafter referred to as the said taxpayer/the noticee) is holding Goods and Service Tax Registration No. 24AAACR7333J1ZE. The taxpayer is engaged in the manufacturing and supply of taxable goods viz. Aluminium Foil. Hereafter, wherever the provisions of Central Goods and Service Tax Act, 2017 and Central Goods and Service Tax Rules, 2017 are quoted, the corresponding provisions of Gujarat State Goods and Service Tax Act, 2017 and Gujarat State Goods and Service Tax Rules, 2017 would apply simultaneously. Further, in terms of Rule 2 of the Integrated Goods and Service Tax Rules, 2017, the provisions of Central Goods and Service Tax Rules, 2017 would apply for referring contraventions as mentioned in Section 20 of the Integrated Goods and Service Tax Act, 2017.

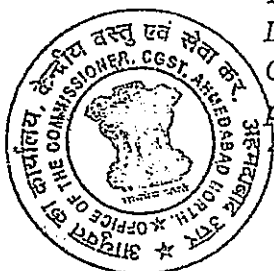
2. Whereas, on the basis of information, a search was conducted at the premise of M/s. Raviraj Foils Limited under Section 67(2) of CGST Act, 2017 on 11-10-2019. During the course of investigation and scrutiny of documents of the taxpayer, it was observed that said taxpayer has wrongly claimed refund of IGST paid on zero-rated export supplies by availing the benefit of Advance Authorization issued under Chapter-4 of the Exim Policy for the period from F.Y. 2017-18 to F.Y. 2019-20 (upto July-2019) read with Notification no. 79/2017-Customs dated 13.10.2017. During the course of investigation, the said taxpayer accepted the ineligibility of the IGST Refund claimed by them and initiated making payment along with the applicable interest through DRC-03. During the course of investigation, it was revealed that the said taxpayer had availed the refund of IGST paid on Zero Rated Supplies after availing benefit of Notification no. 79/2017-Customs dated 13.10.2017 and contravening the provisions of Rule 96(10) of CGST Rules, 2017 as amended. Also, it was noticed that the said tax payer had also exported the goods under IGST on the export made under Advance Authorisation instead of exporting the goods under LUT.

3. Whereas, in terms of Rule 96(10) of the Central Goods and Service Tax Rules, 2017 the taxpayer availing refund of IGST paid on Zero rated Outward Supplies should not have availed the benefit of Notification no. 79/2017-Customs dated 13.10.2017. The same has been clarified vide Notification No. 16/2020-CT dated 23.03.2020. On being pointed out and despite deliberating on the issue during the course of investigation, the taxpayer had admitted to have availed irregular IGST refund amounting to total Rs. 3,99,43,965/and produced the details of IGST refund.

4. Whereas, Notification No. 54/2018-Central Tax dated 09.10.2018 substituted Rule 96(10) of CGST Rules 2017 with the following:-

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

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



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

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

5. Whereas, the said taxpayer had made following Exports on payment of IGST after having availing the benefit of Notification No. 79/2017-Customs dated 13.10.2017. The table detailed hereafter list the number of Zero rated supplies/IGST export and the amount of IGST refund received.

Shipping Bill wise Detail of Export with Payment of IGST on which refund claimed by the tax payer			
Financial Year 2017-2018			
Sr. No.	Shipping Bill No.	Shipping Bill Date	IGST Amount
1	7215235	07/07/2017	955,858
2	7505495	21/07/2017	1,998,288
3	7505495	21/07/2017	892,718
4	9230056	11/10/2017	1,281,426
5	9585315	30/10/2017	989,547
6	9747461	07/11/2017	640,671
7	9857799	13/11/2017	199,234
8	9989992	18/11/2017	1,296,994
9	1028852	21/11/2017	597,552
10	1121673	24/11/2017	1,010,271
11	1146048	25/11/2017	744,998
12	1146048	25/11/2017	296,908
13	1407207	07/12/2017	1,292,369
14	1648408	19/12/2017	119,606
15	1648408	19/12/2017	783,022
16	1649893	19/12/2017	313,165
17	1854724	28/12/2017	817,424
18	1883760	29/12/2017	485,552
Total			1,47,15,603/-

Shipping Bill wise Detail of Export with Payment of IGST on which refund claimed by the Tax Payer			
Financial Year 2018-19			
Sr. No.	Shipping Bill No.	Shipping Bill Date	IGST Amount
1	6937444	8/16/2018	1,276,931
2	6962332	8/17/2018	1,413,921
3	6973750	8/18/2018	2,367,247
4	7163860	8/27/2018	1,044,322



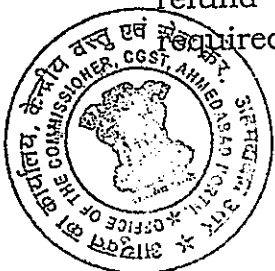
5	7291290	8/31/2018	812,900
6	7582623	9/14/2018	42,652
7	7582623	9/14/2018	60,282
8	7582623	9/14/2018	225,819
9	7816258	9/25/2018	459,866
10	7816258	9/25/2018	715,784
11	7990836	10/3/2018	1,052,982
12	8005660	10/3/2018	32,344
13	8005660	10/3/2018	9,171
14	8005660	10/3/2018	289,608
15	8005660	10/3/2018	681,477
16	8005660	10/3/2018	20,034
17	8005660	10/3/2018	126,524
18	8005660	10/3/2018	17,546
19	8005660	10/3/2018	24,919
20	5405800	10/23/2018	2,238,277
21	8524243	10/27/2018	1,125,920
22	8647274	11/1/2018	1,420,015
<b>Total</b>			<b>1,54,58,541</b>

<b>Shipping Bill wise Detail of Export with Payment of IGST on which refund claimed by the Tax Payer</b>			
<b>Financial Year 2019-2020</b>			
<b>Sr. No.</b>	<b>Shipping Bill No.</b>	<b>Shipping Bill Date</b>	<b>IGST Amount</b>
1	3474853	4/13/2019	954,584
2	3596815	4/19/2019	949,802
3	3864798	5/1/2019	939,120
4	3864798	5/1/2019	898,048
5	3980896	5/6/2019	1,327,992
6	4434800	5/25/2019	36,804
7	5038\98	6/21/2019	345,657
8	5112801	6/25/2019	1,198,236
9	5272465	7/1/2019	2,078,187
10	5272492	7/1/2019	1,041,393
<b>Total</b>			<b>97,69,823</b>

6. 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.

7. During the search, a list of export made by said taxpayer against which they claimed IGST refund for the period from July, 2017 to July, 2019 total amounting to Rs.3,99,43,965/- submitted by the said taxpayer. Therefore, the taxpayer is ineligible to refund claim on which they have not paid IGST during the time of procurement of raw material. The amount of erroneously taken refund is Rs.3,99,43,965/- from July, 2017 to July, 2019 and the same is required to demanded/pay back along with applicable interest and penalty.



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

9. Whereas, the Government had introduced self assessment system under a trust based regime which casts the onus of proper assessment and discharging the liabilities of the tax on the taxpayer. Section 59 of the Central Goods and Services Tax Act, 2017 provides that every registered person shall self-assess the taxes payable under this Act. Thus, it 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.

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

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

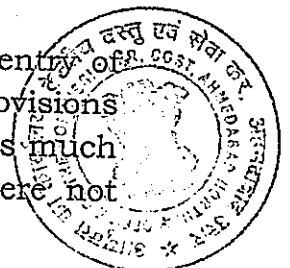
*Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier."*

11. Whereas, Sub section (1) of Section 74 provides that-

*"Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or 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.*

12. From the foregoing paras, it appeared that the said taxpayer have contravened the following provisions of the CGST Act, 2017 and Rules made thereunder and also the provisions of IGST Act, 2017:

- (i) 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.

(ii) 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.

(iii) 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.

(iv) Section 59 of the Central Goods and Services Tax Act, 2017 along with the corresponding entry of the Gujarat State Goods and Services Act, 2017 read with the provisions of Section 20 of Integrated Goods and Service Tax Act, 2017 in as much as they have failed to self-assess the taxes payable under this Act and failed to reverse/pay the amount of erroneous refund of IGSST as detailed above.

**13.** Therefore, a Show Cause Notice No.- RFND/GST/CTP/OTH/160/2020 dated 31.03.2022 was issued to M/s. Raviraj Foils Limited, having its principal place of business located at Survey No.169 & 179, PO Chharodi, Farm opp. Tata Nano, Tal. Sanand, Ahmedabad-382170 by the Additional Commissioner, CGST, Ahmedabad North as to why :

(i) The extended period of limitation, prescribed under Section 74(10) of Central Goods and Services Tax Act, 2017 and the corresponding entry of the Gujarat State Goods and Services Act, 2017 and Section 20 of Integrated Goods and Service Tax Act, 2017 should not be invoked against them for the reason discussed above;

(ii) Total IGST of Rs. 3,99,43,965/- (Rupees Three Crore Ninety Nine Lakh Forty Three Thousand Nine Hundred and Sixty Five Only) alongwith equivalent penalty should not be demanded, confirmed 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;

(iii) Interest at the appropriate rate should not be demanded and recovered from them under the provisions of Section 50(1) of the Central Goods & Service Tax Act, 2017 read with Section 20(xxv) of the IGST Act, 2017;

(iv) IGST of Rs. 2,97,30,026/- (Two Crore Ninety Seven Lakh Thirty Thousand and Twenty Six only) paid through ITC/Cash should not be appropriated against their outstanding GST tax liability as per para (ii) above;



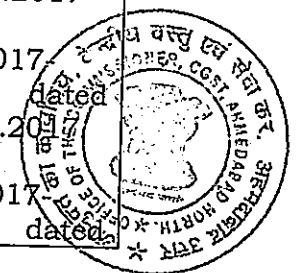
(v) Penalty should not be imposed upon them under the provisions of Section 20(xxv) of the IGST Act, 2017 read with Section 122(1) of CGST Act, 2017 for the above contraventions.

**DEFENSE REPLY:-**

14. M/s. Raviraj Foils Limited has filed their defence reply vide letter dated 20.02.2024 wherein they denied the allegations in the aforesaid SCN. Their reply is as under:-

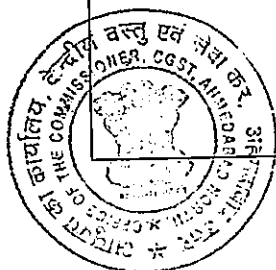
15.1 M/s. Raviraj Foils Limited for the sake of clarity summarized changes made in Rule 96(10) as below:-

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





			13.10.2017
Notification No. 39/2018-CT.	4.9.2018 (with effect from 23.10.2017)	Rule 96 (10) amended retrospectively. It was amended to provide that bar under said rule would apply when registered person himself avails IGST exemption benefit under AA, EPCG and EOU and not when supplier to registered person avails the same.	The persons claiming refund of integrated tax paid on exports of goods or services should not have - (i) received supplies wherein benefit availed of - a) NN. 48/2017-CT dated 18.10.2017 or b) NN. 40/2017-CT (Rate), dated 23.10.2017 or c) NN. 41/2017-IT (Rate), dated 23.10.2017 (ii) availed the benefit of a) NN. 78/2017-Cus. dated 13.10.2017 b) NN. 79/2017-Cus. dated 13.10.2017
Notification 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 Phase II, the bar would apply when registered person himself avails	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



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

**15.2** All the above-mentioned notifications has specific effective date of insertion/substitution effective from 23.10.2017 (specifically stated in the Notification), except for Notification No, 54/2018 -CT dated 9.10.2018, which has effective date of implementation as the date of issue of notification and not from 23.10.2017. Further, Vide Notification No. 53/2018-CT, the effect of Notification No. 39/2018-CT was nullified.

**15.3** Hence, from the combined reading of above-mentioned notifications, it is clarified that the before issuance of Notification No. 54/2018-CT dated 9.10.2018, a registered person shall not be eligible to claim refund of IGST paid on export of goods, if supplier of said registered person has availed the benefit of Notification No. 78/2017-Customs or Notification No. 79/2017-Customs both dated 13.10.2017, on import of goods.

**15.4** However, after issuance of Notification No. 54/2018-CT dated 9.10.2018, restriction has been placed upon the registered person from availing the refund of IGST paid on export of goods, if said registered person has availed the benefit of Notification No. 78/2017-Customs or Notification No. 79/2017customs both dated 13.10.2017, on import of goods.

**15.5** Therefore, from the above analysis, it is clear that the net effect of such changes are that a registered person shall be eligible to claim refund of IGST paid on export of goods till '08.10.2018', if the said registered person has imported goods under Advance Authorisation Scheme, by availing benefit under Notification No. 79/2017-customs both dated 13.10.2017.



**15.6** The above view has also been clarified by Circular No. 125/44/2019-GST, dated 18.11.2019, wherein vide Para No. 52, CBIC has clarified that-

*"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."*

**15.7** The demand raised by the department in the impugned SCN, for claiming of refund of IGST of Rs. 3,99,43,964/-, paid on export of goods, is factually incorrect, since department has raised demand for the total amount of IGST refund received by the noticee during the period July 2017 to March 2020, on the basis of data provided by the noticee during the audit, and department has not verified the same. However, as per the legal position mentioned in above paras, noticee has contravened the provision of Rule 96(10), for the period after 09.10.2018, as per Notification No. 54/2018-Central tax dated 9th October 2018, and therefore, noticee has availed the refund of IGST of Rs. 1,02,41,268/only, paid on export, after availing the benefit of Advance Authorisation, in violation of Rule 96(10) *ibid*.

**15.8** Further, said taxpayer has submitted that order sanctioning the refund claims of the noticee have attained finality and same being an appealable order, noticee reply upon the following decisions:-

- CC v. Milat Fibers [2011(271)ELT 512(Guj)
- Doothat Tea Estate Kanoi Plantation (P) Limited V CCE Shillong [2001(132) ELT 386(Tri.-Kol.)]

.....  
.....

**15.9** Further, they submitted that they have imported inputs on payment of IGST even under AA because advance authorization notification permits import of inputs on payment of IGST. Thus, demand of IGST refund to that extent is not sustainable as there is no violation of Rule 96(10) of CGST Rules 2017.

**15.10** Said taxpayer submitted that there is no dispute that goods were exported, and consideration is also received by the noticee. Only case of department is that noticee ought to have exported goods under LUT/bond in terms of Rule 96A of CGST rules and not under Rule 96 of CGST rules.

**15.11** Noticee is entitled for refund amounting to Rs. 2,97,30,024/- in terms of Rule 96A of CGST rules. Thus, demand to that extent is not sustainable being revenue neutral as noticee is entitled for refund under Rule 96A of CGST Rules. Further even otherwise, noticee is entitled for re-credit of ITC, thus demand is revenue neutral in the present case.

**15.12** Further, they submitted that demand for the period prior to 09.10.2018 is not sustainable in terms of Notification No. 54/2018-CT, which is effective from 09.10.2018 and not from 23.10.2017. Therefore, out of total refund of IGST of Rs. 2,97,30,024/-, they have availed the benefit of Rule 96 for the period 09.10.2018 till 31.03.2023 only, having refund of IGST of



Rs. 1,02,41,268/- only. Demand of IGST refund of Rs. 1,94,88,756/- for the export of goods prior to 09.10.2018 is not sustainable in terms of Notification No. 54/2018-CT, which is effective from 09.10.2018.

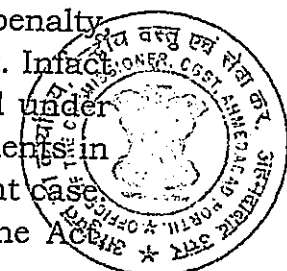
**15.13** Therefore, in view of Notification No. 54/2018-CT, dated 09.10.2018, read with vide Para No. 52 of Circular No. 125/44/2019-GST, dated 18.11.2019, the demand of refund of IGST, in terms of Rule 96(10) for the period prior 09.10.2018, is not sustainable in law, and exporter is duly eligible to claim refund of IGST paid on export of goods prior to 09.10.2018, if the said exporter himself has imported goods under Advance Authorisation Scheme, by availing benefit under Notification No. 79/2017-customs both dated 13.10.2017. Therefore, demand proposed by the department contrary to any CBIC's Circular or Notifications, for the period before 09.10.2018, leads to demand void-ab-initio, and therefore demand proposes of Rs. 3,99,43,964/liable to be set aside.

**15.14** They have already surrendered IGST refund of Rs. 2,97,30,024/- vide DRC 03 based on the allegation raised by the department for the 13.10.2017 to 31.03.2023 without agreeing on merits against refund claimed for 43 SB Bills. Details of such payments are as under:-

S.N.	ARN of DRC 03	Date of DRC 03	Amount IN Rs.
1	AD241219010172N	31.12.2019	9,89,547/-
2	AD240220022366Q	29.02.2020	65,32,513/-
3	AD240220022463U	29.02.2020	35,03,751/-
4	AD240520008251V	30.05.2020	59,68,954/-
5	DC2407200461419	31.07.2020	12,01,622/-
6	DC2408200308738	29.08.2020	47,84,211/-
7	DC2408200308901	29.08.2020	10,59,254/-
8	AD240222024665G	28.02.2022	12,92,369/-
9	AD240222025556G	28.02.2022	43,97,803/-
<b>Total</b>			<b>2,97,30,024/-</b>

**15.15** Further, they submitted that they have agreed on rejection of refund in terms of Rule 96(10) and therefore made the payment of Rs. 2,97,30,024/- against refund claimed for 43 Shipping Bills for the period in question, they have also intimated to Preventive North, vide different letters, to issue PMT-03 as required under Rule 93 of the Rules, to allow them to take the credit of amount of IGST paid of Rs. 2,97,30,024/-, for which refund has been rejected, and the same has already been discharged through DRC-03 as mentioned above. In response to said letters, they have duly received Re-Credit letter, allowing them to take re-credit of IGST refund, rejected and subsequently surrendered, of amount of Rs, 2,40,39,852/-, only, out of total amount of GST surrendered of Rs. 2,97,30,024/-. However, for balance amount of Rs. 56,90,172/-, they have not received any PMT 03. Therefore, they requested to issue PMT 03 for Rs. 56,90,172/- in terms of Rule 93 of CGST Rules 2017.

**15.16** Further they submitted that as demand of refund is not sustainable, demand of interest is also not sustainable. As regard imposition of penalty they submitted that they have not any intention to avail undue benefit. In fact they have clearly declared on the shipping bills that goods are exported under advance authorisation. Thus considering the series of changes/amendments in Rule 96(10) of CGST Rules, 2017, penalty is not impossible in the instant case. They also submitted that for imposing penalty under Section 74 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. The Noticee have provided all the details as and when desired by the Department vide the letters to the Department and the Noticee at no point of time had the intention to evade any tax or suppressed any fact willfully from the knowledge of the Department. The Noticee inter alia place reliance upon the following decisions to submit the information is available on record, no suppression can be alleged on the assessee;

(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 & Consultants Pvt. Ltd.* 2006 (203) ELT 492 (T)

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

**15.17** They also submitted that penalty under Section 74 of the Act can be imposed only if the taxpayer suppresses any information from the Department. However, the Noticee have not suppressed any fact with an intention to evade payment of tax. Therefore, penalty under Section 74 cannot be imposed in the present case. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of Akbar Badruddin Jiwanl v. Collector of Customs reported at 1990 (047) ELT 0161 SC and Pahwa Chemicals Vs. CCE - 2005 (189) ELT 257 (SC).

#### **PERSONAL HEARING**

**16.** Adhering to the principal of natural justice, personal hearings have been provided to the said taxpayer on 22.06.2023 and 22.02.2024. Ms. Madhu Jain, Advocate and Authorized Representatives of the noticee appeared for personal hearing on 22.02.2024 through virtual mode and reiterated their defence submission dated 22.02.2024. He further requested to decide the matter on merit.

#### **ADDITIONAL SUBMISSION DATED 28.02.2024**

**17.** The Noticees stated that out of total IGST Refund of Rs. 3,99,43,967/-, the they have made Export with Payment of IGST of Rs. 2,97,30,027/- in violation of Rule 96(10) of CGST Rules, 2017, which is duly surrendered by the noticee vide DRC-03. Further, for the IGST Refund of Rs. 50,85,650/-, they submitted that there is NO Violation of Rule 96(10) with respect to said export, since the noticee has imported the said goods with Payment of IGST under Advance Authorisation, and subsequently exporter the said goods with payment of IGST.

**18.** Further, for the balance amount of IGST refund of Rs. 51,28,290/-, they submitted that the said export of goods has been made by the them before 13-10-2017, and the violation under Rule 96(10) of CGST Rules, 2017 read with Notification No. 79/2017-Customs, dated the 13<sup>th</sup> October 2017 has come into force w.e.f. 13-10-2017. The summarised bifurcation of **Total IGST Refund of Rs. 3,99,43,967/-** is tabulated below:



Particular	IGST Amount
No Violation under Rule 96(10) - Export Before 13-10-2017	51,28,290
No Violation under Rule 96(10) - IGST paid on Import	50,85,650
Violation under Rule 96(10) -Surrendered through DRC-03	2,97,30,027
<b>Total IGST Refund</b>	<b>3,99,43,967</b>

Therefore, they requested to consider the above submission of facts on records, in continuation to their earlier submission filed in response to impugned Show Cause Notice dated 31-03-2022.

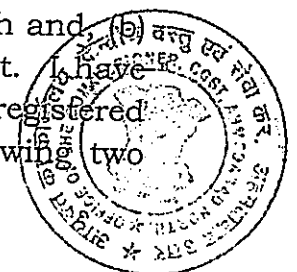
### DISCUSSION AND FINDINGS

19. I have carefully gone through the records of the case, defense reply dated 20.02.2024 and 28.02.2024 and submission made by the noticee during the course of personal hearing and proceed to decide the case.

20. Briefly stated the facts of the case is that M/s. Raviraj Foils Limited, having its principal place of business located at Survey No.169 & 179, PO Chharodi, Farm opp. Tata Nano, Tal. Sanand, Ahmedabad-382170 (hereinafter referred to as the 'said taxpayer) is holding Goods and Service Tax Registration No. 24AAACR7333J1ZE. The taxpayer is engaged in the manufacturing and supply of taxable goods viz. Aluminium Foil. During the course of investigation by Preventive Section, Ahmedabad North it was revealed that the said taxpayer had availed the refund of IGST paid on Zero Rated Supplies after availing benefit of Notification no. 79/2017-Customs dated 13.10.2017 and contravening the provisions of Rule 96(10) of CGST Rules, 2017 as amended. Also, it was noticed that the said tax payer had also exported the goods under IGST on the export made under Advance Authorisation instead of exporting the goods under LUT.

21. It is alleged in the impugned SCN that the noticee had received refund of IGST amounting to **Rs. 3,99,43,967/-** paid on exports (Zero Rated Supplies) made during period from July 2017 to July 2019. The moot point to be decided is as to whether the noticee had violated any of the provisions of Rule 96(10) of the CGST Rules, 2017 or otherwise and the refund of IGST paid on the exported goods is erroneous or not.

22. Before taking in to consideration the submission made by the noticee, firstly I reiterate the legal provisions related to Rule 96(10) of the CGST Rules. I have noted that Section 54 of the CGST Act, 2017 deals with the provisions related to refund, which also includes refund of tax paid on zero rated supplies of goods or services or both. Zero rated supplies have been defined in Section 16 (1) of the IGST Act, 2017 as (a) export of goods or services or both and (b) supply of goods or services or both to a SEZ developer or a SEZ unit. I have also noted that Section 16(3) of the IGST Act, 2017 provides for a registered person making zero rated supplies to claim refund under the following two options:-



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

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

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

**24.** 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.

**25.** 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.

**26.1** 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.

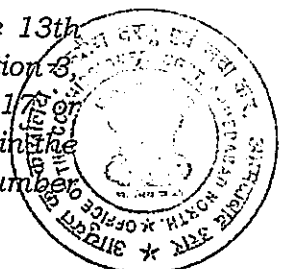
**26.2.** Vide Notification No. 39/2018-Central Tax dated 04.09.2018, the said Rule 96(10) of CGST Rules, 2017 was further amended as below :

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."*





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

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

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

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

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

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

**26.4.** 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 issued on 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

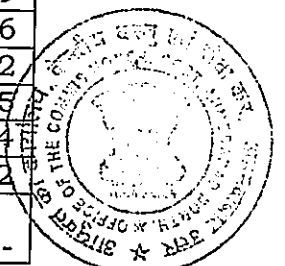
(b) availed the benefit under notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017,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

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

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

**27.** I find that during the course of investigation by Preventive, it was revealed that the said taxpayer had availed the refund of IGST paid on Zero Rated Supplies after availing benefit of Notification no. 79/2017-Customs dated 13.10.2017 and contravening the provisions of Rule 96(10) of CGST Rules, 2017 as amended. As a result of which, the impugned SCN was issued for the July 2017 to July 2019 for the total amount of IGST of Rs. 3,99,43,967/- paid on the exported goods in contravention of Rule 96(10) of the CGST Rules, 2017. Details of which are as under:-

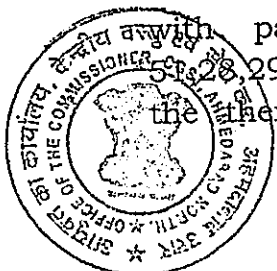
Shipping Bill wise Detail of Export with Payment of IGST on which refund claimed by the tax payer			
Financial Year 2017-2018			
Sr. No.	Shipping Bill No.	Shipping Bill Date	IGST Amount
1	7215235	07/07/2017	955,858
2	7505495	21/07/2017	1,998,288
3	7505495	21/07/2017	892,718
4	9230056	11/10/2017	1,281,426
5	9585315	30/10/2017	989,547
6	9747461	07/11/2017	640,671
7	9857799	13/11/2017	199,234
8	9989992	18/11/2017	1,296,994
9	1028852	21/11/2017	597,552
10	1121673	24/11/2017	1,010,271
11	1146048	25/11/2017	744,998
12	1146048	25/11/2017	296,908
13	1407207	07/12/2017	1,292,369
14	1648408	19/12/2017	119,606
15	1648408	19/12/2017	783,022
16	1649893	19/12/2017	313,165
17	1854724	28/12/2017	817,424
18	1883760	29/12/2017	485,552
<b>Total</b>			<b>1,47,15,603/-</b>



Shipping Bill wise Detail of Export with Payment of IGST on which refund claimed by the Tax Payer			
Financial Year 2018-19			
Sr. No.	Shipping Bill No.	Shipping Bill Date	IGST Amount
1	6937444	8/16/2018	1,276,931
2	6962332	8/17/2018	1,413,921
3	6973750	8/18/2018	2,367,247
4	7163860	8/27/2018	1,044,322
5	7291290	8/31/2018	812,900
6	7582623	9/14/2018	42,652
7	7582623	9/14/2018	60,282
8	7582623	9/14/2018	225,819
9	7816258	9/25/2018	459,866
10	7816258	9/25/2018	715,784
11	7990836	10/3/2018	1,052,982
12	8005660	10/3/2018	32,344
13	8005660	10/3/2018	9,171
14	8005660	10/3/2018	289,608
15	8005660	10/3/2018	681,477
16	8005660	10/3/2018	20,034
17	8005660	10/3/2018	126,524
18	8005660	10/3/2018	17,546
19	8005660	10/3/2018	24,919
20	5405800	10/23/2018	2,238,277
21	8524243	10/27/2018	1,125,920
22	8647274	11/1/2018	1,420,015
<b>Total</b>			<b>1,54,58,541</b>

Shipping Bill wise Detail of Export with Payment of IGST on which refund claimed by the Tax Payer			
Financial Year 2019-2020			
Sr. No.	Shipping Bill No.	Shipping Bill Date	IGST Amount
1	3474853	4/13/2019	954,584
2	3596815	4/19/2019	949,802
3	3864798	5/1/2019	939,120
4	3864798	5/1/2019	898,048
5	3980896	5/6/2019	1,327,992
6	4434800	5/25/2019	36,804
7	5038\98	6/21/2019	345,657
8	5112801	6/25/2019	1,198,236
9	5272465	7/1/2019	2,078,187
10	5272492	7/1/2019	1,041,393
<b>Total</b>			<b>97,69,823</b>

28.1 Firstly, I take up the defense reply made by the said noticee that out of total IGST Refund of **Rs. 3,99,43,967/-**, they have made Export with Payment of IGST of **Rs. 2,97,30,027/- only** in violation of Rule 96(10) of CGST Rules, 2017. For the IGST Refund of Rs. 50,85,650/-, they submitted that there is NO Violation of Rule 96(10) as they have imported the said goods with Payment of IGST under Advance Authorisation and subsequently exporter the said goods with payment of IGST. For the balance amount of IGST refund of Rs. 50,85,650/-, they submitted that the said export of goods has been made by them before 13-10-2017, and the violation under Rule 96(10) of CGST



Rules, 2017 read with Notification No. 79/2017-Customs, dated the 13<sup>th</sup> October 2017 has come into force w.e.f. 13-10-2017. Details of which are as under:-

Particular	IGST Amount
No Violation under Rule 96(10) - Export Before 13-10-2017	51,28,290
No Violation under Rule 96(10) - IGST paid on Import	50,85,650
Violation under Rule 96(10) -Surrendered through DRC-03	2,97,30,027
<b>Total IGST Refund</b>	<b>3,99,43,967</b>

28.2 I find that in support of above claim, the said noticee has submitted copy of Shipping Bills, Bill of Entries and other documents. Ongoing through said documents and SCN dated 31.03.2022, I find that it is settled position that violation under Rule 96(10) of CGST Rules, 2017 read with Notification No. 79/2017-Customs, dated the 13<sup>th</sup> October 2017 issued by CBIC, New Delhi has come into force w.e.f. 13-10-2017, i.e. those Shipping Bill in which export has been taken place before 13.10.2017 are not treated as violation under Rule 96(10) of CGST Rules, 2017 read with Notification No. 79/2017-Customs, dated the 13<sup>th</sup> October 2017. I find that in total 3 SBs (having IGST refund of Rs. 51,28,290/-), export was taken before 13.10.2017 and accordingly there is no violation of Rule 96(10) of CGST Rules, 2017. Details of said Shipping Bills are as under:-

Sr. No.	Shipping Bill No.	Shipping Bill Date	IGST Amount in Rs.	Remarks
1	7215235	07/07/2017	9,55,858	No violation of Rule-96(10) as export before 13.10.2017
2	7505495	21/07/2017	19,98,288	
3	7505495	21/07/2017	8,92,718	
4	9230056	11/10/2017	12,81,426	
			<b>51,28,290</b>	

28.3 Further, as regard IGST Refund of Rs. 50,85,650/-, the said noticee has submitted copy of Bills of Entry No. 6164308 dated 20.12.2019, 6511326 dated 17.01.2020 and Shipping Bills No.- 1121673 dated 24.11.2017, 3596815 dated 19.04.2019, 3864798 dated 01.05.2019, 5038198 dated 21.06.2019, 5272465 dated 01.07.2019 claiming that they have imported the said goods with payment of IGST under Advance Authorisation and subsequently exporter the said goods with payment of IGST. I have gone through copy of Bill of Entry No.-6164308 dated 20.12.2019 and 6511326 dated 17.01.2020 and find that goods/raw material namely Aluminium Foil Stock was imported under Advance License with payment of IGST and finished goods was exported with payment of IGST on same license vide Shipping Bills No.- 3596815 dated 19.04.2019, 3864798 dated 01.05.2019, 5038198 dated 21.06.2019 and 5272465 dated 01.07.2019. Details of which are as under:-



S.N.	Bill of Entry No.	S.B. No.	IGST paid in S.B.(Rs.)
1	6164308 dated 20.12.2019	3864798 dated 01.05.2019	9,39,120/-
		5038198 dated 21.06.2019	3,45,657/-
		5272465 dated 01.07.2019	20,78,187/-
2	6511326 dated 17.01.2020	3596815 dated 19.04.2019	9,49,802/-
<b>Total</b>			<b>43,12,766/-</b>

Further, as regarding Shipping Bills No.- 1121673 dated 24.11.2017 having IGST amount of Rs. 7,72,884/-, said noticee has not submitted copy of Bill of Entry/documents showing that goods were imported under Advance License with payment of IGST and finished goods was exported vide Shipping Bills No.- 1121673 dated 24.11.2017 with payment of IGST on same license. Therefore, I find that said noticee has made Export with Payment of IGST of Rs. 7,72,884/- in respect of Shipping Bills No.- 1121673 dated 24.11.2017 in violation of Rule 96(10) of CGST Rules, 2017.

**28.4** In view of above discussion, I find that out of total demand of erroneous Refund of Rs. 3,99,43,967/-, they have made Export with Payment of IGST of **Rs. 3,05,02,911/- only** in violation of Rule 96(10) of CGST Rules, 2017. For rest amount i.e. Rs. 94,41,056/- (Rs. 51,28,290+ 43,12,766), there is no violation of Rule 96(10) of CGST Rules, 2017 and demand of Rs. 94,41,056/- is liable to be dropped. Further, details of erroneous Refund of Rs. 3,05,02,911/- under the provision of Rule 96(10) of CGST Rules, 2017 comes as under:-

<b>Shipping Bill wise Detail of Export with Payment of IGST on which refund claimed by the Taxpayer</b>			
<b>Financial Year 2017-2018 to 2019-2020</b>			
<b>Year</b>	<b>Shipping Bill No.</b>	<b>Shipping Bill Date</b>	<b>IGST Amount</b>
2017-2018	9585315	30/10/2017	989547
2017-2018	9747461	07/11/2017	640671
2017-2018	9857799	13/11/2017	199234
2017-2018	9989992	18/11/2017	1296994
2017-2018	1028852	21/11/2017	597552
2017-2018	1121673	24/11/2017	237387
2017-2018	1121673	24/11/2017	772884
2017-2018	1146048	25/11/2017	744998
2017-2018	1146048	25/11/2017	296908
2017-2018	1407207	07/12/2017	1292369
2017-2018	1648408	19/12/2017	119606
2017-2018	1648408	19/12/2017	783022
2017-2018	1649893	19/12/2017	313165
2017-2018	1854724	28/12/2017	817424
2017-2018	1883760	29/12/2017	485552
2018-2019	6937444	8/16/2018	1276931
2018-2019	6962332	8/17/2018	1413921
2018-2019	6973750	8/18/2018	2367247
2018-2019	7163860	8/27/2018	1044322
2018-2019	7291290	8/31/2018	812900
2018-2019	7582623	9/14/2018	42652



2018-2019	7582623	9/14/2018	60282
2018-2019	7582623	9/14/2018	225819
2018-2019	7816258	9/25/2018	459866
2018-2019	7816258	9/25/2018	715784
2018-2019	7990836	10/3/2018	1052982
2018-2019	8005660	10/3/2018	32344
2018-2019	8005660	10/3/2018	9171
2018-2019	8005660	10/3/2018	289608
2018-2019	8005660	10/3/2018	681477
2018-2019	8005660	10/3/2018	20034
2018-2019	8005660	10/3/2018	126524
2018-2019	8005660	10/3/2018	17546
2018-2019	8005660	10/3/2018	24919
2018-2019	5405800	10/23/2018	2238277
2018-2019	8524243	10/27/2018	1125920
2018-2019	8647274	11/1/2018	1420015
2019-2020	3474853	4/13/2019	954584
2019-2020	3864798	5/1/2019	898048
2019-2020	3980896	5/6/2019	1327992
2019-2020	4434800	5/25/2019	36804
2019-2020	5112801	6/25/2019	1198236
2019-2020	5272492	7/1/2019	1041393
<b>Total</b>			<b>3,05,02,911/-</b>

29. Now, I take up the issue of violation of Rule 96(10) of CGST Rules 2017 read with Notification No. 79/2017-Customs, dated the 13<sup>th</sup> October 2017. I find that the said noticee had availed the benefit of Notification No. 79/2017-Customs dated 13.10.2017 (Import under Advance License) at the time of import of raw material/inputs and thereafter the finished /manufactured goods were exported on payment of IGST & refund of Rs. 3,05,02,911/- was claimed of such IGST paid. The said mechanism adopted by taxpayer is prohibited under GST law as discussed above. For ready reference, I reproduced below Notification No. 79/2017-Customs dated 13.10.2017:-

**Notification No. 79/2017-Customs dated 13.10.2017**

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, on being satisfied that it is necessary in the public interest so to do, hereby makes the following further amendments in each of the notifications of the Government of India in the Ministry of Finance (Department of Revenue), specified in column (2) of the Table below, in the manner as specified in the corresponding entry in column (3) of the said Table, namely :-

S. No.	Notification number and date	Amendments
1	16/2015-Customs, dated the 1 <sup>st</sup> April, 2015 [vide number G.S.R. 252(E), dated the 1 <sup>st</sup> April, 2015]	In the said notification,- (a) in the opening paragraph, after clause (ii), the following shall be inserted, namely:- "(iii) the whole of integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act: Provided that the exemption from integrated tax and the goods and services tax compensation cess shall be available up to the 31 <sup>st</sup> March, 2018."; (b) in the Explanation C(II) for the words "However, the following categories of supplies, shall also be counted towards fulfilment of export obligation:", the words "However,

		authorisations where exemption from integrated tax and goods and service tax compensation cess is not availed, the following categories of supplies, shall also be counted towards fulfilment of export obligation:" shall be substituted."
2	18/2015-Customs, dated the 1 st April, 2015 [vide number G.S.R. 254 (E), dated the 1 st April, 2015]	In the said notification, in the opening paragraph,- (a) for the words, brackets, figures and letters "from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, safeguard duty leviable thereon under section 8B and anti-dumping duty leviable thereon under section 9A", the words, brackets, figures and letters "from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, integrated tax leviable thereon under sub-section (7) of section 3, goods and services tax compensation cess leviable thereon under sub-section (9) of section 3, safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under section 9A" shall be substituted; (b) in condition (viii), after the proviso, the following proviso shall be inserted, namely:- "Provided further that notwithstanding anything contained hereinabove for the said authorisations where the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act, has been availed, the export obligation shall be fulfilled by physical exports only;"; (c) after condition (xi), the following conditions shall be inserted, namely :- "(xii) that the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act shall be subject to pre-import condition; (xiii) that the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act shall be available up to the 31st March, 2018."

In brief, Notification No. 79/2017-Customs dated 13.10.2017 read with Rule 96(10) of CGST Rules 2017 allows the importer to import the Inputs/raw material without payment of IGST on import with condition that he shall not be eligible to claim a refund of IGST Paid on Export of Goods.

30. In contention of allegation made regarding availment of Notification No. 79/2017-Customs dated 13.10.2017, the noticee has submitted that that they availed IGST exemption on imports against Advance licence, however, demand for the period prior to 09.10.2018 is not sustainable in terms of Notification 54/2018-CT which is effective from 09.10.2018 and not from 23.10.2017. Further, they relied upon Circular No. 125/44/2019-GST dated 18.11.2019 in this regard. Further, they submitted that they surrendered IGST refund of Rs. 30,024/- vide DRC 03 without agreeing on merits for the period 10.2017 to 31.03.2020.



31. In this regard, I have gone through detailed reply submitted by said noticee dated 20.02.2024 and 28.02.2024 and I find that effective date of application of Notification No. 54/2018-CT is already settled by The Hon'ble Gujarat High Court in the case of Cosmo Films Ltd. v. UOI (reported in 2020 (43) GSTL 577 (Guj)) wherein Hon'ble Gujarat High Court has held that – Rule 96(10) as substituted w.e.f. 09.10.2018 vide Notification No. 54/2018-CT, shall apply retrospectively from 23.10.2017. A relevant text of the said judgment is reproduced below.

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

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

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

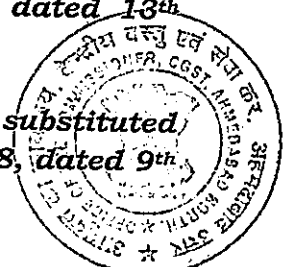
**“(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have –**

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

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

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

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





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

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

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

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

**2. In the Central Goods and Services Tax Rules, 2017, in rule 96, for sub-rule (10), the following sub-rule shall be substituted and shall be deemed to have been substituted with effect from the 23<sup>rd</sup> October, 2017, namely:- "(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have received supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, notification No. 48/2017-Central Tax, dated the 18<sup>th</sup> October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1305 I, dated the 18<sup>th</sup> October, 2017 or notification No. 40/2017-Central Tax (Rate) dated the 23<sup>rd</sup> October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 I, dated the 23<sup>rd</sup> October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23<sup>rd</sup> October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 I, dated the 23<sup>rd</sup> October, 2017 or notification No. 78/2017-Customs, dated the 13<sup>th</sup> October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272I, dated the 13<sup>th</sup> October, 2017 or notification No. 79/2017-Customs, dated the 13<sup>th</sup> October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 I dated the 13<sup>th</sup> October, 2017."**

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

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

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

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



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

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

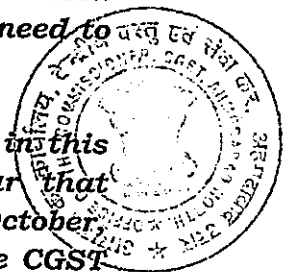
8.14 Considering the effect of the Notification No. 54/2018, the contentions raised on behalf of the respondents that there is no discrimination qua the petitioner is tenable in law, as by the amendment made by Notification No. 54/2018 it clearly denied the benefit which is granted to the petitioner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

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

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

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

9. In view of above amendment, the grievance of the petitioner raised in this petition is therefore taken care of. However, it is also made clear that Notification No. 54/2018 is required to be made applicable w.e.f. 23<sup>rd</sup> October, 2017 and not prior thereto from the inception of the Rule 96(10) of the CGST



Act. Therefore, in effect Notification No. 39/2018, dated 4<sup>th</sup> September, 2018 shall remain in force as amended by the Notification No. 54/2018 by substituting sub-rule (10) of Rule 96 of CGST Rules, in consonance with sub-section (3) of Section 54 of the CGST Act and Section 16 of the IGST Act. The Notification No. 54/2018 is therefore held to be effective w.e.f. 23<sup>rd</sup> October, 2017. Rule is made absolute to the aforesaid extent, with no order as to costs."

32. As discussed in above para, I find that the judgment in the case of *Cosmo Films Ltd. v. UOI* (reported in 2020 (43) GSTL 577 (Guj)) validates the retrospective application of Rule 96(10) under Notification Number 54/2018-CT from 23 October 2017. Since the Hon'ble Gujarat High Court has held that Notification No. 54/2018 is effective w.e.f. 23<sup>rd</sup> October, 2017, it naturally follows that from 23.10.2017, persons claiming refund of integrated tax paid on export of goods should not have received supplies on which the benefit of Notification No. 79/2017-Customs dated 13.10.2017 (provide exemption from IGST upon import of goods under Advance Authorization) are taken. In the present case, the Noticee has availed the benefit of Notification No. 79/2017-Customs dated 13.10.2017 and hence, the refund of IGST amount of Rs. 3,05,02,911/- (Rupees Three Crore Five Lakh Two Thousand Nine Hundred Eleven Only) for said period is not admissible to the said noticee as per order of Hon'ble Gujarat High Court in the case of *Cosmo Films Ltd. v. UOI*.

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

34. From the above discussion, I find that the said noticee 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 is inadmissible to the said noticee. In view of the above, I find that that the said taxpayer has contravened the following provisions of law:

- (i) 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.
- (ii) 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 which he is required to furnish such return.



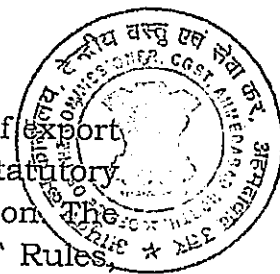
(iii) Notification No.16/2020-CT dated 23.03.2020 an amendment has been made by inserting following explanation to Rule 96(10) of CGST Rules, 2017 as amended (With retrospective effect from 23.10.2017).

**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.

(iv) Section 59 of the Central Goods and Services Tax Act, 2017 along with the corresponding entry of the Gujarat State Goods and Services Act, 2017 read with the provisions of Section 20 of Integrated Goods and Service Tax Act, 2017 in as much as they have failed to self-assess the taxes payable under this Act and failed to reverse/pay the amount of erroneous refund of IGSST as detailed above.

35. 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. 79/2017-Customs dated 13.10.2017 has been availed. Since the fact of receiving inputs under Notification No. 79/2017-Customs dated 13.10.2017 and consequent ineligibility from claiming IGST refund are known to the Noticee and yet, in the anonymity of online processing of refund claims which is automatic in nature, the Noticee has claimed refund which amounted to suppression of facts and at the same time, wilful mis-statement also. The noticee has clearly violated the provisions of Rule 96(10) of the CGST Rules, 2017. 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.

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



2017 bars the refund of such IGST, I find that they have deliberately paid the IGST on the goods exported with an intention to en-cash the unutilized ITC. The such intention of the noticee tantamount to wrong utilization of ITC with a intention to encash it by way of refund. The erroneous refund obtained by the noticee needs to be demanded from the said noticee.

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

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

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

**38.** It is a fact that in the instant matter the noticee obtained the erroneous refund in contravention of the provisions of Rule 96(10) of the CGST Rules, 2017 by wrong utilization of ITC on account of fraud and mis-statement on their part in order to avail unjust advantages. Therefore, as per the aforesaid provision of law, the interest under section 50 of the act becomes recoverable from the noticee.

**39.** Once when it is established that the noticee has received refund erroneously on account of fraud, mis-statement with a malafide intention, penalty under Section 74 of the CGST Act, 2017 becomes imposable. In the case in hand it is sufficiently proved that the intention of the noticee was to obtain unjust advantages by way of making of payment of IGST at the time of export and en-cash it by way of refund which, in fact, was without the authority of law. Thus on the one hand, the noticee was availing benefit of Notification No. 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 en-cash it in the form of refund clearly shows the ill intention on the part of noticee which was against the very object of the scheme and its spirit as well. Thus, in terms of the restriction imposed under Rule 96(10) of the CGST Rules, the noticee ought to have exported the goods under LUT instead of payment of IGST but because of aforesaid ill intention they acted in defiance of the provision of law. Further the said noticee was engaged in the business activities of export of goods since long, therefore, they were very well aware about the statutory provision of law which governs the exports and refund of tax paid thereon. The noticee despite being aware of the fact that Rule 96(10) of the CGST Rules, 2017 which bars the refund of such IGST, I find that they have deliberately paid the IGST on the goods exported in order to obtain unjust advantage as discussed above and liable to impose penalty under Section 74 of the CGST Act, 2017.



40. From the above discussion and facts, I hold that erroneous refund of Rs. 3,05,02,911/- (Rupees Three Crore Five Lakh Two Thousand Nine Hundred Eleven Only) is liable to be demanded and recovered from the said noticee under the provision of Section 74(1) of CGST Act read with Section 20 of IGST Act 2017 alongwith applicable interest under Section 50 of Act, ibid along with penalty equivalent to refund under the provision of Section 74(1) of CGST Act read with Section 20 of IGST Act 2017. Further, I find that in the Show Cause Notice, it has also been proposed to impose penalty under Section 122(1) of the CGST Act 2017. However, as per provisions of subsection 13 of Section 75 of CGST Act 2017, where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act. Accordingly, I refrain from imposing penalty under Section 122(1) of the CGST Act 2017.

41. Further, I find that said noticee has surrendered/deposited IGST refund of Rs. 2,97,30,024/- vide DRC 03 against refund claimed for 43 SB Bills. Details of such payments are as under:-

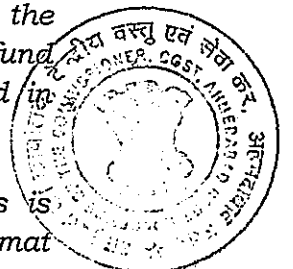
S.N.	ARN of DRC 03	Date of DRC 03	Amount IN Rs.
1	AD241219010172N	31.12.2019	9,89,547/-
2	AD240220022366Q	29.02.2020	65,32,513/-
3	AD240220022463U	29.02.2020	35,03,751/-
4	AD240520008251V	30.05.2020	59,68,954/-
5	DC2407200461419	31.07.2020	12,01,622/-
6	DC2408200308738	29.08.2020	47,84,211/-
7	DC2408200308901	29.08.2020	10,59,254/-
8	AD240222024665G	28.02.2022	12,92,369/-
9	AD240222025556G	28.02.2022	43,97,803/-
<b>Total</b>			<b>2,97,30,024/-</b>

As the said noticee has deposited amount of Rs. 2,97,30,024/- in respect of IGST refund received by them in contravention of Rule 96(10) of CGST Rules 2017, the same needs to be appropriated against demand of IGST of Rs. 3,05,02,911/- (Rupees Three Crore Five Lakh Two Thousand Nine Hundred Eleven Only). Further, I find that the noticee has paid said amount without agreeing on merits, therefore protest of the noticee needs to be vacated.

42. I find that said noticee in their defence reply has submitted that they have not received any PMT 03 for amount of Rs. 56,90,172/- and accordingly requested to issue PMT 03 for said amount. In this regard, I relied upon Circular No. 174/06/2022-GST dated 06.07.2022 wherein it is clarified that re-credit of the amount in the electronic credit ledger can be done once the taxpayer deposits the erroneously refunded amount along with interest and penalty. Relevant paras of said circular is reproduced below:-

4.1 The taxpayer shall deposit the amount of erroneous refund along with applicable interest and penalty, wherever applicable, through FORM GST DRC-03 by debit of amount from electronic cash ledger. While making the payment through FORM GST DRC-03, the taxpayer shall clearly mention the reason for making payment in the text box as the deposit of erroneous refund of unutilised ITC, or the deposit of erroneous refund of IGST obtained in contravention of sub-rule (10) of rule 96 of the CGST Rules.

4.2 Till the time an automated functionality for handling such cases is developed on the portal, the taxpayer shall make a written request, in format



enclosed as Annexure-A, to jurisdictional proper officer to re-credit the amount equivalent to the amount of refund thus paid back through FORM GST DRC-03, to electronic credit ledger.

4.3 The proper officer, on being satisfied that the full amount of erroneous refund along with applicable interest, as per the provisions of section 50 of the CGST Act, and penalty, wherever applicable, has been paid by the said registered person in FORM GST DRC-03 by way of debit in electronic cash ledger, he shall re-credit an amount in electronic credit ledger, equivalent to the amount of erroneous refund so deposited by the registered person, by passing an order in FORM GST PMT-03A, preferably within a period of 30 days from the date of receipt of request for re-credit of erroneous refund amount so deposited or from the date of payment of full amount of erroneous refund along with applicable interest, and penalty, wherever applicable, whichever is later.

In view of above, the said noticee can approach to proper officer for re-credit of erroneous refund paid back by them after payment of applicable interest as per the provisions of section 50 of the CGST Act, and penalty under the provision of Section 74(1) of CGST Act.

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

### ORDER

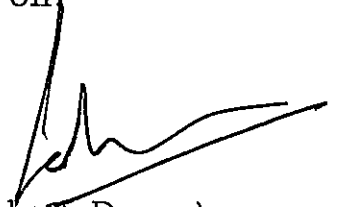
- (i) I confirm the demand of erroneously refunded IGST amounting to Rs. 3,05,02,911/- (Rupees Three Crore Five Lakh Two Thousand Nine Hundred Eleven Only) and order to recover the same from M/s. Raviraj Foils Limited under the provisions of sub-section (9) of Section 74 of the CGST Act, 2017 and the corresponding entry of the Gujarat State Goods and Services Tax Act, 2017 and Section 20 of the IGST Act, 2017;
- (ii) I dropped the demand of Rs. 94,41,056/- (Rupees Ninety Four Lakh Forty One Thousand and Fifty Six Only) under the provisions of sub-section (9) 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;
- (iii) I order to appropriate the IGST of Rs. 2,97,30,024/- (Rupees Two Crore Ninety Seven Lakh Thirty Thousand Twenty Four Only) paid by M/s. Raviraj Foils Limited against the demand of IGST liability as per para(i) above by vacating claim of protest lodged by the said noticee;
- (iv) I order to demand interest at the rates prescribed on amount confirm in para(i) above 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;
- (v) I impose a penalty of Rs. 3,05,02,911/- (Rupees Three Crore Five Lakh Two Thousand Nine Hundred Eleven Only) under Section 74(1) of the CGST Act, 2017 read with the Section 74(1) of the Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 on M/s. Raviraj Foils Limited. In terms of sub section (11) of Section 74 ibid, where any person served with an order issued under sub-section (9) pays the tax along with



interest payable thereon under section 50 and a penalty equivalent to fifty per cent of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded;

- (vi) Since penalty under Section 74 of CGST Act 2017 is already imposed, I refrain from imposing penalty under Section 122(1) of the CGST Act 2017 in terms of Section 75(13) of the CGST Act 2017.

44. Accordingly the Show Cause Notice No.-  
RFND/GST/CTP/OTH/160/2020 dated 31.03.2022 is disposed off,

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

F.NO.GST/15-12/OA-AE/2022  
By RPAD/hand delivery

Dated 19.03.2024

To,  
M/s. Raviraj Foils Limited,  
Survey No.169 & 179, PO Chharodi,  
Farm opp. Tata Nano, Tal. Sanand,  
Ahmedabad-382170

Copy to:

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

