Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 13772 of 2025

Techno Waxchem Private Limited

Versus

Union of India & Ors.

For the petitioner	:	Mr. Vinay Kumar Shraff Mr. Harsh Gadodia Mr. Dev Kumar Agarwal
For the Union of India	:	Mr. Partha Sarathi Banerjee
For the CGST authorities	:	Mr. Bhaskar Prosad Banerjee Mr. Tapan Bhanja
For the State	:	Mr. Tanoy Chakraborty Mr. Saptak Sanyal
Heard on	:	16.01.2026, 06.02.2026 & 13.02.2026
Judgment on	**:**	**22nd May, 2026.**

Raja Basu Chowdhury, J:

1. Challenging, *inter alia,* the order in original dated 4th February, 2025 issued under Section 74(9) of the CGST Act, 2017 (hereinafter referred as the "said Act") and the demands raised by the respondents in form GST DRC-07 all dated 5th February, 2025 along with the summary of the orders for the tax periods April 2018 to March 2019, April 2019 to March 2020, April 2020 to March

2021 and April 2021 to March 2022, the above writ petition has been filed.

2. The petitioner claims to be a private limited company registered under the provisions of the Companies Act, 1956 and is also a registered tax payer under the said Act.

3. The petitioner claims to be primarily engaged in the business of manufacturing and exporting of various chemical products predominantly used in the rubber industry. In order to carry out the manufacturing process, the petitioner procures a wide range of inputs, including but not limited to Resorcinol, Stearic Acid, Formaldehyde, Phenol (PTBP), Hexamine, Palm Oil Fatty Acids, Zinc Oxide, Styrene, etc. The above inputs are procured both through domestic purchases as also by way of import from international suppliers, depending upon the availability and cost efficiency.

4. According to the petitioner, among the various inputs, Resorcinol is a critical input utilized in the manufacturing process. The procurement whereof is made through import under Advance Authorisation Scheme, which allows duty free import of inputs that are used in the manufacturing of export goods. According to the petitioner, Resorcinol is procured from two major sources, namely, Japan and China. It is while importing from China that the petitioner uses the Advance Authorisation license. According to the petitioner, the inputs procured both domestically and through imports from international markets, as mentioned above, are

utilized in the manufacturing process to produce the following final products:

Sl. No.	Technical Name	Final Product Name
1	Technic – KR140	Modified Formaldehyde Resin
2	Technic – OSCH	Oil Silica Coated Hexamine
3	Technic – RSB-II	Resorcinol & Silica Blend
4	Technic – RSAM	Resorcinol & Stearic Acid Melt
5	Technic – B-18S/B-19S/B-20S	Resorcinol Formaldehyde Resin

5. The petitioner contends that in the manufacturing of final products listed under serial no. 3 to 5 of the table above, multiple inputs are utilized apart from Resorcinol, including but not limited to Stearic Acid, Formaldehyde, Phenol (PTBP), Hexamine etc.

6. With effect from 1st July, 2017, Goods and Service Tax (GST) regime was introduced and had been implemented by making necessary amendment in the Customs Act, 1962 and the Customs Tariff Act, 1975 as well. Consequentially, with effect from 1st July, 2017 instead of levying and collecting additional duty of customs equal to the duty of excise chargeable on similar goods produced or manufactured in India, Integrated Goods and Services Tax (IGST) came to be levied on imported goods, whereas the goods cleared for export were deemed to be transactions in the nature of inter-state supply of goods under the Integrated Goods and Services Tax Act, 2017 (in short the "IGST Act"), and therefore, IGST was levied and collected on the goods exported to the foreign countries. Originally,

the rebate i.e. refund of excise duties paid on exported goods was allowed under Rule 18 of the CENVAT Excise Rules, 2002 prior to 1st July, 2017. Subsequently in the GST regime, the IGST Act has also incorporated identical provisions, for refund of tax in Section 16 of the IGST Act, 2017. The goods or services which are exported by the petitioner are not subjected to IGST as they are treated as "zero rated supply" under Section 16 of the IGST Act, 2017. Section 16 of the said IGST Act provides that a registered person making zero rated supply shall be eligible to claim refund under either of the conditions prescribed in sub-section (3) thereof i.e. (a) supply of goods or services under bond or Letter of Undertaking without payment of integrated tax and claim refund of unutilized Integrated Tax Credit or, (b) supply of goods or services on payment of Integrated Tax and claim refund of such tax paid., which has since been deleted with effect from 1st October 2023.

7. To claim the refund/rebate under Section 16 of the IGST Act, provisions of Section 54 of the said Act, were made applicable and the procedure prescribed in the CGST Rules, 2017 (hereinafter referred to as the "said Rules") which are applicable for refund under Section 54 of the said Act are therefore, prescribed for availing refund under Section 16 of the IGST Act.

8. Now, Explanation 1 to Section 54 of the said Act provides that "refund" includes refund of tax paid on zero rated supply of goods or services or both or on inputs or input services used in making

such zero rated supplies or refund of tax paid on the supply of goods regarded as deemed exports, or refund of unutilized input tax credit as provided under Section 54(3) of the said Act.

9. Section 54(3) provides that subject to the provisions of sub-section (10) a registered person can claim refund of unutilized input tax credit however, the proviso to the said sub-section provides that no refund of unutilized input tax credit shall be allowed in cases other than (i) zero rated supplies made without payment of tax or (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempted supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council. It is also provided that no refund of unutilized input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty; and that no refund of input tax credit shall be allowed, if supplier of goods or services or both avail of drawback in respect of central tax or claims, refund of integrated tax paid on such supplies.

10. It appears that Rule 96 of the said Rules has been framed to deal with refund of IGST paid on goods and services exported out of India for entitlement of refund under Section 54(3) of the said Act, whereas Rule 89 has been framed to deal with refund of unutilized input tax credit used in goods and services exported out of India without payment of tax. According to the respondents, the

petitioner had availed refund of IGST to the tune of Rs. 6,28,27,407/- by exporting its finished goods under 15 several Advance Authorisation licenses against payment of IGST though, at the time of importing their inputs they did not pay IGST on imported goods, by availing various exemption notifications and thereby contravened various provisions of Rule 96(10) of the said Rules. Since, the issue pertains to availing benefit of refund of IGST and since Rule 96(10) of the said Rules has been allegedly contravened; the relevant CGST Rule is extracted hereinbelow:-

> **"***96. Refund of integrated tax paid on goods or services exported out of India.—(1) The shipping bill filed by an exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:*
>
> *(a) the person in charge of the conveyance carrying the export goods duly files a departure manifest or an export manifest or an export report covering the number and the date of shipping bills or bills of export; and*
>
> *(b) the applicant has furnished a valid return in form GSTR-3 or form GSTR-3B, as the case may be;…*
>
> *xxx xxx xxx*
>
> *(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 October 18, 2017, published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide number G.S. R 1305(E), dated the October 18, 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 October 23, 2017, published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide number G.S. R 1320(E), dated the October 23, 2017 or Notification No. 41/2017- Integrated Tax (Rate), dated the October 23, 2017, published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide number G.S. R 1321(E), dated the October 23, 2017 has been availed; or

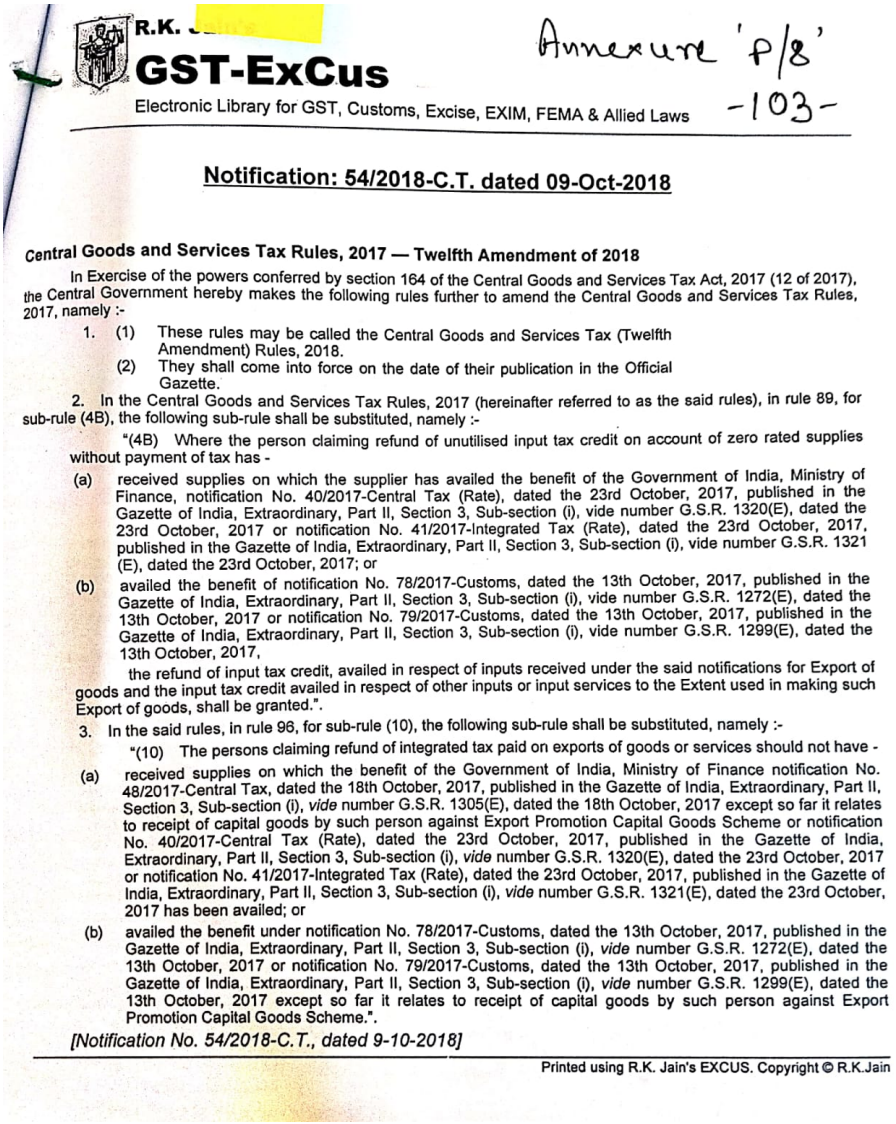
*(b) availed the benefit under Notification No. 78/2017-Customs, dated the October 13, 2017, published in the Gazette of India, Extraordinary, Part II, section 3, sub-section (i), vide number G.S. R 1272(E), dated the October 13, 2017 or Notification No. 79/2017-Customs, dated the October 13, 2017, published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

11. As would appear from the above, Rule 96 of the said Rules falls under Chapter X, 'Refund' and deals with the refund of Integrated Tax paid on goods or services exported out of India. Sub-rule (1) to Sub-rule (9) of Rule 96 of the said Rules prescribe the procedure for filing of the shipping bills, returns and other forms to avail the refund of IGST paid under Section 16(3)(b) of the IGST Act.

12. Sub-rule (10) of Rule 96 of the said Rules was inserted for the first time by Notification No. 75/2017 dated 29th December, 2017 with effect from 23rd October, 2017. Subsequently, by Notification No. 3/2018 dated 23rd January, 2018 sub-rule (10) was amended with effect from 23rd October, 2017. By Notification No. 39/2018 dated 4th September, 2018 with effect from 23rd October, 2017 the Rule 96(10) was further amended wherein the restrictions were

made applicable to cases where exporter himself has availed of the benefit of duty free procurement under Notification No. 78/2017-Customs dated 13th October, 2017 and Notification No. 79/2017 – Customs dated 13th October, 2017 which provide for duty free imports of inputs capital goods by AA, EOU and EPCG license holders However, this position was altered by Notification No.53/2018-Central Tax, dated 9th October, 2018 whereby Rule 96(10) was once again substituted with effect from 23rd October, 2017 and the position of the Rule prior to the amendment of Notification No.39/2018 dated 4th September, 2018 was restored.

13. Still later, by Notification No. 54/2018 Rule 96(10) of the said Rules was substituted with effect from 9th October, 2018 on the following terms:-



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Annexure 'P/8'

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Notification: 54/2018-C.T. dated 09-Oct-2018

Central Goods and Services Tax Rules, 2017 — Twelfth Amendment of 2018

In Exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely :-

1. (1) These rules may be called the Central Goods and Services Tax (Twelfth Amendment) Rules, 2018.
(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in rule 89, for sub-rule (4B), the following sub-rule shall be substituted, namely :-

"(4B) Where the person claiming refund of unutilised input tax credit on account of zero rated supplies without payment of tax has -

(a) received supplies on which the supplier has availed the benefit of the Government of India, Ministry of Finance, 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

(b) availed the benefit of 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 refund of input tax credit, availed in respect of inputs received under the said notifications for Export of goods and the input tax credit availed in respect of other inputs or input services to the Extent used in making such Export of goods, shall be granted.".

3. 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.".

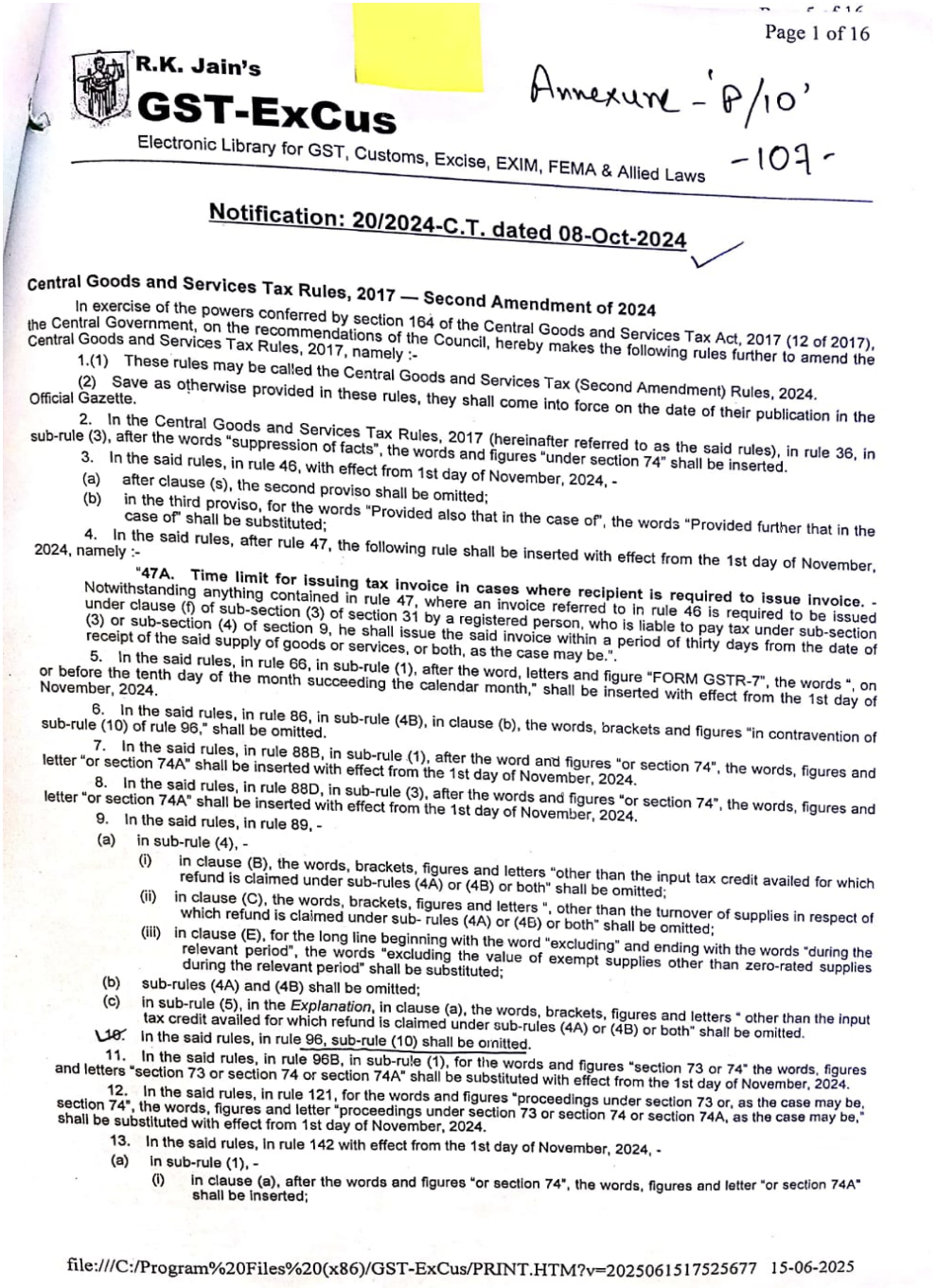
[Notification No. 54/2018-C.T., dated 9-10-2018]

14. Again by Notification No. 16/2020 dated 23rd March, 2020 an explanation was inserted in Rule 96(10) with effect from 23rd October, 2017, which provided that where IGST and Compensation Cess has been paid on procurement of inputs under Notification No. 78/2017-Customs dated 13th October, 2017 or Notification No.79/2017-Customs dated 13th October, 2017 and exemption has been availed in respect of basic Customs duty (BCD) only, such procurements would not be considered to have been procured by availing the benefit of the said notifications. The said notification

was issued as per the recommendations of the GST council in its 39th meeting held on 14th March, 2020.

15. According to the petitioner, the GST council in the 54th meeting agreed with the recommendations of the law committee to ommit Rule 96(10), Rule 89(4A), Rule 89(4B) and for the consequential amendment in clause(b) of sub-rule (4B) of Rule 86, Clause-B, Clause-C and Clause-E of sub-rule (4) of Rule 89, and explanation (a) to sub-rule (5) of Rule 89 of CGST Rules 2017 along with proposed circular.

16. Following the above on the basis of the recommendations as above, the Government issued the Notification No. 20/2024 dated 8th October, 2024 deleting sub-rule (10) of Rule 96 of CGST Rule, 2017. The relevant part of the notification is extracted hereinbelow:-



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Annexure - 'P/10'
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Notification: 20/2024-C.T. dated 08-Oct-2024

Central Goods and Services Tax Rules, 2017 — Second Amendment of 2024

In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely :-

1.(1) These rules may be called the Central Goods and Services Tax (Second Amendment) Rules, 2024.

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017 (hereinafter referred to as the said rules), in rule 36, in sub-rule (3), after the words "suppression of facts", the words and figures "under section 74" shall be inserted.

3. In the said rules, in rule 46, with effect from 1st day of November, 2024, -

(a) after clause (s), the second proviso shall be omitted;

(b) in the third proviso, for the words "Provided also that in the case of", the words "Provided further that in the case of" shall be substituted;

4. In the said rules, after rule 47, the following rule shall be inserted with effect from the 1st day of November, 2024, namely :-

"**47A. Time limit for issuing tax invoice in cases where recipient is required to issue invoice.** - Notwithstanding anything contained in rule 47, where an invoice referred to in rule 46 is required to be issued under clause (f) of sub-section (3) of section 31 by a registered person, who is liable to pay tax under sub-section (3) or sub-section (4) of section 9, he shall issue the said invoice within a period of thirty days from the date of receipt of the said supply of goods or services, or both, as the case may be.".

5. In the said rules, in rule 66, in sub-rule (1), after the word, letters and figure "FORM GSTR-7", the words ", on or before the tenth day of the month succeeding the calendar month," shall be inserted with effect from the 1st day of November, 2024.

6. In the said rules, in rule 86, in sub-rule (4B), in clause (b), the words, brackets and figures "in contravention of sub-rule (10) of rule 96," shall be omitted.

7. In the said rules, in rule 88B, in sub-rule (1), after the word and figures "or section 74", the words, figures and letter "or section 74A" shall be inserted with effect from the 1st day of November, 2024.

8. In the said rules, in rule 88D, in sub-rule (3), after the words and figures "or section 74", the words, figures and letter "or section 74A" shall be inserted with effect from the 1st day of November, 2024.

9. In the said rules, in rule 89, -

(a) in sub-rule (4), -

(i) in clause (B), the words, brackets, figures and letters "other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both" shall be omitted;

(ii) in clause (C), the words, brackets, figures and letters ", other than the turnover of supplies in respect of which refund is claimed under sub- rules (4A) or (4B) or both" shall be omitted;

(iii) in clause (E), for the long line beginning with the word "excluding" and ending with the words "during the relevant period", the words "excluding the value of exempt supplies other than zero-rated supplies during the relevant period" shall be substituted;

(b) sub-rules (4A) and (4B) shall be omitted;

(c) in sub-rule (5), in the *Explanation*, in clause (a), the words, brackets, figures and letters " other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both" shall be omitted.

10. In the said rules, in rule 96, sub-rule (10) shall be omitted.

11. In the said rules, in rule 96B, in sub-rule (1), for the words and figures "section 73 or 74" the words, figures and letters "section 73 or section 74 or section 74A" shall be substituted with effect from the 1st day of November, 2024.

12. In the said rules, in rule 121, for the words and figures "proceedings under section 73 or, as the case may be, section 74", the words, figures and letter "proceedings under section 73 or section 74 or section 74A, as the case may be," shall be substituted with effect from 1st day of November, 2024.

13. In the said rules, in rule 142 with effect from the 1st day of November, 2024, -

(a) in sub-rule (1), -

(i) in clause (a), after the words and figures "or section 74", the words, figures and letter "or section 74A" shall be inserted;

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17. According to the petitioner, the petitioner had during the period from October 2017 to March 2022 applied and availed refund of IGST amounting to Rs.6,28,27,407/-. The refund corresponds to the IGST paid during exports, as substantiated by the shipping bills duly reflected in the ICEGATE portal, thereby validating the refund claims and compliance with the export regulations.

18. The petitioner further contends that by several letters dated 9th July, 2021, 9th December, 2022, 4th December, 2022 and 31st March, 2022 the department alleged that the petitioner had availed double benefit by way of encashment of accumulated ITC and accordingly, the petitioner had been directed to submit certain documents to the department which included Advance Authorisation Licenses as referred by DRI along with copy of the shipping bills, export invoices, GST Returns for the related financial period. The petitioner claims that petitioner duly responded to the same.

19. According to the petitioner, notwithstanding the above response, two several summons were issued by the DGGI under Section 70 of the CGST Act, 2017 directing the petitioner to appear before the Senior Intelligence Officer. Following the above and despite submission of requisite documents, the respondent no.2 initially issued a notice in Form GST DRC-01A advising the petitioner to repay an amount of Rs.6,28,27,407. Before the petitioner could formally respond to the same, and despite the petitioner seeking an extension, the show-cause notice for the period 2017-18 to 2021-22 dated 27th September, 2023 was issued under Section 74 of the said Act alleging that the petitioner had availed inadmissible refund of IGST against shipping bills in contravention of the provisions of Rule 96(10) of the said Rules read with Notification 54/2018-CT dated 9th October, 2018.

20. The petitioner had furnished a detailed reply to the above show-cause. The petitioner was given a personal hearing. In course of such hearing, the petitioner's representative apart from reiterating its stand had clarified that the subsequent development in the form of the Notification No. 20/2024-Central Tax, dated 8th October, 2024 whereby Rule 96(10) of the said rules having been deleted with effect from 8th October, 2024, the demand could not survive. According to the petitioner, once, a rule is deleted/omitted, the same is deemed to have been removed from the statute book and the same is treated to have never existed. The petitioner submits that by ignoring the above, the determination has been made. The determination apart from being *per se* illegal is dehors the statute and without jurisdiction. The foundation for issuing the show-cause is Rule 96(10) which had been removed from the statute book before the determination under Section 74(9) of the said Act had been made. In support of his contention, that once, a rule is omitted ordinarily as a consequence thereof, the provision is set 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, reliance has been placed on the judgment delivered in the case of ***Rayala Corporation (P) Ltd. and M.R. Pratap v. Director of Enforcement, New Delhi***, reported in **(1969) 2 SCC 412** and ***Kolhapur Canesugar Works Ltd. v. Union of India***, reported in **2000 (119) E.L.T. 257 (S.C.)**.

21. Independent of the above, reliance has also been placed on the judgment delivered in the case of ***Addwrap Packaging (P.) Ltd. v. Union of India***, reported in **[2025] 175 taxmann.com 592 (Gujarat)**., and the judgment delivered in the case of ***Hikal Limited v. Union of India***, reported in **2025 SCC Online Bom 3169** to contends that the provisions of the Amending Act do not include any saving clause to protect pending proceedings resulting from the omission of the IGST Rules. According to the petitioner, the proceedings are deemed to have been closed upon Rule 96(10) of the said Rules being omitted.

22. The respondents are represented, it has been the respondents' case that the proceedings had been initiated against the petitioner for recovery of a sum of Rs. Rs.6,28,27,407/- which amount the petitioner had wrongfully taken refund of, by availing the benefit of automatic refund of GST. Such refund according to the respondents was obtained in contravention of the provisions of Rule 96(10) of the said Rules. The refund was availed during the subsistence of the Rules and the show-cause was also issued during the subsistence of the rules. Though the Rule has been omitted by the notification dated 8th October, 2024, the omission of Rule 89(4B) and Rule 96(10) has not been made retrospective. Consequentially, there is no irregularity in passing the order.

23. Heard the learned advocates for the respective parties and considered the materials on record. From the sequence of events

narrated hereinabove, it is apparent and clear that the petitioner is a registered tax payer and is otherwise bound by the provisions of the said Act. It is also not in dispute that the petitioner between October 2017 and March 2022 had availed a refund of IGST amounting to Rs. 6,28,27,407/-. This according to the petitioner, corresponds to IGST paid during exports as substantiated by shipping bills reflected in ICEGATE portal which validates the refund claims. It is also not in dispute that the provisions of Section 96(10) as amended was in subsistence when the show-cause cum demand notice was issued.

24. As would appear from the show-cause notice, the petitioner's director had admitted that the petitioner was unaware of the law and due to wrong interpretation of law had enjoyed undue benefit by availing exemption of IGST on imported goods in one hand and on the other hand, they had encashed the accumulated ITC accrued on account of other goods and services procured indigenously by paying for IGST *suo moto* for the purpose of the export though, export being zero rated supply, which is contrary to provisions of Rule 96(10). Thus, proceeding fundamentally around non-compliance of Rule 96(10) of the said Rules, the demand was calculated. The petitioner had duly responded to the show-cause and was also afforded a personal hearing. In the operative portion of the order, the Proper Officer has inter alia, pleased to observe as follows:-

In this connection, I find the following:

- Rule 96(10) was inserted in order to prevent exporters from availing double benefit duty free/concessional procurement of inputs by availing benefit under the relevant notification and of refund of integrated tax paid on export as it was leading to monetization of ITC which was attributable towards non-export supplies, this was done in exercise of power under section 164 of the CGST Act (power to make rules) which includes the power to give retrospective effect to these Rules read with Section 16 of IGST Act.
- The scope of the restriction imposed by rule 96(10) of the CGST Rules, regarding non-availment of the benefit of notification Nos. 48/2017-Central Tax dated the 18.10.2017, 40/2017- Central Tax (Rate) dated 23.10.2017, 41/2017-Integrated Tax (Rate) dated 23.10.2017, 78/2017- Customs dated I 3.10.2017 or 79/2017-Customs dated 13.10.2017 was clarified vide the Circular No. 45/19/2018-GST dated 30-05-2018. At point No. 7 of the said Circular, it has been stated that -

7. .1 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 utilise the input tax credit availed on other domestic supplies received for making the payment of integrated tax on export of goods.

- The fundamental principle governing the provisions of refund is that in the case of exports, taxes are not exported and accordingly, the tax suffered on the inputs used in the exported goods is refunded to the taxpayer. However, where tax has not been paid on the inputs used in the exported goods, refund of IGST would tantamount to encashment of ITC, which is against the fundamental principle of taxation and also beyond the scope of Section 16(3)(b) of the IGST Act, 201 7. Accordingly, provisions of Rule 96(10) of CGST Rules were formulated to avoid encashment of ITC on inputs and input services for manufacture of goods for domestic supplies, against the exports manufactured using inputs for which benefit of specified exemption notifications have been obtained. Thus, the legislative intent was to give refund of IGST only where tax paid inputs have been used in the making zero-rated supplies.

- Further, Refund is not an unfettered right. The statutory authority that empowers a tax payer to claim such refund also provides for imposition of checks and balances. Section 16(3)(b) of the IGST Act. 20 17 states that-

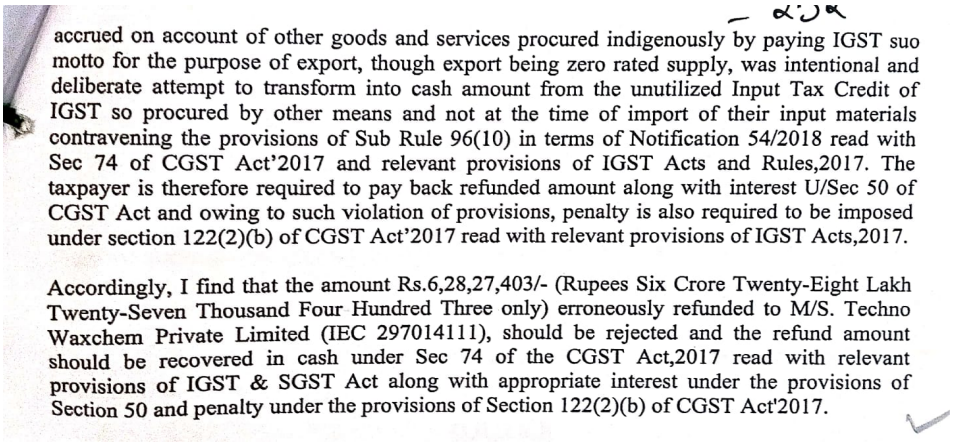
"a registered person may supply goods or services or both, subject to such conditions, safeguards and procedures as may be prescribed on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied"

- Therefore, while the said Section extended authority for refund of tax paid on the goods and services, the same section also ensured that such claims are not absolute and they would be subject to such conditions, safeguards and procedures as may be prescribed. Section 16 of the IGST Act. does not offer any carte blanche for claim of refund. It provides for allowing such claims of legitimate refunds which are not contrary to or out of the ambit of the larger limitations of law created by imposition of restrictions.

- Now, based on the recommendations of GST Council in 54th meeting, Rule 96(10) of the CGST Rules has been omitted by the **CGST** (Second Amendment) Rules, 2024, prospectively w.e.f. 08.10.2024. All policy decisions with respect to GST Act and rules made thereunder are taken only with the approval of the GST Council, a Constitutional body established under Article 279A of the Constitution of India which has been entrusted to make recommendations to the Union of India and the States on all GST related matters. Further, refund is not an unfettered right and Government is well within its power to impose certain restrictions, conditions and safeguards for grant of refund. This view has also been upheld by the **Hon'ble Supreme Court in the case of Mafatlal Industries Limited v. Union of India** wherein apex court held that **"the right of refund is not automatic".**

In view of the above, I observe that the instant issue has not yet attained finality and the department has opportunity to appeal before Hon'ble Supreme court against the aforementioned order of Hon'ble Kreala High Court. As the GST adjudication is a time bound proceeding, tI am inclined to confirm the demand of Rs. 6,28,27,407/-.

9.20 I am also of the opinion that as a registered taxpayer under GST statute, the said noticee should be well aware and updated about various provisions of Goods & Service Tax law. Therefore, such action of the taxpayer, to enjoy undue benefit by availing exemption of IGST on imported goods in one hand and on another hand they en-cashed the accumulated ITC



accrued on account of other goods and services procured indigenously by paying IGST suo motto for the purpose of export, though export being zero rated supply, was intentional and deliberate attempt to transform into cash amount from the unutilized Input Tax Credit of IGST so procured by other means and not at the time of import of their input materials contravening the provisions of Sub Rule 96(10) in terms of Notification 54/2018 read with Sec 74 of CGST Act'2017 and relevant provisions of IGST Acts and Rules,2017. The taxpayer is therefore required to pay back refunded amount along with interest U/Sec 50 of CGST Act and owing to such violation of provisions, penalty is also required to be imposed under section 122(2)(b) of CGST Act'2017 read with relevant provisions of IGST Acts,2017.

Accordingly, I find that the amount Rs.6,28,27,403/- (Rupees Six Crore Twenty-Eight Lakh Twenty-Seven Thousand Four Hundred Three only) erroneously refunded to M/S. Techno Waxchem Private Limited (IEC 297014111), should be rejected and the refund amount should be recovered in cash under Sec 74 of the CGST Act,2017 read with relevant provisions of IGST & SGST Act along with appropriate interest under the provisions of Section 50 and penalty under the provisions of Section 122(2)(b) of CGST Act'2017.

25. From the above, it is clear that the entire proceeding proceeds on the contravention of Rule 96(10) of the said Rules. I find that in the instant case, the petitioner has despite raising the question of constitutional validity of Rule 96 did not insist for the same, since the GST council during the 54th meeting had recommended omission of Rule 96(10) of the said Rules prospectively along with other rules and accordingly the Notification dated 8th October, 2024 was issued omitting Rule 96(10), no proceedings could have been continued on the basis of contravention of such Rule. Even if, any proceeding had been continued before the omission of such rule, on the omission of the rule, all such proceedings came to an end and stood closed.

26. In this context, I may note that to understand the argument of the petitioner, it would be relevant to consider the effect of the notification dated 8th October, 2024 whereunder Rule 96(10) has stood omitted. I may find that the Hon'ble Supreme Court in the case of ***Rayala Corporation (P) Ltd. and M.R. Pratap*** (supra) in

no uncertain terms while considering a challenge made to a charge arising out of contravention of Rule 132-A(2) of the Defence of India Rules, 1962 (hereinafter referred to as the "DIR Rules"), on the ground that subsequent to omission of the relevant Rule, no charge could be pressed, by noting the factum of the notification of the Ministry of Home Affairs dated 30th March, 1965 (whereby offences punishable under the said Rules) whereby the said Rule 132-A of the DIR Rules relating to prohibition of dealing in foreign exchange was omitted, and also noting that though that Section 4 of the Foreign Exchange Regulation Act 1947 (in short, the "FERA") having been amended, legislature did not make any provision that an offence previously committed under Rule 132A of the DRI Rules would continue to remain punishable as an offence of contravention of Section 4(1) of FERA, had held that after omission of Rule 132-A of the DRI Rules, no prosecution could be instituted even in respect of an act which was an offence when the rule was in force. The other aspect as regards the applicability of Section 6 of the General Clauses Act, 1897 was also considered in the above case wherein the Hon'ble Supreme Court in paragraphs 17 and 18 had been, inter alia, pleased to observe as follows:-

> ***"17.*** *Reference was next made to a decision of the Madhya Pradesh High Court in State of M.P. v. Hiralal Sutwala [1958 SCC OnLine MP 149 : AIR 1959 MP 93] but, there again, the accused was sought to be prosecuted for an offence punishable under an Act on the repeal of which Section 6 of the General Clauses Act had been made applicable. In the case before us, Section 6 of the*

General Clauses Act cannot obviously apply on the omission of Rule 132-A of the DIRs for the two obvious reasons that Section 6 only applies to repeals and not to omissions, and applies when the repeal is of a Central Act or Regulation and not of a rule. If Section 6 of the General Clauses Act had been applied, no doubt this complaint against the two accused for the offence punishable under Rule 132-A of the DIRs could have been instituted even after the repeal of that rule.

18. *The last case relied upon is J.K. Gas Plant Mfg. Co., (Rampur) Ltd. v. R. [1947 SCC OnLine FC 8 : (1947) 9 FCR 141] . In that case, the Federal Court had to deal with the effect of sub-section (4) of Section 1 of the Defence of India Act, 1939 and the Ordinance 12 of 1946, which were also considered by the Allahabad High Court in the case of Seth Jugmendar Das. After quoting the amended sub-section (4) of Section 1 of the Defence of India Act, the Court held:*

> *"The express insertion of these saving clauses was no doubt due to a belated realisation that the provisions of Section 6 of the General Clauses Act (10 of 1897), apply only to repealed statutes and not to expiring statutes, and that the general rule in regard to the expiration of a temporary statute is that unless it contains some special provision to the contrary, after a temporary Act has expired, no proceedings can be taken upon it and it ceases to have any further effect. Therefore, offences committed against temporary Acts must be prosecuted and punished before the Act expires and as soon as the Act expires any proceedings which are being taken against a person will ipso facto terminate."*

The Court cited with approval the decision in the case of Wicks v. Director of Public Prosecutions, and held that, in view of Section 1(4) of the Defence of India Act, 1939, as amended by Ordinance 12 of 1946, the prosecution for a conviction for an offence committed when the Defence of India Act was in force, was valid even after the Defence of India Act had ceased to be in force. That case is, however, distinguishable from the case before

*us in two respects. In that case, the prosecution had been started before the Defence of India Act ceased to be in force and, secondly, the language introduced in the amended sub-section (4) of Section 1 of the Act had the effect of making applicable the principles laid down in Section 6 of the General Clauses Act, so that a legal proceeding could be instituted even after the repeal of the Act in respect of an offence committed during the time when the Act was in force. As we have indicated earlier, the notification of the Ministry of Home Affairs omitting Rule 132-A of the DIRs did not make any such provision similar to that contained in Section 6 of the General Clauses Act. Consequently, it is clear that, after the omission of Rule 132-A of the DIRs, no prosecution could be instituted even in respect of an act which was an offence when that rule was in force.***"***

27. Again, in the case of ***Kolhapur Canesugar Works Ltd.*** (supra) the Hon'ble Supreme Court while considering the scope of omission of Rule 10 and 10A of the Central Excise Rules, 1944 with effect from 6th October, 1977 had observed that General Clauses Act is only applicable to a Central Act or Regulation. The same applies only to the repeal of an Act and not to the omission of the Rule. To morefully appreciate the same paragraphs 32, 33 and 34 are extracted hereinbelow:-

32. *We have carefully considered the decisions in Saurashtra Cement and Chemical Industries [(1993) 42 ECC 126 (Guj) (FB)] and Falcon Tyres case [(1992) 60 ELT 116 (Kant)] . Though the judgments in these cases were rendered after the decision of the Constitution Bench in Rayala Corpn. (P) Ltd. [(1969) 2 SCC 412 : (1970) 1 SCR 639] a different view has been taken by the High Courts for the reasons stated in the judgments. The Full Bench of the Gujarat High Court in Saurashtra Cement and Chemical*

Industries [(1993) 42 ECC 126 (Guj) (FB)] as it appears from the discussions in the judgment, tried to distinguish the decision of the Constitution Bench in Rayala Corpn. [(1969) 2 SCC 412 : (1970) 1 SCR 639] for reasons, we are constrained to say, not sound in law. The decision of the Constitution Bench is directly on the question of applicability of Section 6 of the General Clauses Act in a case where a rule is deleted or omitted by a notification and the question was answered in the negative. The Constitution Bench said that

"Section 6 only applies to repeals and not to omissions, and applies when the repeal is of a Central Act or regulation and not of a rule" (p. 424, para 17 of SCC : p. 656 of SCR).

33. *The Full Bench appears to have lost sight of the position that all the relevant terms i.e. "Central Act", "enactment", "regulation" and "rule" are defined in Sections 3(7), 3(19), 3(50) and 3(51) respectively of the General Clauses Act. When the term Central Act or regulation or rule is used in that Act reference has to be made to the definition of that term in the statute. It is not possible nor permissible to give a meaning to any of the terms different from the definition. It is manifest that each term has a distinct and separate meaning attributed to it for the purpose of the Act. Therefore, when the question to be considered is whether a particular provision of the Act applies in a case then the clear and unambiguous language of that provision has to be given its true meaning and import. The Full Bench has equated a "rule" with "statute". In our considered view this is impermissible in view of the specific provisions in the Act. When the legislature by clear and unambiguous language has extended the provision of Section 6 to cases of repeal of a "Central Act" or "regulation", it is not possible to apply the provision to a case of repeal of a "rule". The position will not be different even if the rule has been framed by virtue of the power vested under an enactment; it remains a "rule" and takes its colour from the definition of the term in the Act (the General Clauses Act). At the cost of repetition we may say that the omissions in the judgment*

in Rayala Corpn. [(1969) 2 SCC 412 : (1970) 1 SCR 639] pointed out in para 17 of the judgment of the Full Bench have no substance as they are not relevant for determination of the question raised for the reasons stated herein.

34. *In para 21 of the judgment the Full Bench has noted the decision of a Constitution Bench of this Court in Chief Inspector of Mines v. Karam Chand Thapar [AIR 1961 SC 838] and has relied upon the principles laid down therein. The Full Bench overlooked the position that that was a case under Section 24 of the General Clauses Act which makes provision for continuation of orders, notification, scheme, rule, form or bye-law, issued under the repealed Act or regulation under an Act after its repeal and re-enactment. In that case Section 6 did not come up for consideration. Therefore the ratio of that case is not applicable to the present case. With respect we agree with the principles laid down by the Constitution Bench in Rayala Corpn. case [(1969) 2 SCC 412 : (1970) 1 SCR 639] . In our considered view the ratio of the said decision squarely applies to the case on hand.***"**

28. In this context, I may note that in the judgement of the Bombay High Court in the case of ***Hikal Limited*** (supra), an identical question fell for consideration where the Hon'ble Bombay High Court in paragraph 122 thereof by noting the absence of the saving clause was pleased to, inter alia, return the following finding which is extracted hereinbelow:-

> ***"122.*** *Upon comprehensive review of all the above aspects, we hold that, following the omission or repeal of the impugned Rules, i.e., Rules 89(4B) and 96(10) of the CGST Rules via Notification dated 08 October 2024, and in the absence of any saving clauses or the benefit of Section 6 of the General Clauses Act, all pending proceedings-such as undisposed show cause notices,*

*orders disposing of show cause notices issued after 08 October 2024, or even orders made before 08 October 2024 but not yet finalised due to appeals before the Appellate Authorities or challenges before this Court, thus not constituting "transactions past and closed"-are not preserved and will stand lapsed.***"**

29. The Hon'ble Gujarat High Court has also in the case of ***Addwrap Packaging (P.) Ltd.*** (supra) taken a similar view.

30. The Hon'ble Delhi High Court in the case of ***Vinayak International Housewares Pvt. Ltd.*** (supra) while considering the effect of the notification no.20/2025-Central Tax dated 8th October, 2024 as aforesaid, and upon considering the case of ***Kolhapur Canesugar Works Ltd.*** (supra), the case of ***Addwrap Packaging (P.) Ltd.*** (supra) and the case of ***Hikal Limited*** (supra), was pleased to, in paragraph 18 thereof, observe as follows:-

"18. *A conjoint reading of all the judicial precedents set out above leads to the following conclusions:*

(i) In the 54th meeting of the GST Council, the recommendation made is relevant, as it clearly observed that Rule 96(10) of CGST Rules leads to unnecessary complication, without any intended benefit and therefore the omission was recommended.

(ii) Rule 96(10) of the CGST rules has been omitted with effect from 8th October, 2024 upon the recommendations of the GST Council in its 54th meeting. The Kerala High Court in Sance Laboratories Pvt. Ltd (Supra) has considered the

constitutional validity of Rule 96(10) of the CGST rules and has held that, if permitted to stand, the constraints placed upon IGST refunds under Rule 96(10) would run contrary to the provisions of the IGST Act, especially Section 16 of the IGST Act. As evident from the above, the said omission of the said Rule has also been considered by all the other High Courts in above mentioned decisions.

(iii) Additionally, various High Courts through the above mentioned decisions, have held that following the decision of the Supreme Court in Kolhapur Canesugar Works (Supra), Rule 96(10) of the CGST rules having been omitted from the Statute, it would also apply to all pending proceedings. The Bombay High Court while considering the same has held that unless and until the transactions have passed and closed, the benefit of omission of Rule 96(10) of the CGST rules has been extended.

*(iv) All pending SCNs, orders and even appeals filed against orders would not be transactions passed and closed and therefore, the proceedings cannot continue under Rule 96(10) of the CGST rules. The benefit of omission of Rule 96(10) of the CGST rule sought to be extended to all pending proceedings including appeals.***"**

31. Having regard to the above, on the omission of Rule 96(10), the order dated 4th February, 2025 no longer survives. The same is accordingly quashed. All consequences shall follow.

32. There shall be no order as to costs.

33. Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

(Raja Basu Chowdhury, J.)