



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

DIN-20240364WT000000F922

फा.सं./F.No. GST/15-15/OA-AE/2022

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. 99/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.

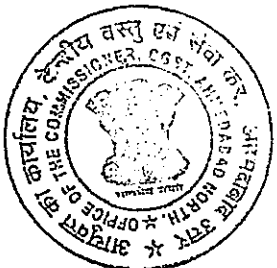
उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या GST-APL-01 में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केंद्रीय जी. एस. टी. नियमावली, 2017 के नियम 108 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।

- (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/77/2020-AE-II dated 31.03.2022 issued to M/s Shah Industries (Legal Name: Parag Manubhai Shah), having GSTIN: 24AIDPS2321M2ZF, C-1/270, GIDC Naroda, Naroda, Ahmedabad, Gujarat-382330.





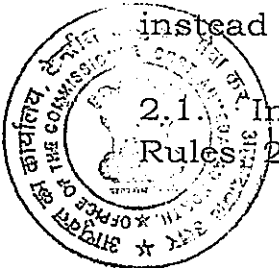
BRIEF FACTS OF THE CASE

M/s. SHAH INDUSTRIES [Legal Name: PARAG MANUBHAI SHAH], having its principal place of business located at C-1/270, GIDC NARODA, NARODA, Ahmedabad, Gujarat, 382330 (hereinafter referred to as the 'said taxpayer') is holding Goods and Service Tax registration no. 24ADIPS2321M2ZF. The taxpayer is engaged in the manufacturing and supply of taxable goods viz. S.O. Dyes falling under HSN 3204. 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. On the basis of information, a search was conducted on the factory premises of the said taxpayer on 04.10.2019 under search warrant no. 36/2019 under Section 67 of the CGST Act 2017. 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 and for the goods made for Deemed Exports thus contravening Rule 96(10) of CGST Rules, 2017 read with Notification no. 48/2017-Central Tax dated 18.10.2017 for the period from F.Y. 2017-18 to F.Y. 2019-20 (Upto September-2019) read with Notification no. 79/2017-Customs dated 13.10.2017. Rule 96(10) of CGST Rules, 2017 provides that the persons claiming refund of IGST paid on exports of goods or services should not have received supplies on which the benefit of Notification No. 48/2017-Central Tax dated 18.10.2017 has been availed. In other words, refund of IGST paid on zero-rated export supplies will not be available if the claimant of such refund had received supplies of inputs or input services against Advance Authorization issued under Chapter 4 of FTP, 2015-2020. During the course of investigation the taxpayer accepted the ineligibility of the IGST Refund claimed by them and initiated making payment through DRC-03.

During the course of investigation and scrutiny of documents 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.

2.1. 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.

3. Notification no. 54/2018-Central Tax dated 09.10.2018 substituted Sub-rule (10) of Rule 96 of the Central Goods and Service Tax Rules, 2017 with the following-

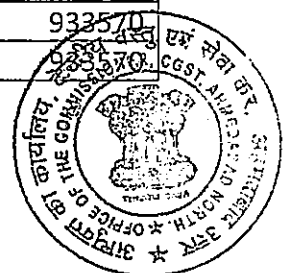
“(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have –

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

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

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

Shipping Bill Wise Details of Export with payment of IGST on which refund claimed by the taxpayer.				
Financial Year 2017-18				
SR NO.	S.B. NO.	S. B. DATE	IGST AMT.	
1	7944326	10-Aug-17	399729	
2	7955249	11-Aug-17	888071	
3	7968480	11-Aug-17	800148	
4	8561452	09-Sep-17	449708	
9	9083472	05-Oct-17	399017	
12	9392252	19-Oct-17	170717	
5	8690018	15-Sep-17	933570	
6	8717953	18-Sep-17	933570	
7	8761948	19-Sep-17	933570	

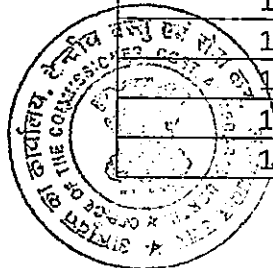


8	9031174	03-Oct-17	470106
10	9150297	07-Oct-17	474534
11	9162905	09-Oct-17	474534
13	9729548	06-Nov-17	171775
14	9947827	16-Nov-17	940212
15	5005431	17-Nov-17	609525
16	9986289	18-Nov-17	470106
17	1454632	11-Dec-17	940212
18	1674655	20-Dec-17	188042
19	1674711	20-Dec-17	752169
20	3224115	01-Mar-18	562098
21	3262176	05-Mar-18	660327
22	3382078	09-Mar-18	584237
23	3393359	10-Mar-18	748814
24	3440182	13-Mar-18	807962
25	3464877	13-Mar-18	714386
26	3525365	16-Mar-18	450333
27	3552989	17-Mar-18	528391
28	3570091	17-Mar-18	325741
29	3579863	19-Mar-18	900666
30	3607846	20-Mar-18	593227
31	3604102	20-Mar-18	900666
32	3628410	20-Mar-18	594492
33	3700213	23-Mar-18	651251
34	3740508	24-Mar-18	136789
35	3804303	27-Mar-18	657717
36	5001509	29-Mar-18	38452
37	5001507	29-Mar-18	559683
38	3874406	30-Mar-18	900666
39	3874346	30-Mar-18	967639
40	3918535	31-Mar-18	225167
41	3918769	31-Mar-18	241910
42	5001509	29-Mar-18	38452
43	5001507	29-Mar-18	559683
		Total	24748064

Shipping Bill Wise Details of Export with payment of IGST on which refund claimed by the taxpayer.

Financial Year 2018-19

SR NO.	S.B. NO.	S. B. DATE	IGST AMT.
1	5171038	28-May-18	672446
2	5260515	31-May-18	153741
3	5963201	02-Jul-18	586995
4	6012105	04-Jul-18	1358784
5	6233842	14-Jul-18	185099
6	6233864	14-Jul-18	452818
7	6233865	14-Jul-18	709920
8	6391370	21-Jul-18	224885
9	6391407	21-Jul-18	409193
10	7170604	27-Aug-18	647554
11	7250058	30-Aug-18	1181743
12	7250057	30-Aug-18	1181743
13	7416354	06-Sep-18	809482
14	7458543	08-Sep-18	711617
15	7632398	17-Sep-18	571334

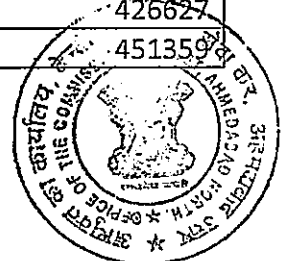


16	5003837	18-Sep-18	1018200
17	7850104	26-Sep-18	666653
18	5004021	01-Oct-18	430511
19	5004022	01-Oct-18	639792
20	5004307	27-Oct-18	549836
21	9165167	27-Nov-18	1077300
22	9193951	28-Nov-18	1088073
23	1208987	09-Jan-19	262398
24	1210804	09-Jan-19	419387
25	1238991	10-Jan-19	606796
26	1280076	12-Jan-19	380077
27	1280095	12-Jan-19	428150
28	1280794	12-Jan-19	938925
29	1379444	17-Jan-19	360547
30	1399273	18-Jan-19	950400
31	1548546	24-Jan-19	361884
32	1584316	25-Jan-19	356590
33	1584304	25-Jan-19	645258
34	1584311	25-Jan-19	942797
35	1653580	29-Jan-19	702650
36	1680849	30-Jan-19	866765
37	1744862	01-Feb-19	384722
38	1737047	01-Feb-19	433382
39	1790491	04-Feb-19	804723
40	1829448	05-Feb-19	866765
41	1848511	06-Feb-19	356590
42	2358760	27-Feb-19	865534
43	2450295	02-Mar-19	537621
44	2452076	02-Mar-19	580186
45	2794294	16-Mar-19	211060
46	2857407	19-Mar-19	208940
47	2990592	25-Mar-19	673589
48	5004609	24-Nov-18	633568
49	5004830	13-Dec-18	528519
50	5005031	31-Dec-18	472319
51	5000035	02-Jan-19	563845
52	5000266	19-Jan-19	992763
53	5000265	19-Jan-19	588070
54	5000264	19-Jan-19	417340
55	5000335	28-Jan-19	588070
56	5000336	28-Jan-19	323136
57	5000475	06-Feb-19	284360
58	5000476	06-Feb-19	439465
59	5000474	06-Feb-19	637655
		Total	35942563

Shipping Bill Wise Details of Export with payment of IGST on which refund claimed by the taxpayer.

Financial Year 2019-20 (Up to Sep-2019)

SR NO.	S.B. NO.	S. B. DATE	IGST AMT.
1	3651525	22-Apr-19	180296
2	3651714	22-Apr-19	421776
3	3641817	22-Apr-19	630666
4	3709125	24-Apr-19	649215
5	3741495	25-Apr-19	426627
6	3768909	26-Apr-19	451359



7	3790257	27-Apr-19	370832
8	3783473	27-Apr-19	939816
9	3845968	30-Apr-19	939816
10	3919409	03-May-19	371371
11	3951710	04-May-19	145202
12	3950629	04-May-19	683597
13	4005024	07-May-19	631584
14	4034326	08-May-19	951091
15	3951719	04-May-19	372635
16	6533136	27-Aug-19	727315
17	6555730	28-Aug-19	668284
18	6763904	06-Sep-19	760201
19	6888203	12-Sep-19	667134
20	6968632	16-Sep-19	270678
21	6987281	17-Sep-19	616544
		Total	11876039

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."

6. 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. 7,25,66,666/- from F.Y. 2017-18 to F.Y. 2019-20 (up to September-2019) and the same is required to demanded/ pay back along with applicable interest and penalty.

7. 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.

8. 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. In this regard, 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.

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

"Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, investigation, 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;

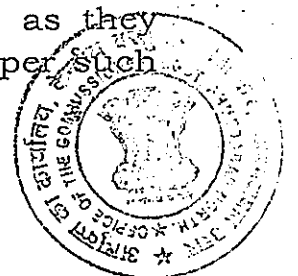
Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier."

9. Sub-section (1) of Section 74 provides that

"where it appeared to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any 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 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."

10. In view of the aforesaid narrations, it appeared that the Taxpayer has contravened the following provisions of law:

- Rule 96(10) of the Central Goods and Services Tax Rules, 2017 along with the corresponding entry of the Gujarat State Goods and Services Act, 2017 read with Section 20 of the Integrated Goods and Service Tax Act, 2017 in as much as they had filed the refund of IGST paid on Zero Rated Supplies after availing the benefit of Notification no. 48/2017-Central Tax, dated 18.10.2017 or Notification no. 79/2017-Customs dated 13.10.2017.
- Section 39(9) of the Central Goods and Services Tax Act, 2017 along with the corresponding entry of the Gujarat State Goods and Services Act, 2017 read with the provisions of Section 20 of Integrated Goods 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;

- Notification No. 16/2020-CT dated 23.03.2020 under which an amendment has been made by inserting the 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.

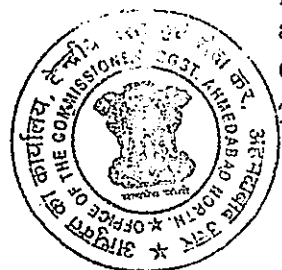
- Section 59 of the Central Goods and Services Tax Act, 2017 along with the corresponding entry of the Gujarat State Goods and Services Act, 2017 and provisions of Section 20 of the Integrated Goods and Service Tax Act, 2017 in as much as they have failed to self-assess the taxes payable under the provisions of the act and failed to reverse/ pay the amount of erroneous refund of Integrated Goods and Service Tax as detailed above at para 4.

11. In terms of the provisions of Rule 142(1A) of the CGST Rules, 2017, DRC-01A was issued to the said taxpayer on 22.03.2022 intimating their liability under Section 74(5) of the CGST Act, 2017 or to file any submissions against the above ascertainment in Part-B of DRC-01A on or before 28.03.2022.

12. Therefore, Show Cause Notice No. RFND/GST/CTP/77/2020-AE-II dated 31.03.2022 was issued to M/s. SHAH INDUSTRIES [Legal Name: PARAG MANUBHAI SHAH], having its principal place of business located at C-1/270, GIDC NARODA, NARODA, Ahmedabad, Gujarat, 382330, called upon to show cause as to why:

(i) the extended period of limitation, prescribed under provisions of sub-section (10) of Section 74 of the Central Goods and Services Tax 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 should not be invoked against them for the reasons discussed above;

(ii) total IGST of Rs. 7,25,66,666/- (Rupees Seven Crore Twenty Five Lakhs Sixty Six Thousand Six Hundred Sixty Six Only) along with equivalent penalty should not be demanded, confirmed and recovered from the taxpayer under the provisions of sub-section (1) of Section 74 of the Central Goods and Services Tax 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 and;



(iii) Interest at the rates prescribed should not be demanded and recovered from the taxpayer under the provisions of Section 20 (xxv) of the Integrated Goods and Service Tax Act, 2017 read with Section 50(1) of the Central Goods and Services Tax Act, 2017 and the corresponding entry of the Gujarat State Goods and Services Tax Act, 2017 and Section 20 of the Integrated Goods and Service Tax Act, 2017;

(iv) IGST of Rs. 3,81,43,122/- (Rupees Three Crore Eighty One Lakhs Forty Three Thousand One Hundred Twenty Two Only) paid through ITC/cash, should not be appropriated against their outstanding GST tax liability as per para (ii) above.

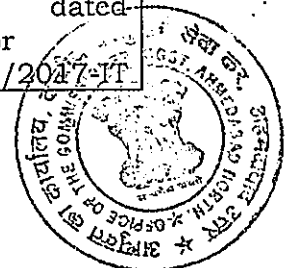
(v) Penalty under the provisions of Section 20 (xxv) of the Integrated Goods and Service Tax Act, 2017 read with Section 122(1) of the Central Goods and Service Tax Act, 2017 for the above contraventions.

DEFENCE REPLY

13. M/s. Shah Industries has filed their defense reply vide letter dated 04.04.2023 received on 05.04.2023 wherein they denied the allegations in the aforesaid SCN. Their reply is as under:-

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

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



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

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

- (i) For the period from 23.10.2017 to 8.10.2018 – Rule 96(10) will apply to a person who has received supplies from supplier who has availed IGST exemption;
- (ii) For the period from 9.10.2018 – Rule 96(10) will apply to a person who himself has availed IGST exemption.

13.2 They further submitted that they are engaged in the business of Manufacturing of chemicals and supply of taxable goods. Out of total IGST amounting to Rs. 7,28,78,206/-, in respect of export of goods, IGST refund amounting to Rs. 3,81,34,266/- pertains to export of goods which are manufactured from inputs imported under Notification No. 79/2017-Cus (i.e. under Advance Authorisation Scheme).

13.3 Further, they submitted that department has assumed that wherever SB contained AA number, it necessarily means violation of Rule 96(10) of CGST Rules. The Department has not verified the fact that inputs which are used in manufacture of export goods are imported without payment of IGST under AA scheme. They further submitted that the violation needs to be proved based on facts and not based on the declaration on the Shipping bills considering the fact that AA scheme permits post export and pre-import benefits to exporters.

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

- (1) CC v. Millat Fibres [2011 (271) E.L.T. 512 (Guj)]
- (2) Doothat Tea Estate Kanoi Plantation (P) Ltd. v. CCE, Shillong [2001 (135) E.L.T. 386 (Tri.-Kol)]
- (3) Commissioner of C.Ex. Shillong v. Jellalpure Tea Estate [2011 (268) E.L.T. 15 (Gau)]
- (4) M/s. Eveready Industries India Ltd. v. CESTAT, Chennai [2016-TIOL-676-HC-MAD-CX = 2016 (337) E.L.T. 189 (Mad)]
- (5) CCE, Tirupathi v. Panyam Cements & Minerals Industries Ltd [2006 (331) E.L.T. 206 (A.P.)]



13.5 They contested that they are duly entitled for refund amounting to Rs. 6,41,86,879/- for the period July-2017 to March-2020, in terms of Rule 96A of CGST Rules, for refund of accumulated ITC, in case if goods were exported without payment of tax, under Bond/LUT. Thus, demand to that extent is not sustainable being "Revenue Neutral". Even otherwise also, they are entitled for refund under Rule 96A of CGST Rules. They relied upon the following decisions:-

- (1) Zenith Spinners v. Union of India – 2015 (326) E.L.T. 97 (Guj) affirmed in 2015 (326) ELT 23 (Supreme Court)
- (2) In the case of 2021 (378) E.L.T. 406 (Mad) REIL Electricals India Ltd vs Jt. Secretary (Revisionary Authority), New Delhi

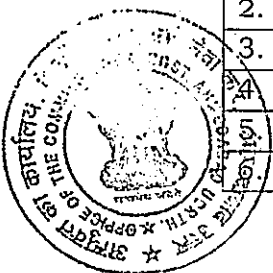
13.6 They submitted that Notification No. 54/2018-CT dated 09.10.2018 has an effective date for implementation as the date of publication in Official Gazette which is 09.10.2018. Thus, Notification No. 54/2018-CT dated 09.10.2018 would not be retrospective effect and therefore demand for the period prior to 09.10.2018 would not be sustainable in law. Further, they submitted that as per para 52 of CBIC Circular No. 125/44/2019-GST dated 18.11.2019, a registered person shall be eligible to claim refund of IGST paid on export of goods till 09.10.2018, if the said registered person has imported goods under Advance Authorisation Scheme, by availing benefit under Notification No. 79/2017-Cus dated 13.10.2017.

13.7 They further submitted that they have claimed total IGST refund of Rs. 3,81,34,267/- paid on Zero Rated Supplies made during the period 23.10.2017 to 31.03.2020, on which they have also availed the benefit of exemption of Notification No. 79/2017-Cus dated 13.10.2017 and not paid IGST on import of inputs. Out of said amount, they have claimed refund of IGST of Rs. 2,87,09,532/- paid on Zero Rated supplies made during the period 09.10.2018 to 31.03.2020 on which they have also availed the benefit of exemption of Notification No. 79/2017-Cus dated 13.10.2017 and not paid IGST on import of inputs.

13.8 Further, they contended that demand for wrong availment of refund of IGST of Rs. 7,25,66,666/- is factually incorrect, since department has raised demand for total amount of IGST refund received by them during the period July-2017 to March-2020. They submitted that without prejudice to other submissions, demand can only be raised for the period 09.10.2018 till 31.03.2020 as per Notification No. 54/2018-CT dated 09.10.2018 and not for complete period from July-2017 to March-2020, and, therefore, assuming, without admitting, demand of refund of IGST of Rs. 2,87,09,532/- only can be sustainable, instead of Rs. 3,81,34,267/- paid on export, after availing the benefit of Advance Authorisation. They relied on the judgment of Hon'ble High Court of Gujarat in case of Zaveri and company vs UOI, SCA No. 15091 of 2018.

13.9 They have agreed on rejection of refund in terms of Rule 96(10), without agreeing on merits, and to buy the peace of mind and surrendered amount of IGST refund claimed of Rs. 3,81,43,123/- against refund claimed for 62 Shipping Bills for the period July-2017 to March-2020 through DRC-03, details of which are as under:-

Sr.No.	DRC-03 ARN	DRC-03 Date	Amount of DRC-03
1.	AD2401200033821	09-01-2020	3,56,590
2.	AD240620003912M	10-06-2020	28,00,710
3.	AD240820000196L	01-08-2020	18,89,280
4.	AD240820000953F	05-08-2020	36,46,437
5.	AD2408200028783	10-08-2020	21,63,340
6.	AD2408200065959	21-08-2020	14,68,150



7.	AD240920000265M	01-09-2020	26,11,756
8.	AD240920004500S	12-09-2020	62,14,712
9.	AD241220006372W	19-12-2020	14,20,150
10.	AD241220006438M	19-12-2020	77,93,248
11.	AD240221006643Q	16-02-2021	17,68,234
12.	AD240221006660U	16-02-2021	23,14,557
13.	AD240721008343K	13-07-2021	36,95,959
	GRAND TOTAL		3,81,43,123

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

13.11 In respect of interest, they submitted that if they exported the said goods, without payment of tax, under Bond/LUT, then company is duly eligible to claim the refund of Rs. 6,41,86,879/- of accumulated input tax credit, in terms of Rule 89(4) of CGST Rules, 2017. Thus, interest is not leviable on them. Further, they submitted that Section 50 of CGST Act, 2017 provides for levy of interest only in cases of short payment or non payment of tax and in cases when the input tax credit was wrongly availed and utilized by the taxpayer. Law does not prescribe any manner of calculating interest for recovery of erroneous refunds which are made to a taxpayer. Thus, interest is not leviable on them.

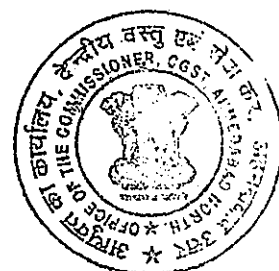
13.12 For imposing penalty under Section 122 of the Act, there should be an intention to evade payment of tax, or wrong availment of any refund, or there should be suppression or concealment of material facts. They have provided all the details as and when desired by the Department. They placed reliance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

- (a) Suvikram Plastex Pvt Ltd v. CCE, Bangalore – III 2008 (225) ELT 282 (T)
- (b) Rallis India Ltd v CCE, Surat 2006 (201) ELT 429 (T)
- (c) Patton Ltd v CCE, Kolkata – V 2006 (206) ELT 496 (T)
- (d) CCE, Tirupati v Satguru Engineering & Consulting Pvt Ltd 2006 (203) ELT 492 (T)
- (e) Indian Hume Pipes Co. Ltd. v. CCE, Coimbatore 2004 (163) ELT 273 (T)
- (f) Hon'ble Supreme Court in the case of Akbar Badruddin Jiwani v Collector of Customs reported at 1990 (047) ELT 0161 SC
- (h) Hon'ble Supreme Court in the case of Pahwa Chemicals vs. CCE – 2005 (189) ELT 257 (SC)

13.13 In view of the above submission, they requested to drop the demand of Tax of Rs. 7,25,66,666/- along with interest and penalty.

PERSONAL HEARING

14. Personal Hearing in the instant case was held on 21.02.2024 in virtual mode. Ms Madhu Jain, Advocate, duly authorized representative of the Taxpayer appeared for Personal Hearing via virtual mode. She re-iterated their written submission dated 05.04.2023. She further requested to decide the matter on merits.



DISCUSSION AND FINDINGS

15. I have carefully gone through the records of the case, defense reply dated 04.04.2023 received on 05.04.2023 and submission made by the Taxpayer during the course of personal hearing and proceeds to decide the case.

16. Briefly stated the facts of the case are that M/s Shah Industries having registration GSTIN No. 24ADIPS2321M2ZF is engaged in the manufacture and supply of taxable goods viz S.O. Dyes falling under HSN 3204. Further, on the basis of information, a search was conducted on the factory premises of the said taxpayer on 04.10.2019. During the course of investigation and scrutiny of documents of taxpayer, it was observed that the Taxpayer had availed the refund of IGST of Rs. 7,25,66,666/- paid on Zero Rated Supplies after availing benefit of Notification No. 79/2019-Customs dated 13.10.2017 and contravening the provisions of Rule 96(10) of CGST Rules, 2017 as amended.

17. It is alleged in the impugned SCN that the Taxpayer had received refund of IGST amounting to Rs. 7,25,66,666/- paid on exports (Zero Rated Supplies) made during period from F.Y. 2017-18 to F.Y. 2019-20 (upto September-2019) in contravention of Rule 96(10) of CGST Rules, 2017. Thus, I find that the issue to be decided is to whether the said Taxpayer is liable to pay erroneously refunded amount of Rs. 7,25,66,666/- during the period from F.Y. 2017-18 to F.Y. 2019-20 (upto Sep-2019).

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

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

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



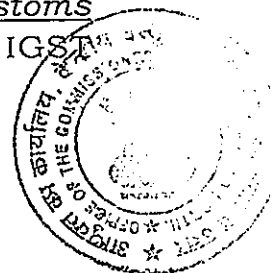
“(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have –

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

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

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

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



during the export of goods where the benefit of the advance authorization and other benefits mentioned in the rule is availed.

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

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

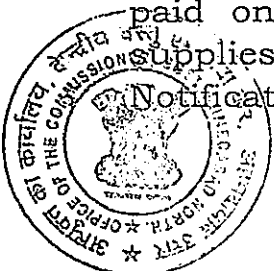
23. This restriction was first introduced vide Notification No. 03/2018-Central Tax dated 23.01.2018, which got subsequently modified and amended by way of Notifications issued from time to time (as discussed below).

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

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

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

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



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

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

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

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

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

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

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

“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/ 201 7-Central Tax, dated the 18th October, 201 7, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G. S.R 1305 (E), dated the 18th October, 2017 or notification No. 40/ 2017-Central Tax (Rate) dated the 23rd October, 201 7, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G. S.R 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 201 7, 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/ 201 7-Customs, dated the 13th October, 201 7, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/ 2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E) dated the 13th October, 2017. "

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

27. The subject matter pertaining to Rule 96 (10) of CGST Rules, 2017 was further amended by the issuance of Notification No. 54/2018-Central Tax dated 09.10.2018 and an exception was carved from the restriction imposed by Sub-Rule 96(10) of Rule 96 for those exporters who are importing capital goods under the EPCG Scheme. This notification was made effective from the date of publication in the Official Gazette i.e. 09.10.2018. The said Notification reads as:

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

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



41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rd October, 2017 has been availed; or

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

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

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

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

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

"However, it is also made clear that Notification No. 54/2018 is required to be made applicable w.e.f 23rd October, 2017 and not prior



thereto from the inception of Rule 96(10) of the CGST Rules. Therefore, in effect Notification No. 39/2018 dated 04.09.2018 shall remain in force as amended by the Notification No. 54/2018 by substituting sub rule (10) of Rule 96 of CGT Rules, in consonance with subsection (3) of Section 54 of CGST Act and Section 16 of IGST Act. The Notification No. 54/2018 is therefore held to be effective w.e.f 23rd October 2017. Rule is made absolute to the aforesaid extent.”

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

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

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

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

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

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

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

33. I find that the Taxpayer in their reply to SCN has made reference to various notifications issued in respect of Rule 96(10) of CGST Rules, 2017 and para 52 of Circular No. 125/44/2019-GST dated 18.11.2019 and stated that vide Circular No.125/44/2019-



GST dated 18.11.2019, it was clarified that any exporter who have imported any input/capital good in terms of Notification No.78/2017-custom and No.79/2017 custom both dated 13.10.2017 before the issuing of Notification No.54/2018 dated 09.10.2018, shall be eligible to claim refund of IGST paid on export. They further submitted that vide Para 52 of the said circular, once the refund become eligible, retrospective notification in the same would not curtail the benefit that tax payer ought to have. Thus, they did not agree for demand for the period prior to 09.10.2018.

34. Taxpayer has also made contention that the Department has assumed that wherever SB contained AA number, it necessarily means violation of Rule 96(10) of CGST Rules. They submitted that out of total IGST amounting to Rs. 7,28,78,206/- in respect of export of goods, IGST refund amounting to Rs. 3,81,34,266/- pertains to export of goods which are manufactured from inputs imported under Notification No. 79/2017-Cus (i.e. under Advance Authorisation Scheme). The Taxpayer has also deposited amount of Rs. 3,81,43,122/- towards present demand of erroneous refund of IGST paid on export of goods. They also submitted that they have paid the said amount without agreeing on the merits and to buy peace of mind.

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

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

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



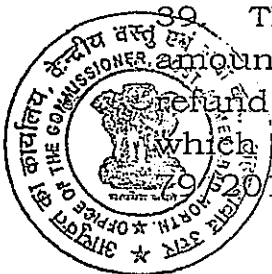
38. From the above discussion, I find that the said Taxpayer had availed the benefit of Notification No.79/2017-Customs dated 13.10.2017 and thereafter the finished /manufactured goods were exported on payment of IGST & refund was claimed of such IGST paid. The refund of IGST paid on Zero Rated export supplies will not be available if the claimant of such refund had availed the benefit of Notification No. 79/2017-Customs dated 13.10.2017. As per the provisions of Rule 96(10) of the CGST Rules, 2017, the said refund of IGST of Rs. 7,25,66,666/- is inadmissible to the said Taxpayer. In view of the above, I find that the said taxpayer has contravened the following provisions of law:

- Rule 96(10) of the Central Goods and Services Tax Rules, 2017 along with the corresponding entry of the Gujarat State Goods and Services Act, 2017 read with Section 20 of the Integrated Goods and Service Tax Act, 2017 in as much as they had filed the refund of IGST paid on Zero Rated Supplies after availing the benefit of Notification no. 79/2017-Customs dated 13.10.2017.
- Section 39(9) of the Central Goods and Services Tax Act, 2017 along with the corresponding entry of the Gujarat State Goods and Services Act, 2017 read with the provisions of Section 20 of Integrated Goods and Service Tax Act, 2017 in as much as they have failed to pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return;
- Notification No.16/2020-CT dated 23.03.2020 under which an amendment has been made by inserting the 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."

- 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 and provisions of Section 20 of the Integrated Goods and Service Tax Act, 2017 in as much as they had failed to self-assess the taxes payable under the provisions of the act and failed to reverse/pay the amount of erroneous refund of Integrated Goods and Service Tax as detailed above.

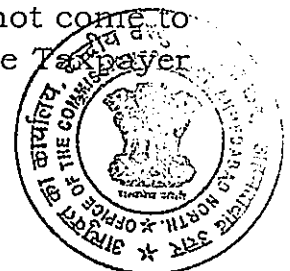
39. The Taxpayer has made contention that out of total IGST amounting to Rs. 7,28,78,206/- in respect of export of goods, IGST refund amounting to Rs. 3,81,34,266/- pertains to export of goods which are manufactured from inputs imported under Notification No. 79/2017-Cus (i.e. under Advance Authorisation Scheme) and



impugned SCN has been issued wrongly in respect of total IGST paid export made during the period 23.10.2017 to 31.03.2020.

In this regard, I find that Notification No. 54/2018-Central Tax dated 09.10.2018 provides that the persons claiming refund of integrated tax paid on exports of goods or services should not have availed the benefit under notification No. 79/2017-Customs, dated the 13th October, 2017. Thus, it is very clear in law that if benefit under notification No. 79/2017-Customs, dated the 13th October, 2017 is availed by the Taxpayer, then, refund can't be claimed in respect of IGST paid on zero rated supplies. On perusal of documents available on record, I find that the Taxpayer has availed benefit of Notification No. 79/2017-Cus dated 13.10.2017 and then claimed refund of IGST amounting to Rs. 7,25,66,666/- in respect of export of goods. The Taxpayer has not submitted any documentary evidence in support of their claim that only IGST refund of Rs. 3,81,34,266/- pertains to export of goods which are manufactured from inputs imported under Notification No. 79/2017-Cus (i.e. under Advance Authorisation Scheme). Thus, I find that entire refund claim of Rs. 7,25,66,666/- is erroneous.

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



had been committed with an intention to evade the payment of GST by suppressing the facts. Therefore, the same is required to be demanded and confirmed from them under Section 74(1) of the CGST Act, 2017/Gujarat GST Act'2017 read with Section 20 of IGST Act'2017 by invoking extended period of five years.

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

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

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

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

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

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

44. Thus, on perusal of the facts of the case and in view of the above discussion, I find that this is a fit case to levy penalty under 74(1) of the CGST Act, 2017 read with Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 as they failed to pay the tax with the intend to evade the same. These facts would not have come to



light had the department not initiated inquiry against the said Taxpayer. The Taxpayer had thus, willfully suppressed the erroneous refund of IGST paid on exports with an intent to evade the Tax. Hence, I find that this is a fit case to impose penalty equivalent to the tax under Section 74(1) of the CGST Act, 2017 read with Gujarat GST Act, 2017.

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

46. I further find that the Taxpayer has already deposited amount of Rs. 3,81,43,122/- without agreeing on the merit. The same needs to be appropriated and adjusted by vacating the claim of protest against the said demand of IGST of Rs. 7,25,66,666/- refunded erroneously in contravention of Rule 96(10) of CGST Rules, 2017.

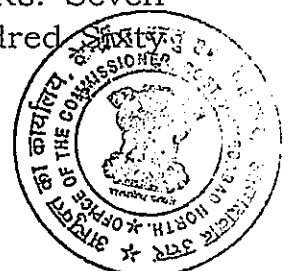
47. Further, I find that in the Show Cause Notice, it has also been proposed to impose penalty under Section 122(1) of the CGST Act 2017. However, as per provisions of sub-section 13 of Section 75 of CGST Act 2017, where any penalty is imposed under section 73 or section 74, no penalty for the same act 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.

48. From the above facts, I hold that the said amount of IGST of Rs. 7,25,66,666/- is liable to be demanded and recovered from the said Taxpayer under the provisions of Section 74(1) of the CGST Act, 2017 read with the Section 74(1) of the Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 along with applicable interest under the provisions of Section 50 of the Act, ibid. I find that the said tax payer has already paid the IGST amount of Rs. 3,81,43,122/- and the same needs to be appropriated against the said demand. Further, I find that the Taxpayer is also liable for penalty equivalent to the tax under Section 74(1) of the CGST Act, 2017 read with Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017.

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

O R D E R

- (i) I confirm the demand of IGST of Rs. 7,25,66,666/- (Rs. Seven Crore Twenty Five Lakh Sixty Six Thousand Six Hundred



Six Only) and order to recover the same from them under the provisions of sub-section (1) of Section 74 of the CGST Act, 2017 and the corresponding entry of the Gujarat State Goods and Services Tax Act, 2017 and Section 20 of the IGST Act, 2017;

- (ii) I order to appropriate the IGST of Rs.3,81,43,122/- (Rupees Three Crore Eighty One Lakh Forty Three Thousand One Hundred Twenty Two Only) paid through ITC/Cash against the demand of IGST liability as per para (i) above by vacating the claim of protest;
- (iii) I order to demand interest at the rates prescribed and recover the same from them under the provisions of Section 20 (xxv) of the IGST Act, 2017 read with Section 50(1) of the CGST Act, 2017 and the corresponding entry of the Gujarat State Goods and Services Tax Act, 2017;
- (iv) I impose a penalty of Rs. 7,25,66,666/- (Rs. Seven Crore Twenty Five Lakh Sixty Six Thousand Six Hundred Sixty Six Only) under Section 74(1) of the CGST Act, 2017 read with the Section 74(1) of the Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 on the taxpayer. In terms of sub section (11) of Section 74 ibid, where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded;
- (v) 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.

50. Accordingly, the Show Cause Notice No. RFND/GST/CTP/77/2020-AE-II dated 31.03.2022 is disposed off.



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

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

DT. 19.03.2024

By RPAD

To,
M/s. SHAH INDUSTRIES
[Legal Name: PARAG MANUBHAI SHAH],
C-1/270, GIDC NARODA,
NARODA, Ahmedabad, Gujarat, 382330

Copy to:

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

