

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 14854 OF 2023

Kelvion India Pvt. Ltd.

...Petitioner

Versus

The Union of India & Ors.

...Respondents

**WITH
WRIT PETITION NO. 14862 OF 2023
WITH
WRIT PETITION NO. 14860 OF 2023
WITH
WRIT PETITION NO. 14858 OF 2023
WITH
WRIT PETITION NO. 14857 OF 2023
WITH
WRIT PETITION NO. 14855 OF 2023
WITH
WRIT PETITION NO. 14852 OF 2023**

Mr. Rahul Thakar a/w Yash Dethe i/by C. B. Thakar for the Petitioner.
Mr. Karan Adik i/by Megha Bajoria for the Respondents.

**CORAM : M.S. Sonak &
Advait M. Sethna, JJ.**

DATED : 09 December 2025

Oral Order:- (Per M. S. Sonak, J.)

1. Heard learned counsel for the parties.

2. Learned counsel for the parties state that a common judgment and order can dispose of these Petitions.
3. Accordingly, we issue Rule in all these Petitions. We make the Rule returnable immediately at the request of and with the consent of the learned counsel for the parties.
4. The Petitioner is engaged in the business of manufacturing and exporting of heat exchangers and other allied products. During its business, the Petitioner imported certain raw materials under the advance authorisation, claiming exemption from the payment of basic customs duty and IGST, relying on the customs notifications dated 1 April 2015 and 13 October 2017.
5. The Petitioners contend that this raw material was used to manufacture finished goods, which were exported from India. For the period between June 2019 and December 2019, the Petitioner made exports on payment of IGST. For this, the Petitioners received a refund of IGST under the relevant provisions of the IGST Act, 2017.
6. The Petitioners claimed that not all finished goods exported outside India included goods manufactured using raw materials imported under advance authorisation. The Directorate of Revenue Intelligence (DRI) alleged that the Petitioner had availed the benefits of advance authorisation in breach of Rule 96(10) of the CGST Rules, 2017.
7. Therefore, the Petitioner, to avoid controversy, repaid the refund it had received for the period between June 2019 and December 2019

and from July 2020 to September 2020, amounting to Rs. 2,82,39,137/-, along with applicable interest of Rs. 38,19,915/-.

8. The Petitioner now claims that the amount paid back by them exceeded what was otherwise required to be paid under Rule 96(10) of the CGST Rules, 2017. Mr Thakar states that this was, in fact, four times more than the amount that would have become payable if Rule 96(10) were to be applicable and established as violated.

9. Accordingly, the Petitioner applied for a refund on 20 August 2021 under the category of “Excess payment of tax – if any” to the second Respondent. This Application was rejected vide order dated 19 October 2021, following the issuance of a show cause notice dated 1 December 2021 to the Petitioner.

10. The appellate authority rejected the challenge to the 10 October 2021 order. Hence, the present Petitions.

11. During the pendency of these Petitions, this Court, in the case of *Hikal Ltd. Vs. Union of India & Ors.* (Writ Petition No.78 of 2025 decided on 11 September 2025) has held that Rule 96(10) was omitted without making any provisions for saving pending proceedings. Mr Thakar therefore submits that the argument about any alleged breach of Rule 96(10) or invocation of Rule 86(4B) of the CGST Rules would no longer be applicable. Accordingly, he proposes that we set aside the impugned orders of the appellate authority and the adjudicating authority, and remand the matter to the adjudicating authority for deciding the Petitioner’s refund application dated 20 August 2021 and the show cause notice dated 1 December 2021 afresh.

12. Mr Adik, whilst not agreeing with the contentions of Mr Thakar, submits that Rule 86(4B) cannot be interpreted to have a retrospective effect. He submitted that there are no errors in the impugned orders. He further submitted that the Petitioner has an alternate remedy before the GST Tribunal.

13. We have considered the rival contentions.

14. As of now, the GST Tribunal is not operational and therefore, at least in the peculiar facts of this case and the order that we proposed to make, no useful purpose would be served by relegating the Petitioner to avail the alternate remedy.

15. The Petitioner was called upon to return the amounts received by way of refund, *inter alia*, by alleging breach of the provisions of Rule 96(10). Besides, the issue of Rule 86(4B) is also involved, as the impugned orders have held that it cannot be given retrospective effect.

16. Recently, in ***Hikal Ltd.*** (supra), this Court has held that the omission of Rule 96(10) was without making any provisions to save the pending proceedings. The adjudicating or appellate authority did not have the benefit of this decision, even though it would have some impact on the issues raised.

17. Therefore, at this stage, without making any observations on the effect of this Court's decision in ***Hikal Ltd.*** (supra) and issues raised in these Petitions, we think that the interest of justice would be met if the impugned orders dated 10 January 2022 and 27 March 2023 are set aside and the matter is remanded to the adjudicating authority i.e. the

second Respondent herein to decide afresh the Petitioner's refund application dated 20 August 2021 and show cause notice dated 1 December 2021 after examining the impact of this Court's decision in *Hikal Ltd.* (supra).

18. Accordingly, we quash and set aside the impugned orders dated 10 January 2022 and 27 March 2023 and remand the matter to the adjudicating authority i.e. the second Respondent to decide afresh the Petitioner's refund application dated 20 August 2021 and show cause notice dated 1 December 2021 as expeditiously as possible and in any event within six months from the date of uploading of this order.

19. The second Respondent must hear the parties and consider the impact of the decision in *Hikal Ltd.* (supra). The second Respondent must also consider all other contentions raised by the Petitioner and the Respondents including the contention about the retrospectivity or the bar for filing two refund claims as raised by Mr. Adik, learned counsel for the Respondents.

20. At the request of learned counsel for the parties, the Petitioner and the Respondents are granted leave to file written submissions in addition to the personal hearing. They say that such written submissions would be filed within four weeks from today. The second Respondent shall also consider such written submissions.

21. The learned Counsel stated that the material facts in all the Petitions are the same, though the amounts may differ. Therefore, they agree that this order can apply to all the matters now disposed of by this order.

22. The Rule is made absolute in the above terms. No costs. All concerned are to act upon an authenticated copy of this order.

(Advait M. Sethna, J)

(M. S. Sonak, J.)