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<u>Omission of Rule 96(10) of the CGST Rules without a saving clause nullifies all pending proceedings</u>

The Hon'ble Supreme Court in ***M/s. Goodluck India Limited & Anr. v. Union of India & Ors. [Special Leave Petition (C) No. 24550 of 2025 along with connected appeals dated August 06, 2026]*** dismissed the appeals filed by the Revenue and declined to interfere with the judgment of the Hon'ble Gujarat High Court in *Addwrap Packaging Pvt. Ltd. & Anr. v. Union of India & Ors. [R/Special Civil Application No. 22519 of 2019 dated June 13, 2025],* thereby affirming that the omission of Rule 96(10) of the Central Goods and Services Tax Rules, 2017 (**"the CGST Rules"**) vide *Notification No. 20/2024-Central Tax dated October 08, 2024*, without any saving clause, applies squarely to all proceedings pending on the date of omission and such pending proceedings cannot be continued thereafter.

<u>Facts:</u>

M/s. Goodluck India Limited & Anr. (**"the Respondents"**/ **"the Assessees"**) and various other exporters exported finished goods on payment of Integrated Goods and Services Tax (**"the IGST"**) and claimed refund of such tax under Rule 96 of the CGST Rules read with Section 16(3)(b) of the Integrated Goods and Services Tax Act, 2017 (**"the IGST Act"**), while simultaneously availing the benefit of duty-exemption/ concessional tax notifications relating to Advance Authorisation, EOU, EPCG, deemed export and merchant export schemes specified in Rule 96(10) of the CGST Rules.

The Revenue alleged that the refunds were claimed in violation of Rule 96(10) of the CGST Rules and, accordingly, initiated recovery proceedings by issuing Show Cause Notices and passing Orders-in-Original treating the refunds sanctioned as erroneous. The Assessees filed writ petitions before the Hon'ble Gujarat High Court challenging the vires of Rule 96(10) of the CGST Rules as being ultra vires Section 16 of the IGST Act and Section 54 of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) as also violative of Articles 14 and 19(1)(g) of the Constitution of India.

During the pendency of the petitions, the GST Council in its 54th meeting held on September 09, 2024, noting the observation of the Law Committee that the operation of Rule 96(10) was leading to unnecessary complications without any intended benefit being served, recommended omission of Rule 96(10), Rule 89(4A) and Rule 89(4B) of the CGST Rules with prospective effect. Consequently, vide *Notification No. 20/2024-Central Tax dated October 08, 2024*, Rule 96(10) of the CGST Rules was omitted with effect from October 08, 2024, without incorporating any saving clause.

The Hon'ble Gujarat High Court in *Addwrap Packaging Pvt. Ltd. & Anr. v. Union of India & Ors. [R/Special Civil Application No. 22519 of 2019 dated June 13, 2025]*, relying upon the Constitution Bench decision in *Kolhapur Canesugar Works Ltd. v. Union of India [(2000) 2 SCC 536] and the decisions in Rayala Corporation (P) Ltd. v. Director of Enforcement [(1969) 2 SCC 412] and Fibre Boards (P) Ltd. v. CIT [(2015) 10 SCC 333],* held that the omission of Rule 96(10), being in the nature of a repeal without any saving clause, would apply to all pending proceedings/ cases where final adjudication had not taken place, and accordingly quashed the impugned Show Cause Notices and Orders-in-Original without examining the challenge to the vires of the Rule.

Aggrieved, the Revenue preferred Special Leave Petitions before the Hon'ble Supreme Court contending, on the strength of the minutes of the 54th GST Council meeting, that the omission was intended to operate prospectively and, therefore, the proceedings initiated prior to October 08, 2024 would remain valid. The Assessees, on the other hand, contended that the sub-rule having been omitted without any saving clause, it applies squarely to all pending proceedings.

<u>Issue:</u>

Whether the omission of Rule 96(10) of the CGST Rules vide *Notification No. 20/2024-Central Tax dated October 08, 2024*, without any saving clause, would apply to all proceedings pending as on the date of omission, thereby precluding continuation of such proceedings?

Held:

The Hon'ble Supreme Court in ***Special Leave Petition (C) No. 24550 of 2025 along with connected appeals*** held as under:

- **Observed that**, Rule 96(10) of the CGST Rules was omitted as its operation was 'leading to unnecessary complications without any intended benefit being served', as noted by the Law Committee in the 54th GST Council meeting, and the recommendation of the GST Council that the omission be prospective is only advisory in nature and does not bind the rule-making authority.

- **Noted that**, the legislature has not brought in any saving clause or sunset clause while omitting sub-rule (10) of Rule 96 of the CGST Rules. The intention to omit the Rule without any saving clause was to bring to an end the unnecessary complications once and for all, and the intention cannot be to keep alive the unnecessary complications insofar as the pending proceedings are concerned.

- **Noted that**, the trite law declared by the Constitution Bench in ***Kolhapur Canesugar Works Ltd. v. Union of India [(2000) 2 SCC 536]*** applies squarely, i.e., the deletion of a provision obliterates it from the statute book as if it had never existed, and Section 6 of the General Clauses Act, 1897 is not applicable in the case of omission of a 'rule'. Unless a saving clause or a legal device/ fiction is incorporated for continuance of proceedings already initiated, all pending proceedings under the omitted rule come to a stop when the omission takes effect.

- **Held that**, there is no good reason to interfere with the well-reasoned judgment of the Hon'ble Gujarat High Court, and accordingly dismissed the appeals filed by the Revenue. The Special Leave Petitions filed by the Assessees challenging the vires of Rule 96(10) were dismissed as infructuous.

- **Directed that**, since several proceedings concerning the effect of omission of Rule 96(10) are pending before various High Courts and conflicting orders have been passed, the Registry shall forward a copy of the order to all the High Courts, and the High Court Registries shall place such matters before the appropriate roster Benches, after obtaining necessary orders from the respective Hon'ble Chief Justices, expeditiously to bring quietus to the litigation on the issue.

Our Comments:

Rule 96 of the CGST Rules prescribes the procedure for refund of IGST paid on goods or services exported out of India in terms of the second option available under Section 16(3)(b) of the IGST Act, i.e., export on payment of IGST with refund of the tax so paid. Sub-rule (10) of Rule 96, first inserted vide *Notification No. 75/2017-Central Tax dated December 29, 2017* with retrospective effect from October 23, 2017 and thereafter substituted vide *Notification No. 54/2018-Central Tax dated October 09, 2018*, barred exporters who had availed the benefit of specified notifications *(Notification Nos. 48/2017-Central Tax, 40/2017-Central Tax (Rate), 41/2017-Integrated Tax (Rate), 78/2017-Customs and 79/2017-Customs)* from exporting on payment of IGST and claiming refund thereof, relegating them only to the LUT route under Section 16(3)(a) of the IGST Act. The provision underwent multiple retrospective and prospective amendments, followed by an Explanation inserted vide *Notification No. 16/2020-Central Tax dated March 23, 2020*, and remained a fertile source of litigation, with the Department seeking recovery of the entire IGST refund even where only a small portion of inputs was imported under exemption.

The judicial landscape on the vires of Rule 96(10) was itself divided. The Hon'ble Gujarat High Court in ***Cosmo Films Ltd. v. Union of India [Special Civil Application No. 15833 of 2018 decided on October 20, 2020]*** had upheld the validity of the Rule, whereas the Hon'ble Kerala High Court in ***M/s. Sance Laboratories Private Limited v. Union of India [2024 (11) TMI 188]*** declared Rule 96(10) ultra vires Section 16 of the IGST Act, being manifestly arbitrary and producing absurd results not intended by the legislature. It is precisely this conflict which the Hon'ble Supreme Court has now put to rest, without adjudicating the vires, by holding that the omission itself governs all pending proceedings.

On the effect of omission, the settled jurisprudence flows from ***Rayala Corporation (P) Ltd. v. Director of Enforcement [(1969) 2 SCC 412]*** and ***Kolhapur Canesugar Works Ltd. v. Union of India [(2000) 2 SCC 536]***, wherein it was held that Section 6 of the General Clauses Act, 1897 saves proceedings only upon repeal of a Central Act or Regulation and has no application to omission of a 'rule', and consequently, unless the omitting notification itself contains a saving clause, pending proceedings under the omitted rule lapse. Further, in ***Fibre Boards (P) Ltd. v. CIT [(2015) 10 SCC 333]***, the Hon'ble Supreme Court clarified that an 'omission' is included within the expression 'repeal' and the effect of repeal without a saving clause is to obliterate the provision completely as if it had never been passed, except for transactions past and closed. Applying these principles, the Hon'ble Gujarat High Court had drawn a fine but crucial distinction, i.e., the omission of Rule 96(10) operates prospectively (and hence refunds/ matters which had attained finality prior to October 08, 2024 are not liable to be reopened), but it applies to all pending proceedings/ cases where final adjudication had not taken place, and this view now stands affirmed by the Hon'ble Supreme Court.

This decision brings much-needed closure to the long-drawn Rule 96(10) controversy. All pending Show Cause Notices, adjudication and appellate proceedings, and writ matters seeking recovery of IGST refunds on the ground of alleged violation of Rule 96(10) would not survive, and exporters would be entitled to maintain and pursue their refund claims of IGST paid on exports in accordance with law. Taxpayers facing pending demands, recoveries or appeals on this issue should promptly bring the present ruling to the notice of the concerned adjudicating/ appellate authorities and jurisdictional High Courts, particularly in view of the specific direction of the Hon'ble Supreme Court to all High Courts to take up such matters expeditiously to bring quietus to the litigation.

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