



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/15-31/OA/2023

DIN- 20240464WT000080844E

आदेश की तारीख/Date of Order: - 22.04.2024

जारी करने की तारीख/Date of Issue :- 22.04.2024

द्वारा पारित/Passed by:-

लोकेश डामोर /Lokesh Damor

अपर आयुक्त / Additional Commissioner

मूल आदेश संख्या / Order-In-Original No. 02/ADC/LD/GST/2024-25

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

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरुद्ध अपील, इसकी प्राप्ति से 90 दिन के अन्दर आयुक्त (अपील), केन्द्रीय वस्तु एवं सेवा कर एवं उत्पाद शुल्क, केन्द्रीय उत्पाद शुल्क भवन, अंबावाड़ी, अहमदाबाद 380015-को प्रारूप GST-APL-01 में दाखिल कर सकता है। इस अपील पर 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।

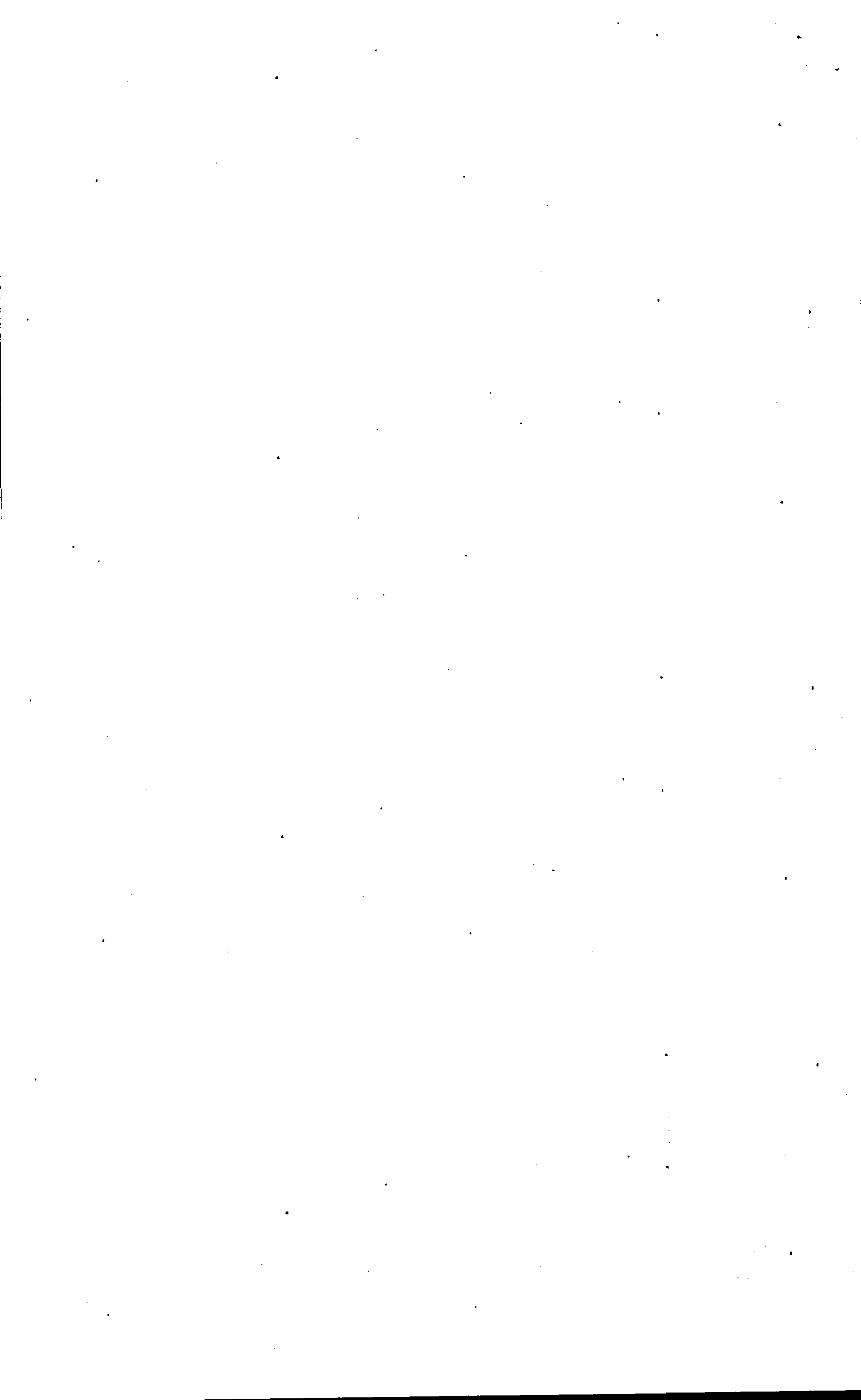
- (1) उक्त अपील की प्रति।
- (2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु. 5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

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. BEND/GST/CTP/OTH/52/2021-AE-II dated 30.03.2023 issued to M/s. Rushil Décor Limited (GSTIN: 24AABCR3005N1ZK), Rushil House, Near Neelkanth Green Bunglow, Off. Sindhu Bhavan Road, Shilaj, Ahmedabad - 380058





Brief Facts of the Case :-

M/s Rushil Decor Limited (24AABCR3005N1ZK), Rushil House, Near Neelkanth Green Bunglow, Off. Sindhu Bhavan Road, Shilaj, Ahmedabad-380058 (hereinafter referred to as "the taxpayer") are engaged in the supply of Synthetic Organic Colouring Matter (32041680, 32041610). They are registered with GSTIN having registration No. 24AABCR3005NI ZK and falls under the jurisdiction of Central GST & Central Excise, Ahmedabad North Commissionerate.

2. INTELLIGENCE:

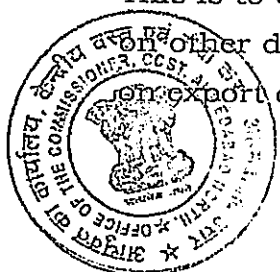
2.1 An intelligence was received by the office, indicating that the Taxpayer was exporting their finished/manufactured goods out of India under payment of Integrated Goods and Services Tax (in short "IGST") and availing benefit of refund in terms of Rule 96 of the Central Goods & Services Tax Rules,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

3. EXECUTIVE SUMMARY OF THE CASE:

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

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

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



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

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

(1) .

(2) .

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

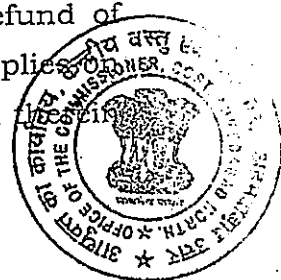
"1. (1) These rules may be called the Central Goods and Services Tax (Eleventh Amendment) Rules, 2018.

(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, Subsection (i), vide number G. S.R 1305 (E), dated the 18th October, 2017 or notification No. 40/ 2017-Central Tax (Rate) dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G. S.R. 1320 (E), dated the 23rd October, 2017 or notification No. 41/2017/Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part 11, Section 3, Sub-section (i), vide number G. S.R. 1321 (E), dated the 23rd October, 2017 or notification No. 78/ 2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/ 2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R 1299 (E) dated the 13th October, 2017."

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



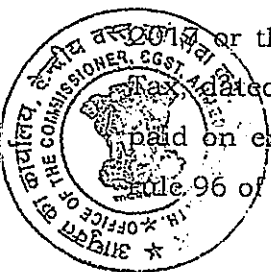
The subject matter pertaining to Rule 96 (10) of CGST Rules, 2017 was further amended by the issuance of Notification No. 54/2018-Central Tax dated 09.10.2018 and an exception was carved from the restriction imposed by sub-rule 96(10) of rule 96 for those exporters who are importing capital goods under 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, Subsection (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 23 October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (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, Subsection (i), vide number G.S.R 1299 (E), dated the 13th October, 2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme.

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

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



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

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

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

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

"10. In the said rules, in rule 96, in sub-rule(] 0), in clause (b) with effect from the 23rd October, 2017, the following Explanation shall be inserted, namely,

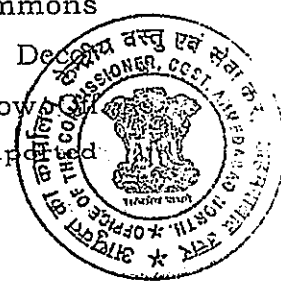
Explanation. - For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs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

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

4. INVESTIGATION

4.2 Based on the above intelligence, an investigation was initiated through summons dated 07.02.2020 (DIN-20200264WT00005Q4891) and summons dated 28.11.2022 (DIN-20221164WT0000555A5C) against M/s Rushil Deccan Limited (24AABCR3005NIZK), Rushil House, Near Neelkanth Green Bungalow, Sindhu Bhavan Road, Shilaj, Ahmedabad-380058, as the taxpayer had imp



goods without payment of IGST under Advance Authorization and later claimed refund amounting to Rs. 4, 14,43,978/-while exporting the goods during the period from November 2017 to July 2018. The details of refund claimed by the taxpayer under Advance Authorization are attached as Annexure-A of the SCN, the summary of which is as follows:

Total No. of Shipping Bill issued	FOB Value of SB (LEO issued)	IGST refund claimed of SB (LEO issued)	IGST refund sanctioned of SB (LEO issued)
128	23,33,84,854.45	4,24,81,232.00	4,14,43,978.00

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

5. OUTCOME OF INVESTIGATION-

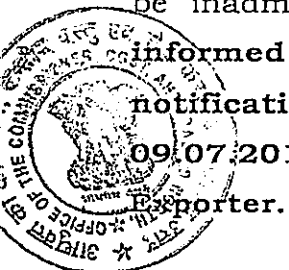
5.1 From the investigation of case, the following facts have emerged:

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

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

6. QUANTIFICATION OF GST:

6.1 As per the details submitted by the taxpayer vide their letters dated 12.12.2022 & 13.12.2022 and further verified from ADVAIT and GSTR 1 returns filed by the taxpayer, the total amount of wrongly taken IGST refund is to the tune of Rs.4, 14,43,978/- on exports after availing benefit of advance authorization on the inputs procured through import. As per the provision of Rule 96(10) of the CGST Rules, 2017, the said refund of the IGST appears to be inadmissible. The taxpayer vide letter dated 12.12.2022 further informed that they had not availed exemption of IGST under notification no. 78/2017-Customs, notification no. 79/2017 after 09.07.2018 and also had not procured goods at 0.1 % as Merchant Exporter.



6.2 Thus, the amount of Rs.4,14,43,978- of IGST Refund on finished/final goods exported by the taxpayer, whose raw material/inputs had been procured through import under benefit of advance authorization licenses required to be demanded and recovered from the taxpayer under the provisions of Section 74(1) of the CGST Act, 2017.

6.3 The taxpayer vide letter dated 13.12.2022 had submitted copy of decision given by Hon'ble Gujarat High Court in the case of Zaveri and Co. Pvt. Ltd. vs Union of India (C/SCA/16212/2020) and informed that as the matter is subjudice. However, no stay has been granted to the taxpayer in Special Civil Application No. 15833 of 2018 & in matter of M/s. Cosmo Films Ltd. vs UOI in Hon'ble High Court of Gujarat.

7. LEGAL PROVISIONS:

7.1 Following are the relevant provisions applicable for payment of GST by the Taxpayer:

7.1.1 Cross empowerment of Central Tax/CGST officers:-

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

(A) Section 6 of CGST Act 2017:

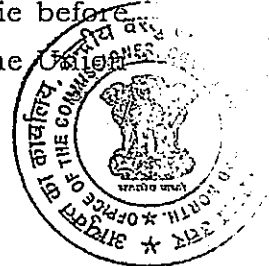
"6. (1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorized to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the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

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

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

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

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



(B) Section 6 of SGST Act 2017:

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

7.4 Rule 96(10) of the CGST Rules 2017

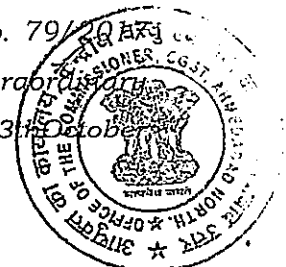
As per Rule 96(10) of the CGST rules, 2017 the taxpayer availing refund of IGST paid on Zero rated Outward Supplies should not have availed the benefit of Notification no. 7912017- Customs dated 13.10.2017.

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

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

(a) received supplies on which the benefit of the Government of India, Ministry of Finance notification No 4812017-Central Tax, dated the 18th October, 2017, published in the Gazette of India, Extraordinary, Part I, 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. 7812017-Customs, dated the 3th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 7912017- Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1299 (E), dated the 13th October,



2017 except so far it relates to receipt of capital goods by such person against Export Promotion Capital Goods Scheme.

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

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

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

Sec. 59 of CGST Act, 2017

The Government had introduced self-assessment system under a trust-based regime which casts the onus of proper assessment and discharging of the tax on the taxpayer. Section 59 of the Central Goods and Services Tax Act, 2017 provides that every registered person shall self-assess the taxes payable under this Act. Thus, it appears that the taxpayer had failed to self-assess the eligibility of the refund thereby contravening the provisions of Section 59 of the Central Goods and Service Tax Act, 2017,

Sec. 39(9) of CGST Act 2017

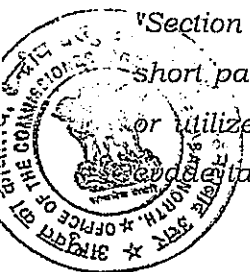
Section 39(9) of the Central Goods and Service Tax Act, 2017 provides that

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

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

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

"Section 74 (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or any willful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been



so paid or which has been so short paid or to whom. the refund has erroneously been made, or who has wrongly availed or utilized input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

7.6 Interest on delayed payment of tax

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

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

"Section 20. Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act relating to,

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

8. CONTRAVENTION OF VARIO US PROVISIONS:

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

- (i) Section 54 of the CGST Act, 2017 along with the corresponding entry of the Gujarat State Goods and Services Act, 2017 read with the provisions of Section 20 of Integrated Goods and Service Tax Act, 2017 in as much as they have fraudulently claimed the refund of JGST paid on export of Goods.
- (ii) Section 16 of the IGST Act, 2017 in as much as they have fraudulently claimed the refund of IGST without being eligible for the same.
- (iii) Rule 96 of the CGST Rules, 2017 along with the corresponding entry of the Gujarat State Goods and Services Act, 2017 read with the provisions of Section 50 of the CGST Act, 2017.



of Section 20 of Integrated Goods and Service Tax Act, 2017 as much as they have availed the benefit of said rule although they were not eligible for the same in light of conditions laid down in Rule 96(10) of the CGST Rules, 2017.

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

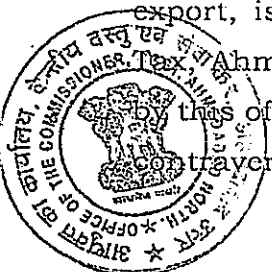
9. SUPPRESSION:

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

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

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

9.3 From the Information/ data of the taxpayer, it appears that the taxpayer have suppressed the erroneous refund of IGST paid on exports, it appears that the taxpayer's liabilities are not properly discharged. The failure to properly discharge their Tax liability is utter disregard to the requirements of law and breach of trust deposited on them is outright act in defiance of law by way suppression, concealment &no furnishing value of erroneous refund with intent to evade payment of tax. The above said erroneous refund of IGST paid on export, is unearthed after investigation was conducted by officers of Central Ahmedabad North and therefore had the investigation not been initiated by this office, the said facts would have not come to light. All the above facts of contravention on the part of the Taxpayer have been committed with an



intention to evade the payment of GST by suppressing the facts. Therefore, the same is required to be demanded from them under Section 74(I) of the CGST Act, 2017/Gujarat GST Act'2017 read with Section 20 of IGST Act'2017 by invoking extended period of five years. Since the said taxpayer was liable to self-assess the liability to pay tax, they had an obligation to furnish the correct and complete information.

9.4 Further, it appears that the taxpayer had not paid the tax within the prescribed due dates. Further, it appears they had erroneously availed refund of IGST. These non-payments of Tax were not shown in their statutory GST returns. It, therefore, appears that there is a case of suppression of facts with intent to evade the payment of tax. It appears that short paid/ not paid TGST is to be demanded/ recovered from the said taxpayer under the provisions of Section 74(1) of the CGST Act, 2017 read with the provisions of Section 20 of the TGST Act,2017.

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

- (i) extends the time limit specified under sub-section (10) of section 73 for issuance of order under subsection (9) of section 73 of the said Act, for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized, in respect of a tax period for the financial year 2017-18, up to the 30th day of September, 2023;
- (ii) excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation under sub-section (10) of section 73 of the said Act for issuance of order under subsection (9) of section 73 of the said Act, for recovery of erroneous refund;
- (iii) excludes the period from the 1st day of March, 2020 to the 28th day of February, 2022 for computation of period of limitation for filing refund application under section 54 or section 55 of the said Act."

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

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

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



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

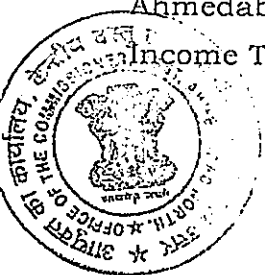
9.5 In view of the above facts, the erroneously refunded amount of Rs 4,14,43,978/- is liable to be recovered from them under Section 74(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 and the Rules made there under along with interest as applicable under Section 50(1) of the said Acts and the Rules made there under. Further, by such acts of omission and commission, the Taxpayer have also rendered themselves liable for penal action under Section 74(1) of CGST Act, 2017 for contravention of provision of CGST Act, 2017 /IGST Act, 2017 and rules made thereunder.

9.6 Further, Form GST DRC-01A bearing F.No. RFND/GST/CTP/OTH/52/2021 dated 20.03.2021 regarding intimation of tax ascertained as being payable under Section 74(5) of CGST Act, 2017 before issuing of Show Cause Notice was issued to the taxpayer on 20.03.2023 and sent vide email dated 20.03.2023.

9.7 In reply, the taxpayer vide their letter dated 24.03.2023 submitted that the said liability is not acceptable and submissions in respect of this matter is already submitted vide letter dated 13.12.2022. Vide letter dated 13.12.2022, the taxpayer submitted the copy of decision given by Hon'ble High court of Gujarat in the case of Zaveri and Co. Pvt. Ltd. vs Union of India (C/SCA/16212/2020) dated 18.02.2020 wherein notice has been issued to the respondents returnable on 24.02.2020 and stay has been granted by the court in the said case.

9.8 In light of aforesaid discussions, the contention of the taxpayer that is not tenable. Further, Hon 'ble High Court of Gujarat in the Special Civil Application No. 15833 of 2018 & in matter of Mis. 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 Notification NO. 54/2018 is held to be effective w.e.f.23' October 2017. As no stay has been granted to the taxpayer in Special Civil Application No. 15833 of 2018 & in matter of M/s. Cosmo Films Ltd. vs UOI in Hon'ble High Court of Gujarat, the request made by the taxpayer is not tenable. The detailed discussion in this regard is already held in paras above.

10. Now, therefore, M/s Rushil Decor Limited (24AABCR3005N1ZK). Rushil House, Near Neelkanth Green Bunglow, Off. Sindhu Bhavan Road, Shilaj, Ahmedabad-380058, are hereby called upon to show cause to the Joint/ Additional Commissioner (I/c Division-VI), Central GST and Central Excise, Ahmedabad North Commissionerate having his/her office at Custom House, Income Tax Circle, Ahmedabad- 382210 as to why:



- (i) Erroneously refunded IGST amount of **Rs.4,14,43,978/-** (Rs. Four crores fourteen lakhs forty three thousand nine hundred seventy eight only) should not be demanded and recovered from them under Section 74(1) of the CGST, 2017, read with corresponding Section of Gujarat GST Act, 2017 read with Section 20 of the TGST Act, 2017;
- (ii) Interest at appropriate rate should not be demanded and recovered from them on the proposed demand mentioned at (i) above under Section 50(1) of the CGST Act, 2017, read with corresponding Section of Gujarat GST Act, 2017, read with Section 20 of the IGST Act, 2017;
- (iii) Penalty should not be imposed upon them on the proposed demand at (i) above under Section 74(1) of the CGST Act, 2017, read with corresponding Section of Gujarat GST Act, 2017, read with Section 20 of the IGST Act, 2017.

Defence Submission

11. The said taxpayer vide their letter dated 09.05.2023 have submitted that there had been multiple amendments in Rule 96(10) of the CGST Rules, 2017 and in view of the plethora of amendments in Rule 96(10) of the CGST Rules, 2017, as mentioned in their reply, the interpretation of the provision was not clear to the tax authorities and therefore multiple amendments were made in the Rule. Possible interpretation for the Rule 96 (10) from 13 October 2017 to 09 October 2018 that the refund of IGST paid on export of goods should not be available if the supplier to an exporter has claimed exemption on specified notifications. In the present case, it was not the case that the supplier to an exporter has claimed any of the exemption under the specified notifications and therefore the Company has not violated the Rule 96 (10) of the CGST Rules, 2017.

12. The provisions attained its finality after notification no. 54/2018-Central Tax dated 09 October 2018 was issued by the Government. Further, the notification dated 09 October 2018 was made effective from 09 October 2018 and not retrospectively from 23 October 2017. The same is clearly evident from the notification itself.

13. It is submitted that impugned SCN was issued merely based on the decision of Gujarat High Court in the case of M/s Cosmo Films Limited which held that Notification No. 54/2018 – Central tax is required to be made applicable w.c.f 23rd October 2017 and not prior thereto.

14. They have relying upon the Hon'ble Gujarat High Court in case of Zaveri and Company Pvt Ltd has decided to re-look the said para of M/s Cosmo Films Limited. Relevant points from the order are as below:

- In the case of M/s Cosmo Films Limited, Hon'ble Gujarat High court held that the amendment made in the Notification 54/2018 CT, needs to



retrospectively. Thereafter, the same issue has come in the case of Zaveri and Company Private limited.

- The learned counsel observed that para-9 of the order passed in the Special Civil Application No. 15833 of 2018 (2020-TIOL-1801-HC-AHM-GST) i.e. in case of M/s Cosmo Films Limited, needs to be re-looked, as the Department has started issuing notices indiscriminately on the premise that the Notification would apply with effect from 23 October 2017. Further, High court has also noted that the amendment made vide notification, no. 54/2018-Central tax dated 09 Oct 2018 has not specifically provided that it has been made applicable from 23 October 2017 or 09 October 2018.
- The Gujarat High Court in the case of Zaveri and Company Pvt Ltd has stayed the proceedings and held the following: *"Let notice be issued to the respondents returnable on 24.02.2020. Till the next date of hearing, the proceedings pursuant to the notice dated 24.11.2020 Annexure - B shall remain stayed."*

15. They have not availed exemption of IGST on import of input materials under Advance Authorization after 09 July 2018 under Notification 78/2017 or 79/2017 - Customs i.e. the Company has paid IGST on import of input materials after 09 July 2018.

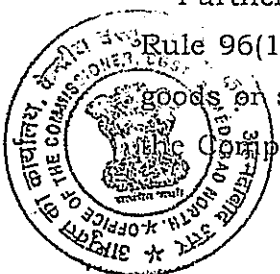
16. Therefore, since the provisions were made effective from 09 October 2018 and there is no benefit of exemption of IGST availed by the Company, there is no violation of Rule 96(10) in case of the Company. The impugned SCN is liable to be set aside on this ground itself.

17. There is no violation of the provisions of Section 54 of the CGST Act, 2017 read with Section 20 and Section 16 of the IGST Act, 2017 and relevant rules thereunder

18. There was no suppression in the present case as:

- They had disclosed all the details of each transaction in GSTR-1 and paid GST vide GSTR-3B.
- The Company has disclosed the details relating to advance authorization in shipping bill and bill of entry
- There is no non-declaration of facts or information by the Company.
- There has been plethora of amendments in Rule 96(10) as discussed in above paras and therefore, the interpretation of the provision was not clear and that the provisions were not providing clarity on the implications. However, the Company has paid IGST on all import of input material under Advance Authorisation after 09 July 2018 i.e. before the notification no 54/2018-Central tax dated 09 October 2018 was effective.

Further, the present matter relates to satisfaction of conditions prescribed under Rule 96(10) of the CGST Rules, 2017 for claiming refund of IGST paid on export of goods or services which is satisfied by the Company and there is no suppression by the Company. The impugned SCN alleging suppression and evasion of tax is without



DISCUSSION AND FINDINGS

23. I have carefully gone through the show cause notice dated 30.03.2023, defense reply dated 09.05.2023 & 01.03.2024, submission made by the taxpayer during the course of personal hearing and other records available in the files and proceed to decide the case.

24. Briefly stated the facts of the case are that M/s Rushil Décor Limited having registration GSTIN No. 24AABCR3005N1ZK is engaged in the supply of "synthetic organic colouring matter (32041680, 32041610), falling under Chapter 32".

25. An intelligence was received indicating that the said taxpayer was exporting their finished/manufactured goods out of India under payment of Integrated Goods and Services Tax (in short "IGST") and availing benefit of refund in terms of Rule 96 of the Central Goods & Service Tax Rules, 2017.

26. Based on the intelligence that the taxpayer had imported goods without payment of IGST under Advance Authorization and later claimed refund amounting to Rs. 4,14,43,978/- while exporting the goods during the period from November, 2017 to July, 2018, an investigation was initiated against the said taxpayer effecting that the said taxpayer has wrongly claimed refund of IGST paid on zero rated export supplies by availing 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 the CGST Rules, 2017 read with No. 48/2017-Central Tax dated 18.10.2017 read with Notification No. 79/2017-Customs dated 13.10.2017, as made affective from 23.10.2017.

27. Accordingly, I find that the issue to be decided is to whether the said taxpayer is liable to pay the amount of Rs. 4,14,43,978/- refunded erroneously during the period from November, 2017 to July, 2018 in contravention of Rule 96(10) of CGST Rules, 2017 read with Notification No. 48/2017-Central Tax dated 18.10.2017 and read with Notification No. 79/2017-Customs dated 13.10.2017.

28. Before taking in to consideration the submission made by the said 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.



29. Rule 96(10) of the CGST Rules, 2017 makes an exception in respect of refund of IGST paid during the export of goods on which certain benefits have been availed by exporter, one of them being availment of benefit of Notification No. 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.”

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

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



32. 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.”

33. 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.”

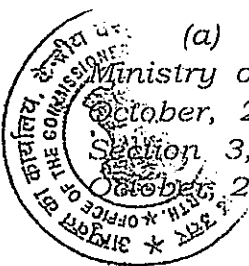
The above notification says that person claiming refund of IGST paid on exports of goods or services should not have received supplies on which the supplier has availed the benefit of Notifications as mentioned therein.

34. 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."

35. 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.

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

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

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

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

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



37. 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 –

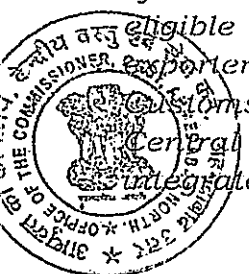
(a) received supplies on which the benefit of the Government of India, Ministry of Finance notification No. 48/2017-Central Tax, dated the 18thOctober, 2017,published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i),vide number G.S.R 1305 (E), dated the 18thOctober, 2017 except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

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.

38. 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."

39. 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.

40. 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.

41. In view of the above discussion, it is clear beyond any doubt 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.

42. On going through facts of the case, it was noticed that the said 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.

43. I find that the said 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. They have not availed exemption of IGST on import of input material under Advance Authorization after 09th July, 2018 under Notification No. 78/2017 or 79/2017-Customs, hence they have not agreed with the demand for the period prior to 09.10.2018.

44. In this regard, I have offered my detailed finding in above paras regards restriction of availment of IGST in contravention of rule 96(10) of the CGST Rules, 2017 read with Notification No. 48/2017-Central Tax dated 18.10.2017 and read with Notification No. 79/2017-Customs dated 13.10.2017 with effect from 23rd, October, 2017. Further, I have gone through detailed reply submitted by the said taxpayer, Notifications issued in respect of Rule 96(10) of CGST Rules, 2017 from time to time and judgement of Hon'ble Gujarat High Court in the case of Cosmo Films Ltd. v. UOI (reported in 2020 (43) GSTL 577 (Guj)) and find that the Hon'ble Gujarat High Court in the case of Cosmo Films Ltd. v. UOI (reported in 2020 (43) GSTL 577 (Guj)) has held that - Rule 96(10) as substituted w.e.f. 09.10.2018 vide Notification No. 54/2018-CT, shall apply retrospectively from 23.10.2017.

45. 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.

46. 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.

47. 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. 3,85,46,395/- is inadmissible to the said Taxpayer. In view of the above, I find that the said taxpayer has contravened the following provisions of law:

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

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



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.

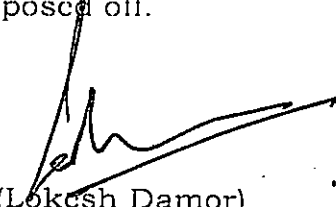
54. From the above facts, I hold that the erroneously refunded amount of IGST of Rs. 4,14,43,978/- is liable to be demanded and recovered from the said taxpayer under the provisions of Section 74(1) of the CGST Act, 2017 read with the Section 74(1) of the Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 along with applicable interest under the provisions of Section 50 of the Act, *ibid*.

55. 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. 4,14,43,978/- (Rs. Four Crores Fourteen Lakhs Forty Three Thousand Nine Hundred and Seventy Eight Only) under the provisions of Section 74(9) 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 and order to recover the same from the said taxpayer.
- (ii) I hold the demand of interest at the rates prescribed against the confirmed demand as per para (i) above 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 and order to recover the same from them;
- (iii) I impose a penalty of Rs. 4,14,43,978/- (Rs. Four Crores Fourteen Lakhs Forty Three Thousand Nine Hundred and Seventy Eight Only) under Section 74(9) 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 said 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;

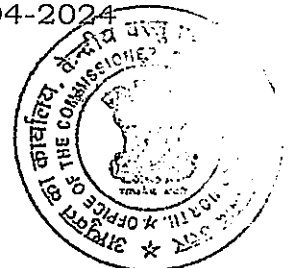
56. Accordingly, the Show Cause Notice No. RFND/GST/CTP/OTH/52/2021-AE-II dated 30.03.203 is disposed off.


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

F.NO.GST/15-31/OA-AE/2023

DT. 22-04-2024

By RPAD



To,

M/s Rushil Decor Limited (24AABCR3005N1ZK),
Rushil House, Near Neelkanth Green Bunglow,
Off. Sindhu Bhavan Road, Shilaj,
Ahmedabad-380058.

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



