



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- 20240464WT000000A904

फा.सं./F.No. GST/15-07/OA/2023

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. 03/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), 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।

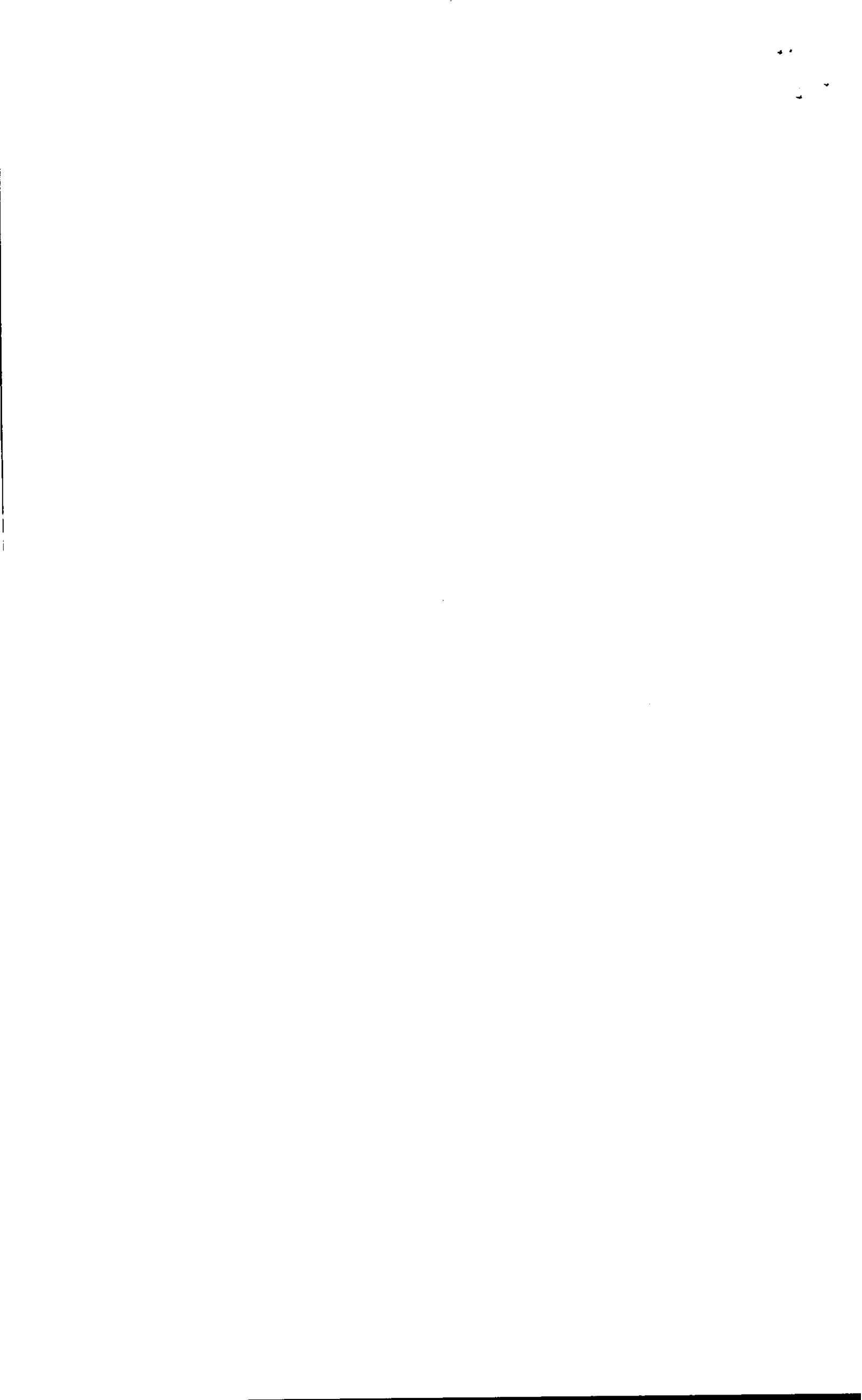
- (1) उक्त अपील की प्रति।
- (2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरुद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिसपर रु .5.00 (पांच रुपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

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 वताओ सूचना/ Proceeding initiated against Show Cause Notice F. No. RFND/GST/CTP/OTH/50/2021-AE-II dated 31.03.2023 issued to M/s. Industrial Chemical Works, B-1,2,3, GIDC Estate, Phase-II, Industrial Estate, Opp. Deepak Oil Mill, Naroda, Ahmedabad, Gujarat - 382330





BRIEF FACTS OF THE CASE

M/s. INDUSTRIAL CHEMICAL WORKS, B-1,2,3, GIDC Estate, PHASE-II, INDUSTRIAL ESTATE, OPP. DEEPAK OIL MILL, NARODA, AHMEDABAD, GUJARAT-382330 (hereinafter referred to as "said taxpayer" for the sake of brevity) are engaged in manufacturing and supplying/exporting of Plastic products which are taxable in terms of Notification no. 01/2017-Central Tax (Rate) dated 28.06.2017. They are registered with GSTIN having registration No. (24AAAFI3082J1ZJ) and falls under the jurisdiction of Central GST & Central Excise, Ahmedabad North Commissionerate.

2. INTELLIGENCE:

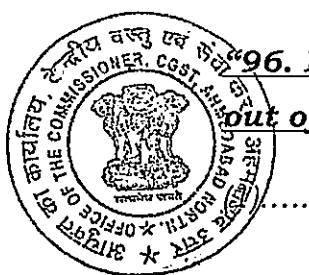
2.1 On the basis of information received, an inquiry was initiated against M/s. INDUSTRIAL CHEMICAL WORKS, B-1,2,3, GIDC Estate, PHASE-II, INDUSTRIAL ESTATE, OPP. DEEPAK OIL MILL, NARODA, AHMEDABAD, GUJARAT-382330 under CGST Act, 2017. During the course of investigation and scrutiny of documents submitted by the taxpayer, it was observed 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 The issue involved in the present case revolves around Rule 96(10) of CGST Rules, 2017, therefore, for better appreciation of the case, it becomes necessary to advert to the provisions of said rule as well as other related provisions/sections /amendments/circulars issued in this regard herein.

3.2 Under the Central Goods and Services Tax Act, 2017 (CGST Act, 2017) and Rules made thereunder, exporters are permitted to claim, either refund of unutilized Input Tax Credit (ITC) under Rule 89 of the CGST Rules, 2017 or refund of IGST paid on the goods exported under Rule 96 of the CGST Rules, 2017. However, the government while restoring the tax-free, for the EOUs, Advance Authorization/EPCG holders, restricted the second option for such exporters. In other words, exporters were barred from claiming refund of IGST paid on exported goods, where the exported goods were manufactured from duty free procured imported raw materials. The purpose behind bringing these provisions under the CGST Act/Rules is to prohibit the manufacturers/exporters from taking double benefit i.e. one at the time of procuring IGST free raw materials under Advance Authorisation/License and subsequently, making exports (by using such duty free raw materials) on payment of IGST and en-cashing such IGST by way of refund. For better appreciation, the amended provisions of Rule 96(10), is reproduced below: -

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



(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 easily 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 :-

(I).....

(II) to (ix).....



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

(1),.....

(2),.....

(9),.....

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

The restriction under sub-rule (10) of Rule 96 of the CGST Rules, 2017 is applicable to those exporter who are receiving inputs/raw materials from such suppliers who are availing benefit under notification No. 48/2017-Central Tax dated 18.10.2017(deemed export), Notification No. 40/2017 Central Tax (Rate) dated 23.10.2017 (At 0.5% intra-state supply to merchant exporter) or Notification No. 41/2017-Central Tax (Rate) dated 23.10.2017 (At 0.5% inter-state supply to merchant exporter) or Notification No. 78/2017-Cus dated 13.10.2017 (Import by 100%EOU) or Notification No. 79/2017-Cus dated 13.10.2017 (Import under Advance License/EPCG). The restrictions under this sub-rule 96(10) came into effect from 23.10.2017 by way of issuance various notifications viz. Notification No. 39/2018-Central Tax dated 04.09.2018, Notification No. 53/2018-Central Tax dated 09.10.2018 and Notification No. 54/2018-Central Tax dated 09.10.2018 and Notification No. 16/2020-Central Tax dated 23.03.2020 as discussed herein.

3.4 Vide Notification No. 39/2018-Central Tax dated 04.09.2018, the said Rule 96(10) of CGST Rules, 2017 was given retrospective effect w.e.f. 23.10.2017. The said Notification reads as:-

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



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

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

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

Thus, from the perusal of above notification, it is clear that rebate on exports cannot be availed by the exporter if the inputs procured by them have enjoyed Advance Authorisation benefits or Deemed Export benefits under the said notification with retrospective effect 23.10.2017.

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

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

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

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

"(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have received supplies on which the supplier has availed the benefit of the Government of India, Ministry of



Finance, notification No. 48/2017-Central Tax, dated the 18th October,2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-

section (i), vide number G.S.R 1305 (E), dated the 18th October,2017 or notification No. 40/2017-Central Tax (Rate) dated the 23rd October,2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-

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

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

Thus, from the perusal of above notification, it is observed that sub-clause (a) and of sub-rule 10 of Rule 96 were merged and this notification is also made effective from 23.10.2017. It further 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.

3.6 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:-

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

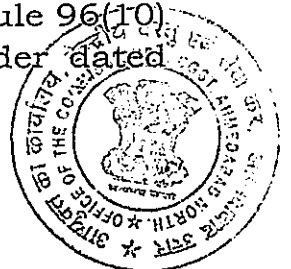
(b) availed the benefit under notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1272(E), dated the 13th October, 2017 or notification No. 79/2017-Customs, dated the 13th October, 2017,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

such person against Export Promotion Capital Goods Scheme.”

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

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

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



analysis that the taxpayer had exported goods on payment of IGST with an intent to claim refund of such duty paid, and at the same time, they 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. The said mechanism adopted by taxpayer is prohibited with effect from 23.10.2017 under GST law as discussed above.

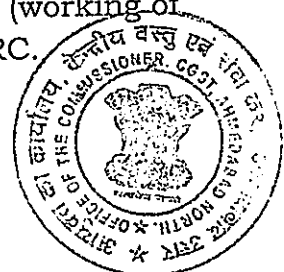
In the instant case, it was gathered that the taxpayer had availed full exemption of IGST at the time of import of raw materials, which have been imported for use in the manufacture of goods to be exported & thereafter, the finished/manufactured goods were exported on payment of IGST & refund was claimed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

4. INVESTIGATION

4.1 On the basis of information received, an inquiry was initiated against M/s. INDUSTRIAL CHEMICAL WORKS, B-1,2,3, GIDC Estate, PHASE-II, INDUSTRIAL ESTATE, OPP. DEEPAK OIL MILL, NARODA, AHMEDABAD, GUJARAT-382330 under summon proceedings under section 70, CGST Act, 2017. During the course of investigation and scrutiny of documents submitted by the taxpayer, it was observed that M/s. INDUSTRIAL CHEMICAL WORKS, had been regularly claiming and receiving refund of IGST paid by them on export goods manufactured out of supplies on which the benefits of Advance Authorization were availed as stated above. It thus appeared that the IGST refunds claimed by the party during the period from July, 2017 onwards in respect of the IGST paid by them on their zero-rated export supplies, so far as it relates to the export of goods against which they received supplies under Advance Authorization, are not available to them and such refunds received by them were wrong as per the aforesaid legal provisions of Rule 96(10) of CGST Rules, 2017 read with Notification No. 48/2017-Central Rate. During the investigation, Summons dated 07.02.2020 was issued to record statement and to submit requisite information/details/documents, for the period July 2017 onwards, as per Annexure to the Summons dt. 07.02.2020 (RUD-1). The taxpayer did not appear before the summoning authority to tender his statement. However, vide their letter, along with annexure, dated 03-09-2021, (RUD-2) they submitted the details regarding the refund of IGST paid on exports wherein benefit of Advance Authorization license had already been availed at the time of import of goods. As per the details submitted by the taxpayer, they have received a total IGST refund of Rs. 3,28,15,111/-.

Vide their above-mentioned letter dated 03-09-2021, they informed that they imported Raw Material under Advance Authorisation Scheme and availing exemption as per notification No.79/2017-Customs Act dated 13-10-2017. Further, they have submitted the followings details as under: -

1. List of Exports Sales Invoices under Advance Authorization for the period 2018-19 to 2019-20.
2. Sample Sets of Exports Documents, containing each invoice, Exports Invoice (FC), Packing List, Advance Authorization declaration, Annexure C1 (working of self-sealing procedure), Tax Invoice (INR), BL, Shipping Bill and EBRC.



Accordingly, the summary of such IGST paid export submitted by M/s. INDUSTRIAL CHEMICAL WORKS is mentioned below:

| Period | No. of Shipping Bills | IGST paid/IGST Refund Sanctioned |
|-------------------|-----------------------|----------------------------------|
| 2018-19 & 2019-20 | 56 | 3,28,15,111/- |
| TOTAL | 56 | 3,28,15,111/- |

4.2 Further, this office letter (DRC 01A) dated 07.03.2023 (RUD-3) requested the taxpayer to pay to the Government Account alongwith interest and penalty;

(a) the wrongly availed IGST Refund availed by them on IGST Refund paid on export of goods wherein they had availed IGST exemption,

(b) to pay the wrongly availed IGST refund on export against Advance Licence Authorisation invalidation given by them to their suppliers of the raw materials of the goods exported during the period from 2017-18 to 2019-20.

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

5. OUTCOME OF INVESTIGATION-

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

- i) The taxpayer has 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 in Annexure A attached to this Show Cause Notice;
- ii) 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 From the details submitted by the taxpayer vide their letter dated 03-09-2021, the total amount of wrongly taken IGST refund to the tune of Rs. 3,28,15,111/- on exports after availing benefit of advance authorization on the inputs procured through import. As per the provision of Rule 96(10) of the CGST Rules, 2017, the said refund of the IGST appeared to be inadmissible.



6.2 Thus, the amount of Rs. 3,28,15,111/- (Rs. Three Crore Twenty Eight Lakh Fifteen Thousand One Hundred Eleven) is required to be demanded and recovered from the taxpayer under Section 74(1) of the CGST Act 2017.

7. LEGAL PROVISIONS:

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

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

(A) Section 6 of CGST Act 2017:

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

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

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

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

(3) Any proceedings for rectification, appeal and revision, wherever applicable, of

any order passed by an officer appointed under this Act shall not lie before an officer appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act.”

(B) Section 6 of SGST Act 2017:

“6. (1) Without prejudice to the provisions of this Act, the officers appointed under the Central Goods and Services Tax Act are authorised to be



proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

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

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

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

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

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

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

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

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

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

(1) “zero rated supply” means any of the following supplies of goods or services or both, namely:—

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



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

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

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

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

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

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

7.4 Rule 96(10) of the CGST Rules 2017.

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 –

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



Part II, Section 3, Sub-section (i), vide number G.S.R 1321 (E), dated the 23rd October, 2017 has been availed or

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

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

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

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

Sec. 59 of CGST Act, 2017

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



Sec. 39(9) of CGST Act 2017

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

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

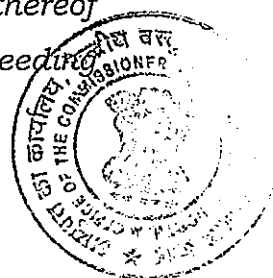
Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier."

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

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

7.6 Interest on delayed payment of tax

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



eighteen per cent., as may be notified by the Government on the recommendations of the Council.

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

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

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

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

8. CONTRAVENTION OF VARIOUS PROVISIONS:

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

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

Tax Act, 2017 inas 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.

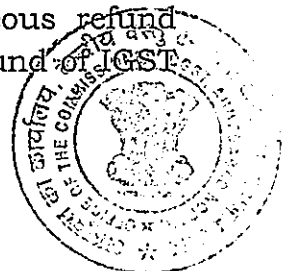
- (iv) Section 39(9) of the Central Goods and Services Tax Act, 2017 along with the corresponding entry of the Gujarat State Goods and Services Act, 2017 read with the provisions of Section 20 of Integrated Goods and Service Tax Act, 2017 in as much as they have failed to pay to the Government the tax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

9. SUPPRESSION:

9.1 The taxpayer is a Private Limited Company and dealing into exports/imports business since long and it is quite obvious that the taxpayer was well aware of the provisions of Rule 96 (10) of CGST Rules, 2017 which prohibits double benefit i.e. exemption of IGST on the input materials imported under Advance Authorisation and refund of IGST paid on the goods exported by using such inputs. Although, having knowledge of the same, the taxpayer willfully and purposefully filed erroneous refund claim and availed refund of IGST with sole intention to en-cash their accumulated Input Tax Credit which they were otherwise prohibited in GST law. Here, it can be seen that despite having knowledge that the refund of IGST paid on export of goods is subject to the conditions as laid down in Rule 96(10) of the CGST Rules, 2017, the taxpayer neither informed the department about their erroneously claimed IGST refund of **Rs. 3,28,15,111/- (Rs. Three Crore Twenty Eight Lakh Fifteen Thousand One Hundred Eleven)**, nor did they make payment of such IGST on their own. Had the department not initiated the investigation, the said facts would not have come to light. Even otherwise, it is settled position that *Ignorantia juris non excusat* i.e. ignorance of law is not an excuse.

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

9.3 From the Information/ data of the taxpayer, it appeared that the taxpayer have suppressed the erroneous refund of IGST paid on exports, it appeared that the taxpayer's liabilities are not properly discharged. The failure to properly discharge their Tax liability is utter disregard to the requirements of law and breach of trust deposed on them is outright act in defiance of law by way suppression, concealment & non-furnishing value of erroneous refund with intent to evade payment of tax. The above said erroneous refund of IGST



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

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

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

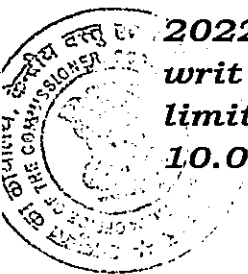
Further, CBIC issued Notification No. 13/2022-Central Tax dated 05.07.2022 vide which time limits prescribed under Sec. 73(9) & 73(10) was extended and reads as under: -

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

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

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

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



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

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

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

9.5 In view of the above facts, the erroneously refunded amount of Rs. 3,28,15,111/- (Rs. Three Crore Twenty Eight Lakh Fifteen Thousand One Hundred Eleven) 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, a Form GST DRC-01A regarding intimation of tax ascertained as being payable under Section 74(5) of CGST Act, 2017 before issuing of Show Cause Notice was issued to the taxpayer on 17.03.2023 for Intimation of liability under Section 74(5) of the CGST Act, 2017.

9.7 The taxpayer had not submitted any reply/payment of tax till date, hence they would not make payment.

10. Therefore, Show Cause Notice No. RFND/GST/CTP/OTH/50/2021-AE-II dated 31.03.2023 was issued to M/s. Industrial Chemicals, B-1,2,3, GIDC Estate, PHASE-II, INDUSTRIAL ESTATE, OPP. DEEPAK OIL MILL, NARODA, AHMEDABAD, GUJARAT-382330, called upon to show cause as to why:

(i) Erroneously refunded IGST amount of Rs. 3,28,15,111/- (Rs. Three Crore Twenty Eight Lakh Fifteen Thousand One Hundred Eleven) should not be demanded and recovered from them under Section 74(1) of the CGST, 2017 read with Section 20 of the IGST Act, 2017;

(ii) Interest at appropriate rate should not be demanded and recovered from them on the amounts mentioned at Sl. No. (i) above under Section 50(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017;



(iii) Penalty should not be imposed upon them on the amounts at Sr. No.(i) above under Section 74(1) of the CGST Act, read with Section 20 of the IGST Act, 2017 for the aforementioned contraventions;

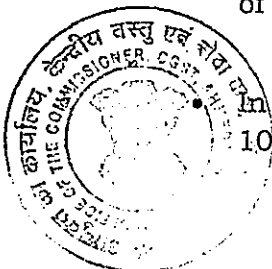
DEFENCE REPLY

11. M/s. Industrial Chemical Works has filed their defense reply vide letter dated 09.08.2023 received on 11.08.2023 wherein they stated that:-

11.1 They stated that they have submitted detail submission vide their letter dated 29.11.2022 which may be considered. The contents of Taxpayer's letter dated 29.11.2022 is reproduced as under:-

- On introduction of GST, for import of Raw materials by the Advance Authorisation holders, Notification No. 79/2017-Customs amending Notification No. 18/2015-Customs was issued where under exemption from payment of IGST is allowed with pre-import condition. However, the matter was litigated by way of SCA No. 14558 of 2018 in the case of Maxim Tubes Company Pvt Ltd vs Union of India reported at 2019 (368) E.L.T. 337 (Guj) wherein the Hon'ble court has held pre-import condition to be ultra-vires. Subsequently, Union of India have filed an appeal before the Hon'ble Supreme Court of India vide Special Leave Petition (Civil) Diary No. 32822 of 2019 / 33803 of 2019 with Diary No. 33091 of 2019 reported as Union of India vs Maxim Tubes Company Pvt Ltd [2020 (372) E.L.T. A104 (S.C.)] which is pending as of now. Subsequently, pre-import condition stand removed by issuance of Notification No. 01/2019-Customs dated 10.01.2019 leaving a question unanswered for the period 01.07.2017 to 10.01.2019, how to deal with pre-import condition.
- Therefore, in view of condition (v)(a) introduced vide Notification No. 01/2019-Customs dated 10.01.2019, exemption from payment of IGST on import is permissible after fulfillment of export obligation in full subject to execution of bond to the effect mentioned there in. Thus, imported material under this notification is subject to actual users conditions.
- Rule 96(10) of CGST Rules, 2017 was introduced vide Notification No. 03/2018-CT dated 23.01.2028 and Notification No. 39/2018-CT with retrospective effect from 01.07.2017 with intention to restrict payment of IGST on the goods manufactured out of imported Raw material in terms of Notification No. 79/2017-Customs and exported under Advance Authorisation. However, both the notifications were rescinded vide Notification No. 54/2018-Central Tax dated 09.10.2018 giving prospective effect. Therefore, the restriction imposed in Rule 96(10) would be applicable from 09.10.2018 onwards.
- However, following sequence of litigation against Notification No. 54/2018-Central Tax in the High Court of Gujarat by Cosmo Films Limited and others would reveal that presently notices issued by DRI for recovery of IGST on import of raw material under Notification No. 79/2017-Customs is stayed.

In the meanwhile Cosmo Films Limited filed SCA No. 15833/2018 registered on 10.10.2018 in the Hon'ble High Court of Gujarat challenging the validity of and



effect of Notification No. 54/2018-Central Tax wherein Judgment dated 20.10.2020 delivered wherein it was held that the Notification No. 54/2018 is held to be effective w.e.f. 23rd October, 2017.

- Further, Gujarat Dyestuff Manufactures association has filed SCA No. 4782 of 2021 vs Union of India in the same matter before the Hon'ble High Court of Gujarat. The Hon'ble High Court of Gujarat have issued notice to Union of India vide their order dated 12.03.2021 wherein the Hon'ble Court has mentioned that "Let Notice be issued to the respondent returnable on 22.03.2021, till the next date of hearing, the proceedings pursuant to the notice dated 04.02.2021". Accordingly, the recovery of Customs duty was stayed.
- If the IGST refund is enforced for recovery, the amount of Tax discharged from ITC has to be re-credited in to our Electronic Credit Ledger and there would have accumulation of ITC on account of such ITC.
- Here, it is question of payment of IGST on the import of Goods in violation of pre import condition which is presently sub-judice as the appeal of Government of India in the case of Maxima Tube is pending for decision. On the other hand, department is pursuing recovery of IGST which has been claimed as refund under Rule 96(10) of CGST Rules, 2017. Under the situation, it needs clarification how the trade shall decide which way the matter is going forward. Therefore, what the assessee has to understand needs to be clarified as to whether IGST on import of Raw material is required to be paid or refund of IGST is required to be paid, recovery of both could not be effected.

11.2 They submitted that in view of CBIC Circular No. 70/44/2018-GST dated 26.10.2018, no refund claimed prior to 09.10.2018 could be re-opened and accordingly refund of Rs. 1,61,75,774/- received prior to 09.10.2018 has to be excluded.

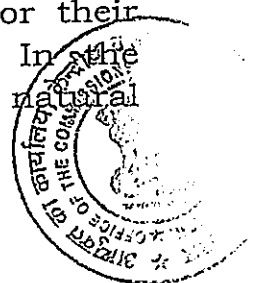
11.3 They stated that, in this regard, a SCA No. 4782 of 2021 vs Union of India filed by GDMA before the Hon'ble High Court of Gujarat wherein they are also one of the litigant. The said petition is pending for decision by the Court, however, stay is granted against the recovery of refund of IGST claimed under Rule 96(10).

11.4 They contested that in circular no. 16/2023-Customs, it was instructed that wherever pre-import condition is violated during the period 13.10.2017 to 09.01.2019, the effected person shall be allowed to pay IGST along with interest. Thus, they are opting for the said circular for reassessment of their Bill of Entries. Once they pay IGST on import of goods in terms of Notification No. 79/2017-Customs, their all the refund claim under Rule 96(10) would get regularize in terms of Notification No. 16/2020-Central tax where under an explanation was introduced with effect from 23.10.2017.

11.5 They also stated that GDMA have again filed a petition No. 13581 of 2023 before the Hon'ble High Court of Gujarat wherein they are one of the litigants. They requested not to initiate any coercive action in the matter.

PERSONAL HEARING

12. Personal Hearing in this case has been granted to the said Taxpayer on 21.07.2023. However, neither the Taxpayer nor their authorized representative appeared for Personal Hearing. In the continuation of above proceedings, to follow principles of natural



justice, one more opportunity of personal hearing was granted to the Taxpayer on 08.08.2023. However, once again, neither the Taxpayer nor their authorized representative appeared for personal hearing. To reduce litigation and to ensure that wrong demand of tax and penalty is not confirmed, personal hearing was again fixed on 29.02.2024 and then on 14.03.2024. However, despite all these efforts, neither the Taxpayer nor their authorized representative appeared for personal hearing. Sufficient opportunities have been given to the Taxpayer and principle of nature justice has been followed but Taxpayer did not avail the opportunities for the reason best known to them. The provision of Section 75(4) of the Central Goods & Service Tax Act, 2017 has been complied with, thus, under these circumstances, I am left with no option but to take up the case for adjudication on the basis of evidences available on record.

DISCUSSION AND FINDINGS

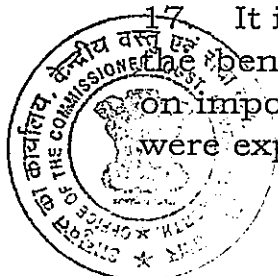
13. I have carefully gone through the records of the case, defense reply dated 09.08.2023 received on 11.08.2023 and proceed to decide the case.

14. Briefly stated the facts of the case are that M/s Industrial Chemical Works having registration GSTIN No. 24AAAFI3082J1ZJ is engaged in manufacturing and supplying/exporting of Plastic products which are taxable in terms of Notification no. 01/2017-Central Tax (Rate) dated 28.06.2017.

15. On the basis of information received, an inquiry was initiated against M/s. Industrial Chemical Works, B-1,2,3, GIDC Estate, Phase-II, Industrial Estate, Opp Deepak Oil Mill, Naroda, Ahmedabad, Gujarat – 382330 under CGST Act, 2017. During the course of investigation and scrutiny of documents submitted by the taxpayer, it was observed that the taxpayer was exporting their finished / manufactured goods out of India under payment of Integrated Goods and Service Tax and availing benefit of refund in terms of Rule 96 of the Central Goods & Service Tax Rules, 2017 although they were not eligible to claim such refund under the said rules.

16. During the course of Investigation, the Taxpayer had informed that they imported Raw material under Advance Authorisation Scheme and availing exemption as per notification No. 79/2017-Customs dated 13.10.2017. Further, as per the details submitted by the taxpayer, they have claimed total refund of IGST Rs. 3,28,15,111/- for the period F.Y. 2018-19 and 2019-20 which is restricted as per Rule 96(10) of CGST Rules, 2017. Accordingly, impugned SCN has been issued to the Taxpayer.

17. It is alleged in the impugned SCN that the Taxpayer had availed the benefit of Notification No. 79/2017-Customs dated 13.10.2017 on imported inputs and thereafter the finished / manufactured goods were exported on payment of IGST & refund of IGST amounting to Rs.



3,28,15,111/- was claimed of such IGST paid during the period F.Y. 2018-19 and 2019-20 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. 3,28,15,111/- during the period F.Y. 2018-19 and 2019-20.

18. In this regard, 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:-

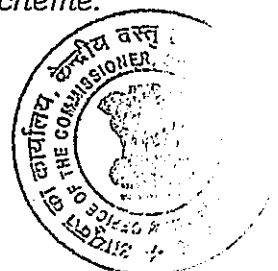
- (i) supply of goods or services or both under LUT without payment of IGST and claim refund of unutilized input tax credit.
- (ii) supply of goods or services or both on payment of IGST and claim refund on goods or services or both on payment of IGST.

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. 40/2017Central Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1320 I, dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1321 I, dated the 23rd October, 2017 has been availed; or

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



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:-

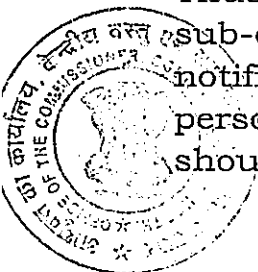
"1. (1) These rules may be called the Central Goods and Services Tax (Eleventh Amendment) Rules, 2018.

(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.

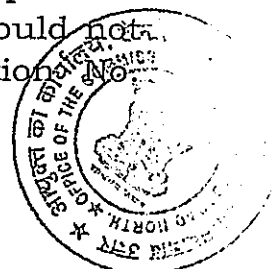
31. In view of the above discussion, it is clear that, with effect from 23.10.2017, a person claiming refund of IGST paid on exports of goods or services should not have availed the benefit of Notification No. 79/2017-Customs dated 13.10.2017.

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

34. 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.

35. 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.

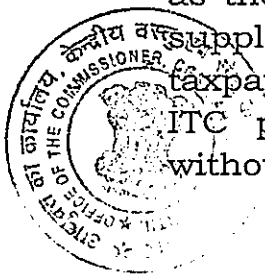


79/2017-Customs dated 13.10.2017 (provide exemption from IGST upon import of goods in case of Export Oriented Units "EOUs") is availed.

36. 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. 3,28,15,111/- 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;

37. Further, I find 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.

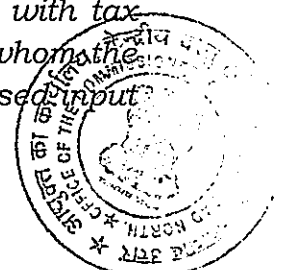
38. Further, I reproduce provisions of Section 74(5) & (6) of the CGST Act, 2017 which reads as follows:-

(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.

39. 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.

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

41. 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.

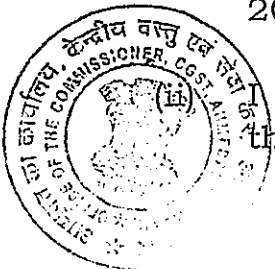
42. From the above facts, I hold that the said amount of IGST of Rs. 3,28,15,111/- is liable to be demanded and recovered from the said Taxpayer under the provisions of Section 74(1) of the CGST Act, 2017 read with the Section 74(1) of the Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 along with applicable interest under the provisions of Section 50 of the Act, *ibid*. 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.

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

O R D E R

- (i) I confirm the demand of erroneously refunded IGST amounting to Rs. 3,28,15,111/- (Rs. Three Crore Twenty Eight Lakh Fifteen Thousand One Hundred Eleven 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.

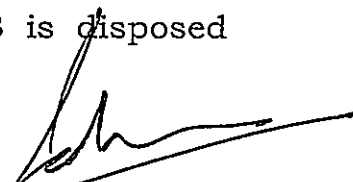
order to demand interest at the rates prescribed and recover the same from them under the provisions of Section 50(1) of the



CGST Act, 2017 and the corresponding entry of the Gujarat State Goods and Services Tax Act, 2017 and Section 20 of the Integrated Goods and Service Tax Act, 2017;

- (iii) I impose a penalty of Rs. 3,28,15,111/- (Rs. Three Crore Twenty Eight Lakh Fifteen Thousand One Hundred Eleven Only) under Section 74(1) of the CGST Act, 2017 read with the Section 74(1) of the Gujarat GST Act, 2017 read with Section 20 of IGST Act, 2017 on 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;

44. Accordingly, the Show Cause Notice No. RFND/GST/CTP/OTH/50/2021-AE-II dated 31.03.2023 is disposed off.


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

F.NO.GST/15-07/OA/2023

DT. 22-04-2024

By RPAD

To,

M/s. INDUSTRIAL CHEMICAL WORKS,
B-1,2,3, GIDC Estate, PHASE-II,
INDUSTRIAL ESTATE, OPP. DEEPAK OIL MILL,
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-II, 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.

