

Writ Petition (MB) No. 103 of 2025

dated 03.02.2025 issued by respondent no.2.

2. The brief facts of the case are that petitioner is, *inter alia*, engaged in the manufacture of Gold Bar & Jewellery etc., falling under Chapter 71 of the Central Excise Tariff Act, 1985; that, accordingly, the petitioner is registered with the GST Department; that, the petitioner is discharging tax liability under CGST Act, 2017, and UKGST Act, 2017 & IGST Act, 2017, as applicable; that, the petitioner is also availing the facility of ITC on inward supplies of goods and supplies being used for providing outward supplies; that, the officers of the State Goods and Service Tax Department conducted audit of the petitioner, wherein it appears that petitioner has claimed refund amounting to Rs.1,05,25,755/- under the head of IGST. That, a show-cause notice No.06/AC/RDR/Sai Vishwas/23-24 dated 26.09.2023 was issued by the respondent no.2 to the petitioner requiring him to show cause as to why alleged inadmissible/erroneous refund amounting to Rs.1,05,25,755/- should not be demanded and recovered from him under Section 74 (1) of the CGST Act, 2017 read with Section 20 of the IGST Rules, 2017 along with Section 50 and penalty under Section 74(1) of the CGST Act, 2017 read with Section of the IGST

Act, 2017. That, the personal hearing in respect of the aforesaid *show-cause notice*, was granted to the petitioner, thereafter, he also filed written submission vide letter dated 16.01.2025. However, respondent no.2 without considering the submissions made by the petitioner, confirmed demand of alleged inadmissible/erroneous refund amounting to Rs.1,05,25,755/- vide order dated 03.02.2025. Hence, the instant writ petition.

3. Learned counsel for the petitioner appearing in support of the petition have drawn the attention of this Court to the provisions of rule 96(10) of the CGST Rules, 2017 would submit that the said rule, *inter alia*, provides that the persons claiming refund of integrated tax paid on export of goods or services would be required to ensure compliance of certain provisions morefully, enumerated in the said rules. To appreciate his aforesaid contention, rule 96(10) of the said rules is extracted hereinbelow:-

"Rule 96(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 GSR 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 GSR 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 GSR 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 GSR 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 GSR 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.

[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.]"

4. Learned counsel for the petitioner would then submit that although, a proceeding was initiated by the respondents within the validity of the said rules and *show-cause notice* in that regard was issued and served on the petitioner, however, before the final order came into existence, rule 96(10) of the said rules stood omitted from the statute book. By placing reliance on a judgment delivered by the Hon'ble Supreme Court in the case of **Kolhapur Canesugar Works Ltd. & Anr., v.**

Union of India & Ors., reported in **(2000) 2 SCC 536**, he would submit that once a rule is omitted, ordinarily as a consequence thereof, the provision is to be obliterated from the statute book as completely as if it had never been passed, and the statute must be considered as if the rule had never existed.

5. By placing reliance on the *show-cause notice* he would submit that the initiation of proceeding by the respondents is based on the alleged contravention of conditions set forth in rule 96(10) of the CGST Rules, 2017. Having regard thereto, once, the said rule was omitted from the statute book on 8th October, 2024, the proceeding initiated by the respondents by way of *show-cause notice* could not have been continued further. He submits that the order passed by the respondent no. 2 is nonest and should consequentially be quashed. In support of his aforesaid contention, he has placed reliance on an unreported order passed by the Hon'ble High Court of Judicature at Bombay in a batch of writ petitions, on 17th December, 2024 in the case of **Aeroflex Industries Ltd. v. Union of India & Ors.**, and the judgment passed by the Hon'ble High Court of Judicature at Allahabad in the case of **Saru Silver Alloys Pvt. Ltd. V. Union of India**, reported in **(2025) 26**

Centax 204 (All.).

6. Learned counsel for the respondent would submit that, at the time, when the show-cause notice was issued, Rule 96 (10) of the CGST Rule, 2017 was in existence, therefore, respondent no.2 have rightly held that the deletion of Rule 96 (10) w.e.f. 08.10.2024 would operate prospectively where proceedings are initiated during the subsistence of the rule would continue to be governed by the said rules.

7. Heard learned counsel for the parties, since the Rule 96 (10) of CGST Rule, 2017 have been declared *ultra vires* by the Hon'ble High Court of Kerala in **Sance Laboratories Pvt. Ltd. Vs. Union of India**, reported in **2024 (91) G.S.T.L. 245 (Ker.)** and have subsequently been deleted vide Notification No.20/2024-Central Tax, dated 08.10.2024, therefore, it would be fruitless to again declare Rule 96 (10) of CGST Rule, 2017 as *ultra vires* the provisions of Section 16 of the IGST Act, therefore, the prayer no.1 does not service any more.

8. The next question that falls for consideration in the instant case is whether respondent no. 2 was at all competent to pass an order subsequent to the omission

of the concerned rule. Admittedly, the Rule 96 (10) of CGST Rule, 2017 was omitted from the statute book on 8th October, 2024 and the order impugned was passed on 30th January, 2025.

9. Having regard to the judgment delivered in the case of ***Kolhapur Canesugar Works Ltd. (supra)***, it would transpire that the effect of omission of rule from the statute book is different from the effect of substitution of rule and the effect of amendment of a statute which is saved by a saving clause. It appears that the Hon'ble Supreme Court having noted the provisions of Section 6 of the General Clauses Act, 1897, had come to a finding that the exception contained in Section 6 of the General Clauses Act applies where any Central Act or Regulation made after commencement of the General Clauses Act repeals any enactment. It is not applicable to omission of a "rule". The Hon'ble Supreme Court had also observed that normal effect of repealing of a statute or deleting a provision is to obliterate it from the statute book subject to the exception engrafted in Section 6 of the General Clauses Act. If, however, a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceeding, all actions must stop where the omission finds them, and if

the final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in Section 6 or in Special Acts may modify the position. Thus, the operation of repeal or deletion as to the future and past largely depend upon the savings applicable. In a case where a particular provision is omitted and in its place another provision dealing with the same contingency is introduced without the saving clause in favour of the pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceedings shall not continue but fresh proceedings for the same purpose may be initiated under the new provision. In the instant case, no new rule has been incorporated. On the contrary, rule 96(10) of CGST Rule, 2017 has itself been omitted from the statute book without any saving clause, at least the parties at this stage have not been able to show anything to the contrary.

10. Having regard thereto, in our view, the said provision of rule 96(10) of CGST Rule, 2017 being omitted unconditionally, without a saving clause in favour of the pending proceedings, all actions from the date of such omission of the rule must stop. Having

regard thereto, we find that there was no scope for the respondent no. 2 to pass any order by invoking the provisions of rule 96(10) of CGST Rule, 2017 after the same was omitted on 8th October, 2024 without a saving clause in favour of the pending proceeding. Having regard to the above observations, we deem it appropriate to allow the writ petition and set aside the order dated 03.02.2025 passed by respondent no.2.

11. Accordingly, the writ petition is allowed and the impugned order dated 03.02.2025 passed by respondent no.2 is set aside.

12. Pending application, if any, also stands disposed of.

13. There shall be no order as to costs.

(G. NARENDAR, C.J.)

(ALOK MAHRA, J.)

Dated: 29.04.2025

BS