HC-KAR

NC: 2025:KHC:52372
WP No. 15251 of 2020

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 9TH DAY OF DECEMBER, 2025**

**BEFORE**

**THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR**

**WRIT PETITION NO.15251 OF 2020 (T-RES)**

**BETWEEN:**

M/S HIKAL LIMITED
HAVING OFFICE AT
NO.82/A, KIADB INDUSTRIAL AREA
JIGANI ANEKAL
BENGALURU – 560 105.
REPRESENTED BY ITS
AUTHORISED SIGNATROY
MR. KEDAR SHRIKRISHNA APTE
AGED 50 YEARS
R/AT 1102, TOWER NO.8,
SAGAR DARSHAN, SECTOR 18, NERUL
MUMBAI – 400 706.

…PETITIONER

(BY SRI. G. SHIVADASS, SENIOR COUNSEL APPEARING FOR
SRI. PRASHANTH S. & SRI. RISHAB J.,
SMT. SHRADHA RAJGIRI & SMT. DHANYATHA R. &
SRI. PRINCESS PREET, ADVOCATES)

Digitally signed by CHANDANA B M
Location: High Court of Karnataka

**AND:**

1. UNION OF INDIA
THROUGH THE SECRETARY
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
NO.137, NORTH BLOCK
NEW DELHI – 110 001.

2. THE STATE OF KARNATAKA
THROUGH THE PRINCIPAL SECRETARY
FINANCE DEPARTMENT
VIDHANA SOUDHA
BENGALURU – 560 001.

3. THE CENTRAL BOARD OF
INDIRECT TAXES AND CUSTOMS
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
CENTRAL REVENUE BUILDINGS
LP. ESTATE ITO
NEW DELHI 110 002.
REPRESENTED BY UNDER SECRETARY.

4. OFFICE OF THE CHIEF COMMISSIONER OF CUSTOMS
C.R. BUILDINGS, QUEENS ROAD,
BANGALORE - 560 001.

5. JOINT DIRECTOR
O/O THE PR. ADDITIONAL DIRECTOR GENERAL,
NO.112, S.P. ENCLAVE ADJACENT TO
KARNATAKA BANK, K.H. ROAD,
BENGALURU - 560 027.

6. ASSISTANT COMMISSIONER
OF COMMERCIAL TAXES
LGSTO-26, 1ST FLOOR, VTK-2,
KORAMANGALA 2ND STAGE
RAJENDRA NAGAR
BANGALORE - 560 047.

7. ASSISTANT COMMISSIONER /
JOINT COMMISSIONER
OF CENTRAL TAX
BENGALURU SOUTH COMMISSIONERATE
C.R.BUILDING ANNEXE
P.B.NO.5400, QUEEN'S ROAD
BENGALURU – 560 001.

…RESPONDENTS

(BY SMT. JYOTI M. MARADI, HCGP FOR R-2 & R-6;
SRI. JEEVAN J.NEERALGI, ADVOCATES FOR R-1, R-3 TO R-5 & R-7)

THIS W.P IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTIFICATION DATED 09.10.2018 VIDE ANNEXURE-F AND NOTIFICATION DATED 09.10.2018 VIDE ANNEXURE-G ISSUED BY THE R-3 AND ETC.

THIS PETITION, COMING ON FOR *FINAL HEARING*, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

**ORAL ORDER**

In this petition, petitioner seeks the following reliefs:

*"a) To issue order(s), directions, writ(s) in the nature of Certiorari quashing the Notification No.53/2018-CT dated 09.10.2018 vide Annexure-F and Notification No.54/2018-CT dated 09.10.2018 vide Annexure-G issued by the Respondent No.3.*

*b) To issue order(s), directions, writ(s) in the nature of Certiorari quashing the SCN dated 07.10.2020 issued by the Respondent No.5 annexed at Annexure-R;*

*c) To issue order(s), directions, writ(s) in the nature of mandamus allowing the pending refund of IGST paid by the Petitioner.*

*d) To issue order(s), directions, writ(s) in the nature of mandamus holding that no interest is payable on the amount of IGST paid to comply with Explanation to Rule 96(10) inserted by Notification No.16/2020-CT dated 23.03.2020, if paid by the petitioner;*

*e) In the alternative and without prejudice to prayer (a), to issue a writ of mandamus directing Respondents to allow the petitioner to amend the Shipping Bills, invoices and the GST Return and consider the exports undertaken by the Petitioner as Zero-rated Supply undertaken under Bond or Letter of Undertaking and in effect allow them to claim the refund of the unutilized Input Tax Credit in terms of Section 16(3)(a) of the IGST Act read with Section 54 of the CGST*

*Act and Rule 89 of the CGST Rules by filing an manual application in this regard;*

*f) To issue order(s), directions, writ(s) or any other relief as this Hon'ble Court deems it fit and proper in the facts and circumstances of the case in the interest of justice."*

2. Heard learned Senior Counsel for the petitioner and learned HCGP for respondent Nos.2 and 6 and learned counsel for respondent Nos.1, 3 to 5 and 7 and perused the material on record.

3. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned Senior Counsel for the petitioner invited my attention to the impugned Show Cause Notice dated 07.10.2020 issued by respondent No.5 in order to point out that the said Show Cause Notice was issued pursuant to the Notification dated 09.10.2018 under which, Rule 96(10) was inserted into the CGST Act by way of amendment w.e.f. 23.10.2017. It is submitted that the validity of the said Notification was challenged before the Kerala High Court in the case of ***Sance Laboratories Private Limited V. Union of India – (2024) 23 Centax 435 (Ker.)*** wherein the said Rule 96(10) was struck down as unconstitutional vide order dated 10.10.2024. It is submitted that prior to the striking down of the said Rule 96(10)

on 10.10.2024, the respondent had already omitted the said Rule by issuing a Notification dated 08.10.2024, which was noticed by the Kerala High Court in the said order, which proceeded to declare that all proceedings between 23.10.2017 and 08.10.2024 would stand abated and deserve to be quashed.

4. It is submitted that the aforesaid judgment of the Kerala High Court has been subsequently followed by the other High Courts including the Uttarakhand High Court, Gujarat High Court, Delhi High Court and Bombay High Court in the petitioner's own case and as such, the impugned Show Cause Notice and all further proceedings in pursuance thereto deserve to be quashed.

5. Per contra, learned HCGP for respondent Nos.2 and 6 and learned counsel for respondent Nos.1, 3 to 5 and 7 submits that there is no merit in the petition and that the same is liable to be dismissed.

6. As rightly contended by learned Senior Counsel for the petitioner, the Kerala High Court in the case of ***Sance Laboratories Private Limited V. Union of India – (2024) 23 Centax 435 (Ker.)*** held as under:

*"**14**. In order to consider the contention that Rule 96(10) of the CGST Rules as it presently stands is manifestly arbitrary I proposed a comparison of the right to a refund flowing from Section 16(3)(a) of the IGST Act (in terms of Rule 89 of the CGST Rules) and the right to a refund following from Section 16(3)(b) of the IGST Act (in terms of Rule 96 of the CGST Rules). It may be noted that the reference to the statutory provisions is with reference to the provisions as they stood prior to the amendment of Section 16 w.e.f. 01-10-2023. The learned Senior Counsel appearing for the petitioner in W.P (C) No. 17447/2023 has provided the following comparison statement. A perusal of the statement shows as to how the working of Rule 96(10) of the CGST Rules has resulted in hostile discrimination amongst exporters who opt to apply for a refund under Section 16(3)(a) read with Rule 89 of the CGST Rules and those who opt to apply for a refund in the manner contemplated by Section 16(3)(b). The statement is extracted below in tabular form:-*

| ***Sl. No.*** | ***Particulars*** | ***Rule 89*** | ***Rule 96*** |
|---|---|---|---|
| *1.* | *Parent Provision* | *Section 16(3)(a) of the IGST Act read with Section 54 of the CGST Act provides for refund of unutilized input tax credit ("ITC") in respect of zero-rated supplies.* | *Section 16(3)(b) read with Section 54 of the CGST Act provides for refund of the IGST paid on exports of goods or services or both on payment of IGST within the expiry of two years from the relevant date.* |
| *2.* | *Relevant Rule* | *Rule 89(4) provides for refund of unutilized input tax credit ("ITC") in respect of inputs and input services in case zero-rated supplies are undertaken without payment of taxes, under a Letter of Undertaking ("LUT")* | *Rule 96 provides for refund of output IGST paid on export of goods and services.*<br>*Note: This payment of tax is essentially from the accumulated ITC, which is a basket of ITC* |

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| | | *or bond.* | *availed on inputs, input services and capital goods with no one-to-one correlation between the usage of inputs and usage of credit so long as the inputs satisfy the requirements under Section 16(1) of the CGST Act.* |
| *3.* | *Procedure* | *i.* *Section 54(4) of the CGST Act provides that the refund application must be accompanied with the documents specified in Rule 89(2), in Annexure 1 of the Form GST RFD-01 to establish that refund is due to the applicant.*<br>*ii.* *Rule 89(1) provides that an application in Form GST RFD- 01 must be fled along with the necessary documents through the common portal for claiming refund of unutilized ITC.*<br>*iii.* *Refund to be calculated as per the formula provided in Rule 89(4), which is: Refund=(Turnover of zero-rated supply of goods and services) × Net ITC ÷ Adjusted Total Turnover.*<br>*Note:*<br>*(a)* *Net ITC is defined as "ITC availed on inputs and input services during the relevant period."*<br>*(b)* *The above definition refers to ITC availed on inputs and input services availed during the relevant period which is the period for which the claim has been fled.*<br>*(c)* *There is no identification of input* | *i.* *As per Rule 96(1), a shipping bill fled by an exporter shall be deemed to be an application for refund of IGST paid on the export of goods.*<br>*ii.* *The common portal designated by the Customs shall electronically transmit the details of relevant export invoices in respect of the export of goods contained in Form GSTR-1 (statement of outward supplies), to the GST common portal.*<br>*iii.* *The shipping bill shall be deemed to be an application, provided:*<br>♦ *the person in-charge of conveyance departure or export manifest or an export report covering the number and shipping bills or bills of export; and*<br>♦ *the applicant has furnished a valid return in Form GSTR-3B (monthly return).* |

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| | | and input services with respect to the exported goods.<br>(d) This identification is based on the turnover of the zero-rated supplies vis-à-vis the adjusted total turnover.<br>(e) ITC is allowed only of inputs and input services and not of capital goods.<br>iv. Prior to export, bond or LUT must be furnished in Form GST RFD-11, as provided in Rule 96A, stating that the exporter shall pay tax along with interest:<br>♦ within 15 days of expiry of 3 months, from the date of issue of invoice for export of goods, if the goods are not exported.<br>♦ within 15 days of expiry of 1 year from the date of issue of invoice for export of services, if payment is not received | iv. In terms of Rule 96(3), the claim of refund of export of goods shall be processed by a proper officer and an amount equal to the IGST paid shall be electronically credited to the bank account of the applicant.<br>v. Detailed Guide on IGST refunds in ICES issued by Directorate General of Systems, CBEC pursuant to the IGST refund module being made operational Since 10.10.2017.<br>vi. Rule 96(9) provides that refund of IGST paid on export of services shall be dealt with in accordance with Rule 89. |
| 4. | Withholding of refund | According to Rule 92(2), claim for refund shall be withheld if the proper officer or the Commissioner is of the opinion that the amount of refund is liable to be withheld under Section 54(10) or (11) of the CGST Act and an order in Part A of Form GST RFD-07 shall be passed. | According to Rule 96(4), claim for refund shall be withheld in the following circumstances:<br>♦ a request has been received Commissioner to withhold the payment of refund in accordance with Section 54(10) or (11) of the CGST Act; or<br>♦ the proper officer of Customs determines that the goods were exported in violation of the provisions of the |

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| | | | | | *Customs Act, 1962; or* |
| | | | ♦ | *the Commissioner or an officer authorised by the Board, is of the opinion that verification of credentials of the exporter, including the availment of ITC by the exporter, is considered essential before grant of refund, in order to safeguard the interest of revenue.* |
| *5.* | *Provisional refund* | *i.* | *The proper officer must give an acknowledgement in Form GST RFD-02, in terms of Rule 90, within fifteen (15) days of fling of the refund application and indicate the date of fling and time period remaining to file an order under Section 54(7) of the CGST Act.* | |
| | | *ii.* | *Section 54(6) of the CGST Act provides that, in case of zero-rated supplies, 90% of the total refund amount claimed shall be refunded on a provisional basis.* | |
| *6.* | *Processing of refund and sanction, therein* | *Section 54(7) of the CGST Act provides that, a refund order must be issued by a proper officer within 60 days from the date of receipt of the refund application.* | | |
| | | *In terms of Rule 92, if the proper officer is satisfied that the refund amount is due and payable to the applicant, shall make an order in Form GST RFD-06 sanctioning the amount of refund therein, and subsequently issue a payment order in Form GST RFD-05 for the amount so sanctioned.* | | *Rule 96(3) provides that the claim of refund of export of goods shall be processed by a proper officer and an amount equal to the IGST paid shall be electronically credited to the bank account of the applicant.* |

*After the amendment in Rule 96 of the CGST Rules – Insertion of Rule 96(10) and substitution of Rule 89(4A) and (4B):-*

| *Sl.No* | *Rule 89* | *Rule 96* |
|---|---|---|
| *1.* | *Refund of unutilized ITC shall be calculated in accordance with Rule 89(4). Refund is claimed under Rule 89(4A) or (4B) or both:* | *Rule 96(9) provides that refund of IGST paid on export of services shall be* |

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<tr><td>(i)</td><td>Net ITC shall be reduced by the ITC availed for which refund is claimed under Rule 89 (4A) or (4B) or both;</td></tr>
<tr><td>(ii)</td><td>Turnover of zero-rated supply of goods shall be reduced by turnover of supplies in respect of which refund is claimed under Rule 89(4A) or (4B) or both;</td></tr>
<tr><td>(iii)</td><td>Adjusted total turnover shall be reduced by the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both;</td></tr>
<tr><td>(iv)</td><td>Net ITC is defined as ITC availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both.</td></tr>
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Note: The above definition refers to ITC availed on inputs and input services availed during the relevant period which is the period for which the claim has been fled.
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<td>dealt with in accordance with Rule 89. Rule 96(3) provides that the claim of refund of export of goods shall be processed by a proper officer and an amount equal to the IGST paid shall be electronically credited to the bank account of the applicant.</td>
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<td>2.</td>
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Under Rule 89(4A) In case the applicant has received supplies from a supplier who has availed the benefit of Notification No. 48/2017-CT dated 18.10.2017 (deemed exports), refund of ITC availed in respect of "other inputs and input services" used in making zero-rated supply of goods or services or both, shall be granted.
<br><br>
Under clause (a) Rule 89(4B)
<br>
In case the applicant has received supplies from a supplier who has availed the benefit of Notification No. 40/2017-CT(R) dated 23.10.2017 or Notification No. 41/2017- IT(R) dated 23.10.2017 (reduced rate of tax – merchant exporters), the following refund shall be granted:
<table>
<tr><td>♦</td><td>ITC availed in respect of "inputs" received under the said Notification s for export of goods, and</td></tr>
<tr><td>♦</td><td>ITC availed in respect of "other inputs and input services" used in making export of goods.</td></tr>
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Rule 96(10)(i) provides that "persons" claiming refund of IGST on export of goods or services, should not have received supplies under the following notifications:
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<tr><td>♦</td><td>Notifications No. 48/2017-CT dated 18.10.2017 (nil rate of tax – deemed exports), except so far as it relates to receipt of capital goods against Export Promotion Capital Goods (EPCG) Scheme;</td></tr>
<tr><td>♦</td><td>Notification No. 40/2017-CT(R) dated 23.10.2017 (reduced rate of tax –merchant exporters; or</td></tr>
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| | | |
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| | | ♦ *Notification No. 41/2017-IT(R) dated 23.10.2017 (reduced rate of tax – merchant exporters).* |
| *3.* | *Under clause (b) of Rule 89(4B)*<br>*In case the applicant has availed the benefit of Notification No. 78/2017-Cus dated 13.10.2017 or Notification No. 79/2017-Cus dated 13.10.2017 (nil rate of duty – export benefit under Customs), refund of ITC availed in respect of "other inputs and input services" to the extent used in making export of goods, shall be granted.*<br>*Note: The ITC is only of the inputs and input services used in making export of goods with a one-to-one correlation with the export of goods unlike Rule 89(4).* | *Rule 96(10)(ii) provides that "persons" claiming refund of IGST on export of goods or services, should not have availed benefit of the Notification No. 78/2017-Cus dated 13.10.2017 or Notification No. 79/2017-Cus dated 13.10.2017 (nil rate of duty – export benefit under Customs), except so far as it relates to receipt of capital goods against Export Promotion Capital Goods (EPCG) Scheme.*<br>*Note:*<br>*(i) The word "person" would have the same meaning assigned under Section 2(84) of the CGST Act.*<br>*(ii) There is no identification of time or consignment, and where or when the benefit of the above Notifications has to be availed.* |

*Shayara Bano (supra) is the authority for the proposition that when the Court finds the provisions of plenary or subordinate legislation manifestly arbitrary, those provisions must be struck down. In paragraph 101 (of the SCC report) of Shayara Bano (supra) the law is stated thus:-*

> *"101. It will be noticed that a Constitution Bench of this Court in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."*

*The judgment of the Supreme Court in K.P Varghese (supra) is the authority for the proposition that where even the provisions of a plenary legislation produce a manifestly absurd and unjust result, that could never have been intended by the Legislature, the Court may modify the language used by the Legislature or even do some violence to it so as to achieve the obvious intention of the Legislature and produce a rational construction. It was held in K.P Varghese (supra):-*

> *"6… It is true that the consequences of a suggested construction cannot alter the meaning of a statutory provision but they can certainly help to fix its meaning. It is a well-recognised rule of construction that a statutory provision must be so construed, if possible, that absurdity and mischief may be avoided. There are many situations where the construction suggested on behalf of the Revenue would lead to a wholly unreasonable result which could never have been intended by the legislature…."*

*The above comparative table clearly indicates that the working of Rule 96(10) of the CGST Rules as presently worded creates a restriction not contemplated by Section 16 of the IGST Act, on the right to refund. Therefore, I am constrained to hold that Rule 96(10) of the CGST Rules as presently worded is ultra vires the provisions of Section 16 of the IGST Act, it is 'manifestly arbitrary' as the term is to be understood in the light of the law laid down in Shayara Bano (supra) and the provision as it stands today produces absurd results, not intended by the Legislature.*

***15**. After this judgment was dictated (to the above extent), it was brought to my notice by the learned Standing Counsel appearing for Central Revenue that the problems associated with the working of Rule 96(10) of the CGST Rules are engaging the attention of the GST Council. Today, when these writ petitions are taken up again, it is brought to my notice that notification No.20/2024-Central Tax, dated 08-10-2024, has now been issued deleting the provisions of Rule 96(10) of the CGST Rules w.e.f. 08-10-2024. However, it is noticed that the notification is prospective and does not deal with cases where the refund of IGST has either been denied or is proposed to be denied on account of the provisions contained in Rule 96(10) of the CGST Rules. Therefore, notwithstanding the deletion of Rule 96(10) w.e.f. 08-10-2024, it falls upon this Court to declare upon its validity for the prior period.*

*Having regard to the findings rendered in this judgment these Writ Petitions will stand allowed as follows:-*

*i. Rule 96(10) of the CGST Rules, as inserted by notification No.53/2018-CT dated 09-10-2018 w.e.f. 23-10-2017 is declared ultra vires the provisions of Section 16 of the IGST Act and unenforceable on account of being manifestly arbitrary;*

*ii. As a consequence of the above declaration, any action that has been initiated by the issuance of a show cause notice or otherwise or has culminated in an order against the petitioners in these writ petitions on the basis of the provisions contained in Rule 96(10) of the CGST Rules, as inserted by notification No.53/2018-CT dated 09-10-2018 w.e.f. 23-10-2017, will stand quashed;*

*iii. It is directed that no proceedings shall be taken to recover any IGST that has been refunded to the petitioners in these writ petitions by applying the provisions of Rule 96(10) of the CGST Rules for the period between 23-10-2017 and 08-10-2024;*

*iv. In cases where orders have been issued by the Adjudicating Authority including on issues other than those arising out of the application of Rule 96(10) of the CGST Rules, the person aggrieved may file appeals against such orders and on such issues other than those arising out of the application of Rule 96(10) of the CGST Rules within a period of two weeks from the date of receipt of a certified copy of this judgment. Since these Writ Petitions have been pending before this Court along with interim orders of protection such*

*appeals shall be deemed to have been fled on time provided they are fled within the time permitted;*

*v. In cases where a show cause notice has been issued, on issues other than those arising under Rule 96(10) of the CGST Rules, the petitioners shall file their replies in response to such notices within a period of two weeks from the date of receipt of a certified copy of this judgment and all issues other than those arising out of the application of Rule 96(10) of the CGST Rules shall be adjudicated by the proper officer."*

7. The said judgment of the Kerala High Court was taken note of by the Uttarakhand High Court in the case of ***M/s. Sri Sai Vishwas Polymers Vs. Union of India and another – 2025-VIL-491-UTR,*** wherein it is held as under:

*"**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.) - 2024-VIL-1160-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, atleast 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."*

8. So also, the Gujarat High Court in the case of ***Addwrap Packaging Pvt. Ltd., Vs. Union of India – (2025) 31 Centax 274 (Guj.)*** followed the judgment of the Kerala High Court and has held as under:

*"__198__. In view of the above decision rendered by the Apex Court, "omission" would be included in the interpretation of word "repeal" and hence omission of Rule 96(10) with effect from 8th October, 2024, would amount to repeal without any saving clause. General Clauses Act, 1897 is largely based on the English Interpretation Act, 1889 and according to such law, the effect of repealing a statute was to obliterate it completely from the records of Parliament as if it had never been passed, except for the purpose of those actions, which were commenced, prosecuted and concluded while it was an existing law. Therefore, repeal without any saving clause would destroy any proceeding whether or not yet begun or whether pending at the time of enactment of the repealing Act and not already prosecuted to a final judgment so as to create a vested right. However by incorporation of Section 38(2) in the English Interpretation Act, 1889 which deals with effect of repeal in future Acts which is equivalent to section 6 of the General Clauses Act has been analysed*

*by the Hon'ble Apex Court in case of Gammon India Ltd v. Special Chief Secretary and others (supra) as under:*

> *"50. The next question is whether the application of that principle could or ought to be limited to cases where a particular form of words is used to indicate that the earlier law has been repealed. The entire theory underlying implied repeals is that there is no need for the later enactment to state in express terms that an earlier enactment has been repealed by using any particular set of words or form of drawing but that if the legislative intent to supersede the earlier law is manifested by the enactment of provisions as to effect such supersession, then there is in law a repeal notwithstanding the absence of the word 'repeal' in the later statute. Now, if the legislative intent to supersede the earlier law is the basis upon which the doctrine of implied repeal is founded, could there be any incongruity in attributing to the later legislation the same intent which Sec. 6 presumes where the word 'repeal' is expressly used. So far as statutory construction is concerned, it is one of the cardinal principles of the law that there is no distinction or difference between an express provision and a provision which is necessarily implied, for it is only the form that differs in the two cases and there is no difference in intention or in substance. A repeal may be brought about by repugnant legislation, without even any reference to the Act intended to be repealed, for once legislative competence to effect a repeal is posited, it matters little whether this is done expressly or inferentially or by the enactment of repugnant legislation. If such is the basis upon which repeals and implied repeals are brought about it appears to us to be both logical as well as in accordance with the principles upon which the rule as to implied repeal rests to attribute to that legislature which effects a repeal by necessary implication the same intention as that which would attend the case of an express*

*repeal. Where an intention to effect a repeal is attributed to legislature then the same would, in our opinion, attract the incident of the saving found in Sec. 6 for the rules of construction embodied in the General Clauses Act which are, so to speak, the basic assumptions on which statutes are drafted."*

***199**. Decision of the Hon'ble Apex Court in case of Mathew M. Thomas and others v. Commissioner of Income Tax (supra) would be applicable to the facts of the present case wherein it is held as under:*

*"4. The Full Bench opined that the Circular was not applicable to the case on hand as the acquisition proceedings were over by the order of the Competent Authority passed on 31.3.1981. The Full Bench observed that the pendency of the proceeding before the Competent Authority was necessary for the applicability of the Circular and as no such proceedings were pending in this case, the Circular had no application. Consequently, the Full Bench declined to answer the question referred and directed the matter to be posted before the Division Bench for hearing.*

*xxx*

*8. It is well settled that the word "Proceedings" shall include the proceedings at the appellate stage. It is sufficient to refer to the Judgement of this Court in Garikapati Veeraya V/s. N. Subiah Choudhry, AIR 1957 SC 540, wherein the Court said at page 553 :-*

*"(i) That the legal pursuit of a remedy, suit appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceedings."*

*Hence we are unable to persuade ourselves to agree with the view expressed by the Full Bench of the High Court in the Judgement under appeal that the circular would apply only to proceedings pending before the Competent Authority."*

***200**. Crawford on "Statutory Construction" dealing with the general effect of the repeal of an Act states the law in America to be as follows:*

> *"A repeal will generally, therefore, divest all inchoate rights which have arisen under the repealed statute, and destroy all accrued causes of action based thereon. As a result, such a repeal, without a saving clause, will destroy any proceedings whether not yet begun, or whether pending at the time of the enactment of the repealing Act, and not already prosecuted to a final judgment so as to create a vested right."*

***201**. In a footnote relating to the cases which the learned author cites in support of the above proposition, he adds:--*

> *"See Cleveland, etc., R. Co. v. Mumford (Ind.) (2) where the repeal of a statute during the trial prevented a judgment from being rendered. Similarly, there can be no legal conviction for an offence, unless the act be contrary to law at the time it is committed; nor can there be a judgment, unless the law is in force at the time of the indictment and judgment. If the law ceases to operate, by its own limitation or by a repeal, at any time before judgment, no judgment can be given. Hence, it is usual in every repealing law to make it operate prospectively only, and to insert a a saving clause, preventing the retroactive operation of the repeal and continuing the repealed law in force as to all pending prosecutions, and often as to all violations of the existing law already committed."*

***202**. The author then proceeds to quote the following passage from Wall v. Chesapeake & Ohio Ry., Company reported in 1919 (125) 120 III:*

> *"It is well settled that if a statute giving a special remedy is repealed without a saving clause in favour of pending suits all suits must stop where*

*the repeal finds them. If final relief has not been granted before the repeal went into effect, it cannot be after. If a case is appealed, and pending the appeal the law is changed, the appellate court must dispose of the case under the law in force when its decision was rendered. The effect of the repeal is to obliterate the statute repealed as completely as if it bad never been passed, and it must be considered as a law which never existed, except for the purposes of those actions or suits which were commenced, prosecuted and concluded while it was an existing law. Pending judicial proceedings based upon a statute cannot proceed after its repeal. This rule holds true until the proceedings have reached a final judgment in the court of last resort, for that court, when it comes to announce its decision, conforms it to the law then existing, and may therefore reverse a judgment which was correct when pronounced in the subordinate tribunal from whence the appeal was taken, if it appears that pending the appeal a statute which was necessary to support the judgment of the lower court has been withdrawn by an absolute repeal."*

***203**. In view of above conspectus of law, it appears that the recommendations of the GST Council to omit Rule 96(10) prospectively would apply to all the pending proceedings and cases. However, the contention on behalf of the Revenue that the petitioners have filed these petitions challenging the validity of Rule 96(10) cannot be said to be pending proceedings is without any basis because the petitioners have also challenged the show cause notices as well as orders-in-original passed by the respondents by invoking Rule 96(10) for rejecting the refund claims of the petitioners and therefore, it can be said that these petitions are nothing but pending proceedings before the Court which has not achieved finality when the Notification No.20/2024 came into force with effect from 8th October, 2024.*

***204***. *By Notification No.20/2024 Rules, 2024 have been notified and as per Rule 10 of the said Rules, Rule 96(10) of the CGST Rules has been omitted with prospective effect. This would give rise to three situations, firstly, whether the same would be applicable retrospectively, or secondly, prospectively or thirdly, same would be applicable prospectively but also to "pending proceedings". As discussed here-in-above, Rule 10 of Rules, 2024 is applicable prospectively and the same also would be applicable to pending proceedings.*

***205***. *Therefore, we are of the opinion that Notification No.20/2024 dated 8th October, 2024 would be applicable to all the pending proceedings/cases meaning thereby that Rule 96(10) would stand omitted prospectively but applicable to pending proceedings/cases where final adjudication has not taken place.*

***206***. *Therefore, in view of foregoing reasons, the omission of Rule 96(10) would apply to all the proceedings/cases/ petitions which are pending for adjudication either before this Court or before the respondent adjudicating authority and no further proceedings are required to be carried forward and petitioners would be entitled to maintain refund claims of IGST paid on export of goods.*

***207***. *In view of above findings, as Rule 96(10) would not be applicable to the pending proceedings, in view of omission of Rule 96(10) by Notification No.20/2024 with effect from 8th October, 2024, the question of challenge to*

*the vires and validity of rule 96(10) is not required to be considered at this stage.*

***208**. The petitions therefore succeed in view of applicability of Notification No.20/2024 whereby Rule 96(10) is omitted and the said Notification would be applicable to all the pending proceedings/cases as on 8th October, 2024. The impugned show cause notices and the orders-in-original are therefore, quashed and set aside. The petitioners are therefore, entitled to maintain refund claims for IGST paid for the export of goods as per Rule 96 of the CGST Rules, 2017 in accordance with law."*

9. Subsequently, in the petitioner's own case in the case ***Hikal Ltd. Vs. Union of India – (2025) 34 Centax 249 (Bom.),*** the Bombay High Court has held as under:

*"**47**. In this batch of Petitions, for reasons that we will discuss elaborately hereafter, we are satisfied that the Petitioners are entitled to succeed on the ground that this is a case of omission or repeal of the impugned Rules without any savings clause to protect the pending proceedings. Besides, we are also satisfied that the provisions of Section 6 of the General Clauses Act are not attracted and therefore, relying upon these provisions, the pending proceedings can claim no immunity or protection. Therefore, it is quite unnecessary to determine the issue of the constitutionality of the impugned rules.*

***48**. However, we wish to briefly record one of the controversies regarding the constitutionality of Rule 96(10) of the CGST Rules, which is not significantly different from Rule 89(4B) of the CGST Rules. The first Rule applies to exports and the second to imports. Both the Rules provide for certain safeguards to ensure that there is no overlap between taxes and refunds regarding specific exports and imports.*

***49**. One of the contentions raised on behalf of some of the Petitioners was that Rule 96(10) of the CGST Rules was already struck down as unconstitutional, null and void by the learned Single Judge of the Kerala High Court in the case of M/s. Sance Laboratories Pvt. Ltd. (supra). Based upon this, they contended that such a striking down will have an effect throughout the territory of India. They further contended that such striking down goes to the nativity, and therefore, any notices or orders alleging or recording the breach of any of the requirements of Rule 96(10), being based upon an ultra vires and unconstitutional Rule, would have to be quashed and set aside.*

***50**. In Kusum Ingots & Alloys Ltd (supra), the Hon'ble Supreme Court has held that where a competent Court having territorial jurisdiction passes an order on a Writ Petition questioning the constitutionality of a parliamentary Act, then, keeping in view the provisions in Article 226(2) of the Constitution of India, such order, will have effect throughout the territory of India, subject of-course to the applicability of the Act.*

***51**. Following Kusum Ingots & Alloys Ltd. (supra) the Coordinate Bench of this Court comprising Abhay S Oka, J (as His Lordship then was) and C V Bhadang, J held that the striking down of Section 10-A(1) of the Divorce Act, 1869 by the Division Bench of the Kerala High Court in the case of Saumya and Thomas (supra), would have effect throughout the territory of India. Therefore, the Family Court at Bandra, Maharashtra, could not have ignored the striking down of Section 10-A (1) of the Divorce Act by the Kerala High Court, on the ground that such a decision was not binding upon the Courts and Authorities in the State of Maharashtra.*

***52**. In Commissioner of Income-Tax, Vidarbha (supra), another Coordinate Bench of this Court, comprising Kantawala, CJ and Chandurkar, J (as His Lordship then was), rejected the contention that the striking down of Section 140- A(3) of the Income Tax Act by the Madras High Court in the case of A.M. Sali Maricar And Anr. Vs Income-Tax Officer And Anr [(1973) 90 ITR 116] was not binding upon the Income Tax Authorities or the Income Tax Tribunals in the State of Maharashtra. The Coordinate Bench held that the Income Tax Act was an all- India statute. If an Income Tax Tribunal in Madras was bound by the decision in A.M. Sali Maricar (supra), then, in the absence of any contrary decision given by any other competent High Court, binding on the authorities and tribunals in the State of Maharashtra, such authorities and tribunals in the State of Maharashtra must proceed based on the law declared by the High Court, even of another*

*State and quash the assessment and penalties under the provision already struck down.*

***53**. In these matters, none of the learned Counsel appearing on behalf of the Respondents was able to make any statement regarding the challenge to the Kerala High Court's decision declaring Rule 96(10) of the CGST Rules as ultra vires and unconstitutional. The Uttarakhand High Court, in the case of M/s Shree Sai Vishwas Polymers (supra), has already taken cognisance of the Kerala High Court's decision and proceeded based on its unconstitutionality. The learned Counsel for the Respondents were also unable to make any statement about the challenge to the Uttarakhand High Court's decision.*

***54**. In the case of Commissioner of Income-Tax Vs Thana Electricity Supply Ltd [1993 SCC OnLine BOM 591], another Coordinate Bench of this Court of this Court comprising Dr B P Saraf, J (as His Lordship then was) & U T Shah, J, however, after noticing the earlier decision in Godavari Devi Saraf (supra) had suggested that the observations in Godavari Devi Saraf (supra) cannot be taken as the ratio decidendi and would, at best, constitute obiter dictum. The Coordinate Bench held that such observations might have persuasive efficacy but not a binding character as in the case of a precedent.*

***55**. Though, for reasons discussed above, we do not propose to examine the issue of constitutional validity of Rules 89(4B) and 96(10) of the CGST Rules, we have*

*noted the contention raised on behalf of some of the Petitioners that since Rule 96(10) is already struck down by the Kerala High Court, the effect of such striking down must enure even in the State of Maharashtra and the authorities in the State of Maharashtra cannot ignore the declaration made by the Kerala High Court in the case of M/s Sance Laboratories Pvt Ltd (supra) regarding unconstitutionality of Rule 96(10) of the CGST Rules, until the said Rule was omitted vide Notification dated 08 October 2024."*

***xxxxx***

*"**59**. From the above, it is indisputable that the impugned rules stand deleted. The only dispute revolves around the scope of such omission or repeal. The Petitioners contend that any savings clause did not back such omission or repeal, and therefore, the common law principle regarding repeals obliterating the repealed provision from the statute book or rule book would apply. The Respondents admit the omission or repeal but contend that the common law rule would not apply because pending proceedings have been expressly saved."*

***xxxxx***

*"**65**. Thus, subject to further discussion on whether this is a case of omission or repeal backed by any savings clauses, it is evident that an omission or a repeal without any savings clauses would lapse the impugned proceedings or orders unless they qualify as "transactions past and closed".*

***66**. In these matters, not even an attempt was made by the learned Counsel for the Respondents to contend that the impugned show cause notices or for that matter, the orders challenged in these Petitions, were covered by the expression "transactions past and closed". In cases where the show cause notices did not culminate in any orders, obviously, the transaction is not covered by the expression. Not only do such show cause notices become vulnerable, but even the orders made after the date of omission or repeal, i.e. after 08 October 2024, become vulnerable. The show cause notices could not have proceeded any further post the repeal or omission of the impugned Rules i.e. beyond 08 October 2024. In some petitions, the challenge is to orders made by adjudicating authorities before October 08, 2024. However, a challenge to such orders was raised and was pending either before the Appellate Authorities or this Court. In such circumstances, even such orders could not be regarded as final for them to be included in the expression "transactions past and closed.*

***67**. In M/s Add Wrap Packaging Pvt Ltd (supra) the Division Bench of the Gujarat High Court has considered this aspect of the omission or repeal of these very impugned Rules on pending proceedings in some detail. The Division Bench held that the omission or repeal of the impugned Rules would affect pending proceedings/cases where final adjudication has not taken place. The Division Bench held that the omission of Rule 96-10 would apply to all the proceedings/cases/Petitions which are pending adjudication either before the High Court or before the*

*adjudicating authorities and no further proceedings are required to be carried forward and the Petitioners would be entitled to maintain refund claims of IGST paid on export of goods. The impugned show cause notices and the orders were therefore quashed and set aside, and it was declared that the Petitioners were entitled to maintain refund claims for IGST paid for the export of goods."*

***xxxxx***

*"**116**. The 2024 Amendment Rules or the CGST Act do not include any savings clause to protect pending proceedings resulting from the omission of the impugned Rules. Mr Sridharan referenced a list of nearly 64 Notifications issued by the Central or State Government, which amended or omitted Rules and included explicit savings clauses. This indicates that the Central Government was aware of the legal obligation to include a savings clause where Section 6 of the General Clauses Act might not apply. Therefore, it appears that not including a savings clause in the Notification dated 08 October 2024, unlike the 64 Notifications mentioned above, was not an accident but a conscious choice, made to benefit export, import, and trade.*

***117**. The argument about the impugned show-cause notices being issued under Section 73 of the CGST Act and such notices surviving because this section had not been omitted or repealed also cannot be accepted. The only allegation in the impugned show cause notices concerns the alleged violation of the requirements of the impugned*

*rules. There are no other allegations, as was asserted by the learned counsel for the Petitioners and not disputed by the learned counsel for the respondents, though a specific opportunity was granted to them. Therefore, if the impugned rules are omitted or repealed without any savings clauses or the protection of Section 6 of the General Clauses Act, nothing would survive in such notices. Such notices cannot be saved based on the argument now advanced."*

***xxxxx***

***"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 indisposed 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.*

***123.*** *Accordingly, we quash and set aside the impugned show cause notices and the impugned orders in original. Furthermore, we also quash and set aside the orders refusing some of the Petitioners' applications for refund, restore those applications to the files of the relevant Authorities, and direct the Authorities to consider and*

*dispose of such refund applications in light of the declaration made by us above regarding the omission and repeal of the impugned Rules. This process must be completed within four months of the date of this order's upload, after providing the Petitioners with a fair opportunity to be heard."*

10. Recently, the Delhi High Court in the case of ***Vinayak International Housewares P. Ltd., Vs. Union of India and others – W.P.(C)3154/2023 and connected matters dated 20.11.2025*** has held as under:

*"**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.*

***19.*** *Applying the above legal principles to the facts and circumstances of the present writ petitions, the following observations are made:*

*(i) In* ***W.P. (C) 3154/2023****, the case is only at the stage of summons and therefore the proceedings deserve to be quashed including the summons. Thus, no proceedings can continue under Rule 96(10) of the CGST rules against the Petitioner.*

*(ii) In* ***W.P. (C) 10687/2023****, the SCN and all subsequent orders emanating therefrom which were passed*

*in the said matter shall also stand quashed. Moreover, as the Petitioner is already in the process of filing the appeal against the order and the additional 10% pre-deposit has already been made by the Petitioner.*

*(iii) In **W.P.(C) 3165/2023**, the SCN and proceedings emanating from the SCN stand quashed."*

11. In view of the aforesaid facts and circumstances and striking down of Rule 96(10) of the CGST Act and the judgments of the Kerala High Court and other High Courts including Bombay High Court in the petitioner's own case coupled with the fact that respondents themselves have omitted Rule 96(10) vide Notification dated 08.10.2024, I am of the considered opinion that the impugned Show Cause Notice and all further proceedings pursuant thereto deserves to be quashed.

12. In the result, I pass the following:

ORDER

(i) The petition is hereby ***allowed***.

(ii) The impugned Show Cause Notice at Annexure – R dated 07.10.2020 issued by respondent No.5 and all further proceedings pursuant thereto are hereby quashed.

(iii) Respondent authorities are directed to refund IGST amounting to Rs.75,55,123/- along with applicable interest back to the petitioner as expeditiously as possible and at any rate within a period of three months from the date of receipt of a copy of this order.

**Sd/-**
**(S.R.KRISHNA KUMAR)**
**JUDGE**

SV; List No.: 3 Sl No.: 4