



प्रधान आयुक्त का कार्यालय,
Office of the Principal Commissioner,
केंद्रीय जीएसटी अहमदाबाद दक्षिण आयुक्तालय
Central GST, Commissionerate- Ahmedabad South,
अपराध और अधिनिर्णय खंड, अम्बावाड़ी, GST भवन, अहमदाबाद
३८००१५



4th Floor, O&A Section, GST Bhavan, Ambawadi 380015

निबन्धित पावती डाक द्वारा/ By REGISTERED POST A.D. DIN: 20230564WS0000555B14
फा.सं./F.No. CGST/04-296/O&A/Zydus/2022-23

आदेश की तारीख/Date of Order : 17-05-2023
जारी करने की तारीख/Date of Issue : 17-05-2023

द्वारा पारित / Passed by: Shri Shравan Ram, JOINT COMMISSIONER

मूल आदेश सं./Order-In-Original No. 01/CGST/Ahmedabad South/JC/SR/2023-24

यह प्रति उस व्यक्ति (यों) को, जिसके (जिनके) लिए यह आदेश जारी किया गया है, उसके (उनके) व्यक्तिगत उपयोग के लिए निःशुल्क प्रदान की जाती है।

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यदि कोई व्यक्ति इस आदेश से स्वयं को अंतुष्ट अनुभव करता है, तो वह इस आदेश के विरुद्ध अपील (अपील), केंद्रीय जीएसटी, केंद्रीय जीएसटी भवन, आंबावाड़ी, अहमदाबाद-15 को प्रारूप GST APL-01 में अपील कर सकता है। उक्त अपील पत्रकार पर आदेश तामील होने अथवा अथवा उसे डाक द्वारा प्राप्त करने की तारीख से दो माह के भीतर दाखिल की जानी चाहिए। इसपर रुपए 2.00/- केवल कान्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this Order may appeal against this order in Form GST APL-01 to Commissioner (Appeals), Central GST, Central GST Bhavan, Near Government Polytechnic, Ambawadi, Ahmedabad -15 within sixty days from date of its communication. The appeal should bear a court fee stamp of Rs.2.00/- only.

उक्त अपील सीजीएसटी/ एसजीएसटी नियम 2017 के नियम 108 के प्रावधानों के अनुसार फॉर्म संख्या GST APL-01 में दाखिल की जानी चाहिए।

The Appeal should be filed in form No. GST APL-01 in accordance with provision of Rule 108 of the CGST/SGST Rules 2017.

निर्णयकी दो प्रतियाँ (उसमें से एक उस आदेश की प्रमाणित प्रतिलिपि होनी चाहिए जिसके विरुद्ध अपील की गई है) अथवा उक्त आदेश की अन्य प्रति जिसपर रु 2.00/- का न्यायालय शुल्क टिकट अवश्य लगा होना चाहिए।

Copies of the Decision (one of which at least shall be certified copy of the order appealed against) or copy of the said Order bearing a court feestamp of Rs.2.00/-.

उक्त आदेश को अपील करते अपील नहीं करें। जय तक कि अपीलकर्ता ने भुगतान नहीं किया है।

(1) अपील पर, एक न्यायालय शुल्क और दंड की राशि का निम्न हिस्सा को अधिनिर्णय आदेश से प्राप्त किया है। (2) उक्त आदेश में उल्लेख विवाद में कर की राशि के दस प्रतिशत के बराबर राशि (अधिकतम पञ्चम करोड़ रुपए के अधीन) विवाद सम्बन्ध में अपील दाया की गई है।

[यहाँ से भाग 129 की उप धारा (3) के तहत एक आदेश के खिलाफ कोई अपील दाया नहीं की जायेगी, जब तक कि अपीलकर्ता द्वारा पञ्चम प्रतिशत भुगतान के बराबर राशि का भुगतान नहीं किया गया हो।]

No appeal shall be filed under sub-section (1), unless the appellant has paid-

(a) in full, such part of the amount of tax, interest fine fee and penalty arising from the impugned order as is admitted by him; and

(b) A sum equal to ten percent of the remaining amount of tax in dispute arising from the said order, [subject to a maximum of twenty five crore rupees] in relation to which the appeal has been filed.

[Provided that no appeal shall be filed against an ordered under sub-section (3) of section 129, unless a sum equal to twenty five percent of penalty has been paid by the appellant]

संदर्भ/Reference : कारण बताओ सूचना फा.सं. /F No. DGG/SZU/36-152/22-23 dated 20.12.2022 issued to M/s. Zydus Life Science Ltd.(Formerly known as M/s Cadila Healthcare Ltd), Zydus Corporate Park, Scheme No. 63, Survey No. 536, Khoraj(Gandhinagar) Near Vaishnodevi Circle, S.G. Highway Ahmedabad-382481.

Brief facts of the case:-

M/s. Zydus Lifesciences Ltd, (Formerly known as M/s. Cadila Healthcare Ltd), Zydus Corporate Park, Scheme no. 63, Survey no. 536, Khoraj (Gandhinagar), Nr. Vaishnodevi Circle, S. G. Highway, Ahmedabad-382 481, Gujarat (hereinafter referred to as "**the noticee**" for the sake of brevity) are engaged in manufacturing and supplying/exporting of pharmaceutical products which are taxable in terms of Notification no. 01/2017-Central Tax (Rate) dated 28.06.2017. They are registered with GSTIN having registration No. 24AAACC6253G3ZX and falls under the jurisdiction of Central GST & Central Excise, Ahmedabad South Commissionerate.

2. INTELLIGENCE:

2.1 An intelligence was received by the office of the Directorate General of Goods and Services Tax Intelligence (In short '**DGGI**') Regional Unit, Vadodara, indicating to the effect that the noticee was exporting their finished/manufactured goods out of India under payment of Integrated Goods and Services Tax (in short "**IGST**") and availing benefit of refund in terms of Rule 96 of the Central Goods & Services Tax Rules, 2017 (in short "**CGST Rules, 2017**") although they were not eligible to claim such refund under the said rules.

3. EXECUTIVE SUMMARY OF THE CASE:

3.1 The issue involved in the present case revolves around Rule 96 (10) of CGST Rules, 2017, therefore, for better appreciation of the case, it becomes necessary to advert to the provisions of said rule as well as other related provisions/sections /amendments/circulars issued in this regard herein.

3.2 Under the Central Goods and Services Tax Act, 2017 (**CGST Act, 2017**) and Rules made thereunder, exporters are permitted to claim, either refund of unutilized Input Tax Credit (**ITC**) under Rule 89 of the CGST Rules, 2017 or refund of IGST paid on the goods exported under Rule 96 of the CGST Rules, 2017. However, the government while restoring the tax-free, for the EOUs, Advance Authorization/EPCG holders, restricted the second option for such exporters. In other words, exporters were barred from claiming refund of IGST paid on exported goods, where the exported goods were manufactured from duty free procured imported raw materials. The purpose behind bringing these provisions under the CGST Act/Rules is to prohibit the manufacturers/exporters from taking double benefit i.e. one at the time of procuring IGST free raw materials under Advance Authorisation/License and subsequently, making exports (by using such duty free raw materials) on payment of IGST and encashing such IGST by way of refund. For better appreciation, the amended provisions of Rule 96(10), is reproduced below:

96. Refund of integrated tax paid on goods or services exported out of India:

(1)

(2)

.....

(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, Subsection (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, Subsection (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."

3.3 From the plain reading of above provisions, it can be easily construed that Rule 96 of the CGST Rules, 2017 deals with the procedure for refund of taxes paid on export of goods and services. Rule 96(10) restricts the eligibility to claim refund of taxes paid on export in those cases where the exporter has received raw material under any of the scheme notified under sub-rule 96(10) like deemed export, Advance Authorization/License, reduced rate of procurement by the merchant exporter etc. This restriction was first introduced vide Notification No. 03/2018-Central Tax dated 23.01.2018 which got subsequently modified and amended by way of Notifications issued from time to time (as discussed below). The restriction under sub-rule (10) of Rule 96 of the CGST Rules, 2017 is applicable to those exporter who are receiving inputs/raw materials from such suppliers who are availing benefit under notification No. 48/2017-Central Tax dated 18.10.2017(deemed export), Notification No. 40/2017 Central Tax (Rate) dated 23.10.2017 (At 0.5% intra-state supply to merchant exporter) or Notification No. 41/2017-Central Tax (Rate) dated 23.10.2017 (At 0.5% inter-state supply to merchant exporter) or Notification No. 78/2017-Cus dated 13.10.2017 (Import by 100%EOU) or Notification No. 79/2017-Cus dated 13.10.2017 (Import under Advance License/EPCG). The restrictions under this sub-rule 96(10) came into effect from 23.10.2017 by way of issuance various notifications viz. Notification No. 39/2018-Central Tax dated 04.09.2018, Notification No. 53/2018-Central Tax dated 09.10.2018 and Notification No. 54/2018-Central Tax dated 09.10.2018 and Notification No. 16/2020-Central Tax dated 23.03.2020 as discussed herein.

3.4 Vide Notification No. 39/2018-Central Tax dated 04.09.2018, the said Rule 96(10) of CGST Rules, 2017 was given retrospective effect w.e.f. 23.10.2017. The said Notification reads as:

"In the said rules, with effect from the 23rd October, 2017, 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 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."

Thus, from the perusal of above notification, it is clear that rebate on exports cannot be availed by the exporter if the inputs procured by them have enjoyed Advance Authorisation benefits or Deemed Export benefits under the said notification with retrospective effect 23.10.2017.

3.5 Further, vide Notification No. 53/2018-Central Tax dated 09.10.2018, the Rule 96(10) was further amended with effect from 23.10.2017 which reads as:-

"1. (1) These rules may be called the Central Goods and Services Tax (Eleventh Amendment) Rules, 2018.

(2) They shall be deemed to have come into force with effect from the 23rd October, 2017.

2. In the Central Goods and Services Tax Rules, 2017, in rule 96, for sub-rule (10), the following sub-rule shall be substituted and shall be deemed to have been substituted with effect from the 23rd October, 2017, namely:-

"(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have received supplies on which the supplier has availed 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, Subsection (i), vide number G.S.R 1305 (E), dated the 18th October, 2017 or notification No. 40/2017-Central Tax (Rate) dated the 23rd October,

2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (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 notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (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, Subsection (i), vide number G.S.R 1299 (E) dated the 13th October, 2017."

Thus, from the perusal of above notification, it is observed that sub-clause (a) and (b) of sub-rule 10 of Rule 96 were merged and this notification is also made effective from 23.10.2017. It further says that person claiming refund of IGST paid on exports of goods or services should not have received supplies on which the supplier has availed the benefit of Notifications as mentioned therein.

3.6 The subject matter pertaining to Rule 96(10) of CGST Rules, 2017 was further amended by the issuance of Notification No. 54/2018-Central Tax dated 09.10.2018 and an exception was carved from the restriction imposed by sub-rule 96(10) of rule 96 for those exporters who are importing capital goods under the EPCG Scheme. The said Notification reads as:-

"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."

3.7 Further, vide Notification No. 16/2020-Central Tax dated 23.03.2020 which reads as:

"In the said rules, in rule 96, in sub-rule (10), in clause (b) with effect from the 23rd October, 2017, the following Explanation shall be inserted, namely,"

Explanation. - For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications."

From the reading of above explanation, it can be inferred that with the insertion of said explanation, any doubts regarding retrospectivity of sub-rule 96(10) stands clear as the said explanation was made applicable with effect from 23.10.2017 and, therefore, with effect from 23.10.2017, refund of IGST paid on the goods exported was prohibited in case where the exporter has availed the benefit of exemption of IGST/Compensation Cess under any of the Customs Notification mentioned in the amended Rule 96(10) of CGST Rules, 2017. In other words, with effect from 23.10.2017, once exemption from payment of IGST is availed on imported raw materials imported under Advance Authorisation in terms of Notification No. 79/2017-Cus dated 13.10.2017, refund of IGST on export goods made out of such raw materials, stands prohibited. In short, the intention of the legislature was to deny the benefit or to prevent an exporter who is receiving goods/services by availing the benefit of certain specified notifications (including Customs Notification No. 79/2017-Cus dated 13.10.2017) from exporting goods under payment of integrated tax. The purpose is to ensure that the exporter does not utilize the input tax credit availed on other domestic supplies received for making the payment of integrated tax on export of goods.

3.8 Cases have come to fore where it is noticed that certain exporters have simultaneously availed the benefit of above-mentioned Customs Notification and also claimed refund under second option of Section 16(3) of IGST Act, 2017. It is observed from the data analysis that some exporter including the noticee had exported goods on payment of IGST with an intent to claim refund of such duty paid, and at the same time, they had availed full exemption of IGST at the time of import of raw materials, which have been imported for use in the manufacture of goods to be exported. The said mechanism adopted by noticee is prohibited with effect from 23.10.2017 under GST law as discussed above.

3.9 After coming into force of GST regime w.e.f. 01.07.2017, Notification No. 79/2017-Customs dated 13.10.2017 was issued amending the Notification No. 18/2015- Customs dated 01.04.2015 by inserting condition (viii) as under:

Sr. No.	Notification number and date	Amendments
2.	18/2015-Customs, dated the 1st April, 2015 <i>vide</i> number	In the said notification, in the opening paragraph,- (a) for the words, brackets, figures and letters "from the

	G.S.R. 254(E), dated the 1st April, 2015]	<p>whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, safeguard duty leviable thereon under section 8B and anti-dumping duty leviable thereon under section 9A”, the words, brackets, figures and letters “from the whole of the additional duty leviable thereon under sub-sections (1), (3) and (5) of section 3, integrated tax leviable thereon under sub-section (7) of section 3, goods and services tax compensation cess leviable thereon under sub-section (9) of section 3, safeguard duty leviable thereon under section 8B, countervailing duty leviable thereon under section 9 and anti-dumping duty leviable thereon under section 9A” shall be substituted;</p> <p>(b) in condition (viii), after the proviso, the following proviso shall be inserted, namely :- “Provided further that notwithstanding anything contained hereinabove for the said authorisations where the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act, has been availed, the export obligation shall be fulfilled by physical exports only;”</p> <p>(c) after condition (xi), the following conditions shall be inserted, namely :- “(xii) that the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act shall be subject to pre-import condition; (xiii) that the exemption from integrated tax and the goods and services tax compensation cess leviable thereon under sub-section (7) and sub-section (9) of section 3 of the said Customs Tariff Act shall be available up to the 31st March, 2018.”.</p>
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Thus, condition no. (xii) and (xiii) were inserted, whereby it was provided that the exemption from Integrated Tax and the Goods and Services Tax compensation Cess leviable thereon under sub section (7) and sub section (9) of Section 3 of Customs Tariff Act shall be subject to pre import condition and available upto 31st March 2018. Accordingly, the exporters were allowed to procure/import raw material against a valid Advance Authorisation without the payment of additional duty, safeguard duty, countervailing duty, anti-dumping duty and integrated tax, which was earlier exempted from the payment of additional duty, safeguard duty, countervailing duty and anti-dumping duty only.

4. INVESTIGATION

4.1 Based on the above intelligence, an investigation was initiated against M/s. Zydus Lifesciences Ltd, (formerly known as M/s. Cadila Healthcare Ltd), by way of Summons issued under Section 70 of the CGST Act, 2017. During the inspection, some requisite details/documents were called for vide Annexure-A to the Summons dt. 18.12.2019 (**RUD-1**). The notice vide letter Cadila/DGGSI/01 dated 18.12.2019 (**RUD-2**) & dated 04.03.2020 (**RUD-3**) submitted the following documents

1. Statement of list of all India GST registration of Cadila Healthcare Limited
2. Copy of the GSTR-3B returns for the period of July 2017 to Oct 2019
3. Copy of the Annual Report for the FY. 2017-18 and 2018-19

4. Details of the refund of IGST paid on Goods Exported out of India under Rule 96 of the CGST Act 2017 during the period from 23.10.2017 to 08.10.2018.

4.2 Further, DGGI vide letter dated 04.03.2020 (**RUD-4**) requested the noticee to pay to the Government Account alongwith interest and penalty;
(a) the wrongly availed IGST Refund availed by them on IGST Refund paid on export of goods wherein they had availed IGST exemption,
(b) to pay the wrongly availed IGST refund on export against Advance Licence Authorisation invalidation given by them to their suppliers of the raw materials of the goods exported during the period from 23.10.2017 to 08.10.2018
(c) to pay the wrongly availed IGST Refund amount on goods purchased since 23.10.2017 in the status of Merchant Exporter by availing the benefit under the Notification nos.40/2017-CT(Rate) dated 23.10.2017 or 41/2017-IT(Rate) dt 23.10.2017, which was not eligible to them.

4.3 In reply to the said letter, the noticee vide its mail dated 02.04.2020 (**RUD-5**) explained the genuineness/correctness of the IGST Refund availed by them and requested to set aside the said demand alongwith penalty and interest.

4.4 Further, as the required details were not provided by the noticee in the required proforma, the said details were again requested to be provided by the noticee vide summon dated 22.04.2022 (**RUD-6**) & 04.05.2022 (**RUD-7**). The taxpayer appeared before the summoning authority to tender his statement on 06.05.2022 (**RUD-8**) and statement of the General Manager (Taxation) of M/s Cadila Healthcare Limited was recorded under section 70 of the CGST Act 2017 wherein he stated that

- They have procured raw material under Advance License and accordingly exported the finished goods manufactured from such raw material imported under advance license and subsequently claimed the refund of the IGST paid on the export of goods. they would submit the details of the refund taken within 5 days.
- They have not quantified the IGST refund claimed by them on the IGST paid during export of goods which were manufactured from the goods imported under advance license by claiming exemption of both BCD and IGST. They would submit the details along with. supportive documents within 5 days on sample basis.

4.5 Accordingly, DGGI vide its letters dated 08.07.2022 (**RUD-9**) requested the noticee for submission of details in respect of the refund obtained by the taxpayer under Rule 96(10) of the CGST Rules, 2017. As no suitable reply was received from the end of the noticee, another summon dated 02.11.2022 was issued for collection of the documents, requisite details and recording of the statement of the authorized person, required for the quantification of the duty (amount of refund obtained under Rule 96(10) of the CGST Act 2017). In response to the said summons, the noticee provided the required details as per Exhibit 1, Exhibit 2 and Exhibit 3 (**RUD-10**) and statement of Shri. Rashmikant N Shah, the General Manager (Indirect Taxation) of M/s. Zydus Lifescience Ltd (Earlier known as Cadila Healthcare Ltd) was also recorded on 02.11.2022 (**RUD-11**) wherein he inter alia stated that:

(i) He stated that vide Exhibit I of his letter dated 02.11.2022, he was submitting the details of quantified IGST refund received by them during the period from 23.10.2017 to 08.10.2018 for which the Company had availed the benefit of Advance Licence on imports made under Notification No.78/2017-Custom and Notification no.79/2017-Customs dated 13.10.2017 and after that they were not claiming the benefits of advance license at the time of import with respect to IGST.

(ii) He submitted that earlier they had provided advance authorization invalidation to their suppliers and again they submitted the said details for the period from 23.10.2017 to 08.10.2018 in the form of exhibit-II. He further submitted that their suppliers had been charging IGST on each invoices / supplies and accordingly they have been claiming refund on the IGST paid during the time of export. He also provided the sample copy of the invoices issued by their suppliers to prove that their suppliers had charged IGST.

(iii) He further stated that they had not paid the applicable refund amounting to **Rs.52,64,695/-** wrongly claimed by them against the goods exported by them that had been purchased as Merchant exporters. He submitted the said details vide Exhibit-III of their letter dated 02.11.2022.

4.6 During the course of investigation, on scrutiny of the documents viz. bills of entry, shipping bills, export invoices and export invoice wise details of raw materials/products used in the manufacturing of exported goods and manner of its procurement, copy of invoices issued by its suppliers wherein validation was granted for Advance Authorization, etc. gathered during the course of investigation, it was revealed that the noticee has imported raw materials, both, with and without payment of IGST, under Advance Authorization and has claimed refund of IGST on exported goods made from such raw material.

5. OUTCOME OF INVESTIGATION

5.1 From the investigation of case, the following facts have emerged:

- i) The noticee has availed the double benefit, one at the time of procuring IGST free raw material in terms of Notification No. 79/2017-Customs dated 13.10.2017 and has availed the benefit of notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017 and on the other hand by claiming the refund on the exports made on payment of IGST in terms of Rule 96 of- the Central Goods and Services Tax Rules, 2017 as mentioned in Annexure A attached to this Show Cause Notice;
- ii) The noticee submits that the restriction under provisions of Rule 96(10) of CGST Rules, 2017 as envisaged under Notification No. 54/2018- Central Tax. Dated 09.10.2018 only came into force from the date of the publication of the said notification (i.e., 09.10.2018). Therefore, they submit that the restriction under Rule 96(10) cannot apply on them to the period prior to 09.10.2018.

6. QUANTIFICATION OF GST:

6.1 From the details submitted by the noticee vide its letter dated 02.11.2022, the total amount of wrongly taken IGST refund worked out to the tune of Rs.7,65,96,522/- received by the noticee on export during 23.10.2017 to 09.10.2018 as shown in Annexure A attached to the Show Cause Notice.

6.2 Further, the noticee had submitted that amount of IGST refund amounting to Rs.52,64,695/- pertains to IGST paid on export of goods which were procured from suppliers for export as Merchant exporter. Thereafter, the said goods were exported on payment of the IGST. As per the provision of Rule 96(10) of the CGST Rules, 2017, the said refund of the IGST was inadmissible if the taxpayer received supplies on which the benefit of notification No. 40/2017-Central Tax (Rate), dated the 23rd October, 2017 or notification No. 41/2017-Integrated Tax (Rate), dated the 23rd October, 2017 has been taken. Hence, the said refund of the IGST amounting to Rs 52,64,695/- is being demanded from the noticee.

6.3 Thus, the amount of Rs **8,18,61,217/-** {**Rs.7,65,96,522/- amount of IGST Refund received by the noticee on export and Rs. 52,64,695/- amount of IGST Refund goods exported by them that had been purchased as Merchant exporters**) is required to be demanded and recovered from the noticee under Section 74(1) of the CGST Act 2017.

7. LEGAL PROVISIONS:

7.1 Following are the relevant provisions applicable for payment of GST by the noticee:

7.1.1 Cross empowerment of Central Tax/CGST officers: The Government has authorized officers of CGST as well as SGST as proper officer under Section 6 of CGST Act 2017. Section 6 of Gujarat Goods and Services Tax Act, 2017 also deals with such authorization. The relevant portions of the said Acts are reproduced hereunder for ease of reference:

(A) Section 6 of CGST Act 2017:

"6. (1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify. (2) Subject to the conditions specified in the notification issued under sub-section (1),- (a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax; (b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter. (3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act

shall not lie before an officer appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act."

(B) Section 6 of SGST Act 2017:

"6. (1) Without prejudice to the provisions of this Act, the officers appointed under the Central Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

(2) Subject to the conditions specified in the notification issued under sub-section (1),

(a) where any proper officer issues an order under this Act, he shall also issue an order under the Central Goods and Services Tax Act, as authorised by the said Act under intimation to the jurisdictional officer of central tax;

(b) where a proper officer under the Central Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act, shall not lie before an officer appointed under the Central Goods and Services Tax Act."

7.1.2 Thus, from the above, it is clear that the officers of Central Tax as well as officer of State Tax, both are the Proper Officer for the purpose of Section 6 of CGST Act as well as SGST Act and any of them can initiate any proceeding under this Act.

7.2 Section 54 of Central Goods and Services Tax Act, 2017:- Section 54 of the CGST Act, 2017 provides for provision with respect of Refund. Section 54(8) of the CGST Act, 2017 states with regard to refund on export good that:

(8) Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to -

(a) refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies;

7.3 Section 16 of Integrated Goods and Services Tax Act, 2017:- This provision of law provide for refund of tax, accumulated on account of Zero rate supply or paid on effecting zero rated supply. The provision states that :

(1) "zero rated supply" means any of the following supplies of goods or services or both, namely:-

(a) export of goods or services or both; or

(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:-

(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be

prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or

(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.

7.4 Rule 96(10) of the CGST Rules 2017. Relevant part of Notification No. 53/2018-CT dated 09.10.2018 and Notification No. 54/2018-CT dated 09.10.2018 relating to said sub-rule is as under:

(A) Notification No. 53/2018-CT dated 09.10.2018: "G.S.R. 1007(E).-
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 (Eleventh Amendment) Rules, 2018.

(2) They shall be deemed to have come into force with effect from the 23rd October, 2017.

2. In the Central Goods and Services Tax Rules, 2017, in rule 96, for subrule (10), the following sub-rule shall be substituted and shall be deemed to have been substituted with effect from the 23rd October, 2017, namely:-

"(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have received supplies on which the supplier has availed 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, Subsection (i), vide number G.S.R 1305 (E), dated the 18th October, 2017 or notification No. 40/2017-Central Tax (Rate) dated the 23rd October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (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 notification No. 78/2017-Customs, dated the 13th October, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection (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, Subsection (i), vide number G.S.R 1299 (E) dated the 13th October, 2017. "

(A) Notification No. 54/2018-CT dated 09.10.2018:

"(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 Taxc (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."

The provision of Rule 96 of CGST Rules, 2017 provides for the mechanism how an exporter can claim refund under Section 16 of IGST Act, 2017. However, sub-rule 96(10) seeks to prevent an exporter, who is receiving goods from supplies availing the benefit of certain specified notification 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 utilized the Input tax credit availed on other domestic supplies received for making the payment of integrated tax on export of Goods. Notification 3/2018-CT dated 23.1.2018 (w.c.f 23.10.2017) as amended vide Notification No. 39/2018-CT dated 4.9.2018 was restored back to previous provision vide Notification No. 53/2018-CT and 54/2018 -CT both dated 9.10.2018 which put certain limitation to restrict the refund. This position is finally settled and all doubts were put to rest with the issuance of Notification No. 16/2020 dated 23.03.2020 having retrospective effect from 23.10.2017 reads as:

"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 (Third Amendment) Rules, 2020.

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

.....
10. In the said rules, in rule 96, in sub-rule (10), in clause (b) with effect from the 23rd October, 2017, the following Explanation shall be inserted, namely,- "Explanation.- For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications."

7.5 Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful misstatement or suppression of facts.

"Section 74 (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or any wilful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilized input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

7.6 Interest on delayed payment of tax

Section 50(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

7.7 Penalty for certain offences: As per Section 122 (1)(viii) of the CGST Act, 2017.

122. (1) Where a taxable person who-

.....

.....

(viii) fraudulently obtains refund of tax under this Act;

.....

.....

he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

7.8 As per Section 20 of the IGST Act, 2017:

"Section 20. Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act relating to,

*(i) scope of supply;(ii) composite supply and mixed supply;(iii) time and value of supply;(v) input tax credit;(v) registration;(vi) tax invoice, credit and debit notes;(vii) accounts and records;(viii) returns, other than late fee;(ix) **payment of tax**; (x) tax deduction at source;(xi) collection of tax at source;(ii) assessment;(xiii) refunds;(xiv) audit;(xv) inspection, search, seizure and arrest;(xvi) **demands and recovery**;(vii) liability to pay in certain cases;(xviii) advance ruling;(ix) appeals and revision;(xx) presumption as to documents;(xxi) offences and penalties;(xii) job work;(xiii) electronic commerce;(xxiv) transitional provisions; and(xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty.*

shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act."

8. CONTRAVENTION OF VARIOUS PROVISIONS:

8.1 From the foregoing paras, it appeared that the noticee have contravened the following provisions of the CGST Act, 2017 and Rules made thereunder and also the provisions of IGST Act, 2017:

- (i) Section 54 of the CGST Act, 2017 in as much as they have fraudulently claimed the refund of IGST paid on export of Goods.
- (ii) Section 16 of the IGST Act, 2017 in as much as they have fraudulently claimed the refund of IGST without being eligible for the same.
- (iii) Rule 96 of the CGST Rules, 2017 in, as much as they have availed the benefit of said rule although they were not eligible for the same in light of conditions laid down in Rule 96(10) of the CGST Rules, 2017.

9. SUPPRESSION:

9.1 The noticee is a Limited Company and dealing into exports/imports business since long and it is quite obvious that the noticee was well aware of the provisions of Rule 96 (10) of CGST Rules, 2017 which prohibits double benefit i.e. exemption of IGST on the input materials imported under Advance Authorisation and refund of IGST paid on the goods exported by using such inputs. Although, having knowledge of the same, the noticee willfully and purposefully filed erroneous refund claim and availed refund of IGST with sole intention to en-cash their accumulated Input Tax Credit which they were otherwise prohibited in GST law. Here, it can be seen that despite having knowledge that the refund of IGST paid on export of goods is subject to the conditions as laid down in Rule 96(10) of the CGST Rules, 2017, the noticee neither informed the department about their erroneously claimed IGST refund of **Rs. 8,18,61,217/-**, nor did they make payment of such IGST on their own. Had the department not initiated the investigation, the said facts would not have come to light. Even otherwise, it is settled position that *Ignorantia juris non excusat* i.e. ignorance of law is not an excuse.

9.2 In view of the above facts, the erroneously refunded amount of Rs **8,18,61,217/-** is liable to be recovered from them under Section 74(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017 and the Rules made there under along with interest as applicable under Section 50(1) of the said Acts and the Rules made there under. Further, by such acts of omission and commission, the noticee have also rendered themselves liable for penal action under Section 122(I)(viii) of CGST Act, 2017 for contravention of provision of CGST Act, 2017/IGST Act, 2017 and rules made thereunder.

9.3 Further, a **Form GST DRC-OIA** regarding intimation of tax ascertained as being payable under Section 74(5) of CGST Act, 2017 before issuing of Show Cause Notice was issued to the noticee on 19.12.2022 and sent vide email dated 19.12.2022.

9.4 In reply, the noticee vide their email dated 20.12.2022 submitted that point raised by the department is not correct, the demand is not acceptable to them, hence they would not make payment, that they would file their detail reply once they receive original SCN from department.

9.5 In light of aforesaid discussions, the contention of the noticee that they are eligible to claim refund of IGST prior to 09.10.2018 is not tenable. The detailed discussion in this regard is already held in paras 3 and it is opined that there is no point to repeat the same.

10. Therefore a show cause notice no. DGGI/SZU/36-152/2022-23 dated 20/12/2022 was issued by the Additional Director, DGGI, Surat Zonal Unit, to M/s. Zydyus Lifesciences Ltd, (Formerly known as M/s. Cadila Healthcare Ltd) answerable to the Additional/Joint Commissioner, Central GST and Central Excise, Ahmedabad South Commissionerate having his/her office at Central GST Bhavan, Majalpur Rd, opp. Polytechnic Road, L Colony, Ambawadi, Ahmedabad, Gujarat 380015 on the following grounds as to why;

- (i) Erroneously refunded IGST amount of Rs **8,18,61,217/-** (Rs. Eight Crore Eighteen Lakhs Sixty One Thousand Two Hundred Seventeen Only) should not be demanded and recovered from them under Section 74(1) of the CGST, 2017 read with Section 20 of the IGST Act, 2017;
- (ii) Interest at appropriate rate should not be demanded and recovered from them on the amounts mentioned at SL No. (i) above under Section 50(1) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017;
- (iii) Penalty should not be imposed upon them on the amounts at Sr. No. (i) above under Section 74(1) of the CGST Act, 2017 read with Section 122(1)(viii) of the CGST Act, 2017/GGST Act, 2017 read with Section 20 of the IGST Act, 2017 for the aforementioned contraventions.

11. Defence Submissions:-

At the outset, the Noticee partially denied the demand raised in the SCN vide their written reply dated 24/01/2023 as it is incorrect and unsustainable on the following grounds which are without prejudice to one another.

1. No demand should be levied on refund received for goods exported with payment of tax

1.1 The Noticee submitted that the Rule 96(10) of CGST Rules 2017 has come into effect from 23 October 2017 hence there was no restriction before 23 October 2017, further, the restriction to export goods with payment of IGST, when exemption of IGST is availed by exporter on import under Advance Authorization (AA) is applicable from 9 October 2018; that before such period there was no such restriction even if goods are imported under AA claiming the IGST exemption; that this restriction is driven from Rule 96(10) of CGST Rules 2017 (Rules'); that this Rule has undergone various changes since its introduction in 2017 which created a lot of confusion in the mind of taxpayers as well as authorities; that they have summarized below Rule 96(10) along with amendment from time to time for easy reference.

Synopsis of Notifications and Circulars in relation to Rule 96(10) which imposes the restriction on dual benefit

S. No.	Reference	Effect	Provision
1.	Notification No. 75/2017 dated 29 December 2017	Retrospective from 23 October 2017	Introduction of Rule 96(10) to restrict exporters to export on payment of IGST if they have received supplies on which supplier has availed benefit of deemed export and merchant export
2.	Notification No.3/2018-Central Tax dated 23 January 2018	Retrospective from 23 October 2017	To additionally restrict exporter to export on payment of IGST if they have received supplies on which supplier has availed benefit of advance authorization (AA) and EPCG.
3.	Circular no. 45/19/2019-GST dated 30 May 2018	-	To clarify the position provided by the above notifications. The circular clarified that restriction does not apply to those exporters who has procured from suppliers who has not availed benefit mentioned above.
4.	Notification no 39/2018-Central Tax 23 dated 4 September 2018	Retrospective from 23 October 2017	Restriction imposed on exporter claiming benefit of AA as well as where supplies have been received from supplier who has availed the benefit of AA (This notification was subsequently rescinded vide notification 53/2018 Central Tax)
5.	Notification no. 53/2018 Central Tax dated 9 October, 2018	Retrospective for the period 23 October, 2017 - 9 October, 2018	Position introduced by Notification No. 3/2018 to restrict only those exporters who have received supplies on which supplier has availed benefit of certain notifications
6.	Notification no. 54/2018 Central Tax dated 9 October, 2018	Prospective for period on/after 9 October, 2018	To restrict exporter to export on payment of IGST who has received supplies on which benefit of deemed exports, merchant exports, advance authorization is availed. EPCG was deleted from restriction
7.	Circular No. 70/44/2018-GST dated 26 October 2018	-	Clarifying the net effect of changes in rule 96(10) brought in by various notification. It clearly states that exporter is eligible to claim refund of IGST paid on exports of goods till the date of issuance of notification 54/2018. (The notification was in effect from 26 October 2018 onwards).
8.	Circular 125/44/2019-GST dated 18 November 2019	-	The Circular further reclarified the effect of changes in Rule 96(10) which was earlier clarified in circular 70/44/2018.
9.	Amendment to CGST Rules vide Notification 16/2020-Central Tax dated 23 March 2020	Retrospective addition of explanation from 23 October 2017	Explanation introduced to Rule 96(10)(b). benefit of certain notifications shall not be considered to be availed where IGST has been paid on inputs.

1.2 The Noticee summarized the various amendments carried out in Rule 96(10) is as follows.

Period	Restriction to claim rebate
1 July 2017 to October 2017	No restriction
23 October 2017 to 8 October 2018	Restriction only where supplier of the exporter claimed benefit under aforementioned exemption notification on inputs
9 October 2018 to current date	Restriction where supplier and exporter, both claimed benefit under aforementioned exemption notification on inputs

2. Noticee has discussed the Rule 96(10) along with the amendments to such rule till date in detail as under:-

2.1 The Noticee has stated that Rule 96 of the Rules deals with refund of IGST paid on the goods exported out of India and stated that a brief procedure for claiming refund of IGST paid on export of goods has been specified in this Rule; that, sub-rule 10 of Rule 96 has prescribed certain conditions to restrict the exporters to make export with payment of IGST.

2.2 The Noticee further stated that Rule 96(10) has been inserted vide Notification no 75/2017 dated 29 December 2017 with **retrospective effect from 23 October 2017**; that the said sub-rule imposed restriction on exporters making export of goods with payment of IGST that such exporters should not have received supplies **from supplier** who have claimed the benefit under the below mentioned notifications:-

S. No.	Notification No.	Exemption granted under the Notification
4.1	48/2017-Central Tax	Deemed export of goods
4.2	40/2017-Central Tax (Rate)	Supplies of goods to merchant exporters at concessional rate
4.3	41/2017-Integrated Tax (Rate)	Supplies of goods to merchant exporters at concessional rate

2.3 The Noticee submitted that it is important to note that at the time of introduction of Rule 96(10), the restriction was imposed only for deemed exports and merchant exports. Hence, when the Rule was introduced, they were not covered under any restriction.

2.4 The Noticee further submitted that within one month of introduction of the Rule, the same was amended vide Notification No. 3/2018-Central Tax dated 23 January with **retrospective effect** additionally restricting the exporters availing exemption under the following category to claim refund of IGST paid on export of goods-

S. No.	Notification No.	Exemption granted under the notification
1.	78/2017-Customs	IGST exemption on imports by EOU/STP units
2.	79/2017-Customs	IGST exemption on imports against Advance Authorization (AA)/Export Promotion Capital Goods Scheme (EPCG)

2.5 The Noticee in their defence reply submitted that from the language used in the notification, it is clear that the **restriction applies only when the supplier of the exporter has availed the benefit** after 23 October 2017 under any of the Notifications mentioned above; that pursuant to the aforementioned changes in the Rule 96(10) the Central Board of Indirect Tax ('CBIC') has also clarified certain issues vide Circular no. 45/19/2019- GST dated 30 May 2018; that Para 7.1 of the Circular clarifies the intention behind the introduction of these restrictions; that it has been mentioned in the Para 7.1 **that the intention is to prevent only those exporters who are receiving goods from suppliers who have in turn availed benefits under aforementioned notifications under which they supply goods either at lower/ reduced/ concessional rate of tax or without payment of tax.**

2.6 The Noticee further submitted that the above intention is also evident from Para 7.2 which states that the restriction is not applicable to an

exporter who has procured goods from the suppliers who have not availed the benefit of the specified notifications for making their outward supplies.

2.7 The Noticee has further submitted that subsequently Rule 96(10) was again amended with **retrospective effect from 23 October 2017** vide Notification no 39/2018- Central Tax dated 4 September 2018; that through this Notification, the Rule was amended to bring a change in the earlier position established; that it was stated in the Notification that the restriction from claiming refund of IGST paid on export of goods shall apply to those exporters who themselves have availed the benefit as per Notification 48/2017- Central tax, 40/2017- Central Tax (Rate), 41/2017- Integrated Tax (Rate), 78/2017- Customs and 79/2017- Customs; that according to this Notification, the restriction has to apply qua the exporter and not the supplier of exporter; that in case, exporter has availed the benefit of the above-mentioned Notifications, only then the exporter will not be eligible to claim the refund of IGST paid on export of goods.

2.8 The Noticee further submitted that to clarify the various confusions faced by the taxpayers due to issuance of various Notifications as mentioned above, Circular No. 59/33/2018-GST was also issued on 4 September 2018 to clarify the intention of the government. The said circular clarified the position with an example which is reproduced as below-

"an importer (X) who is importing goods under the benefit of Advance Authorization/EPCG, is directly purchasing/importing supplies on which the benefit of reduced/Nil incidence of tax under the specified notifications has been availed. In this case, the restriction under rule 96(10) of the CGST Rules is applicable to X. However, if X supplies the said goods, after importation, to a domestic buyer (Y), on payment of full tax, then Y can rightfully export these goods under payment of integrated tax and claim refund of the integrated tax so paid. However, in the said example if Y purchases these goods from X after availing the benefit of specified notifications, then Y also will not be eligible to claim refund of integrated tax paid on export of goods or services."

2.9 The Notice in respect of the **Third Amendment to Rule 96(10)** submits that, the Rule was again amended in the month of October 2018; that the Central Government vide Notification no. 53/2018- Central Tax dated 9th October 2018 amended the Rule 96 (10) retrospectively with effect from 23rd October 2017; that vide the amendment, the exporters were prohibited from claiming refund of the tax paid on the export of goods if the exporter had received supplies on which benefit of the Notification no. 48/2017- Central Tax, 40/2017- Central Tax (Rate), 41/2017- Integrated Tax (Rate), 78/2017- Customs and 79/2017- Customs had been availed.

2.10 The Noticee in respect of the **Fourth Amendment to Rule 96(10)** submits that another notification was issued to further make changes in the Rule. **Notification no. 54/2018- Central Tax dated 9th October 2018** amended the Rule however **giving a prospective effect to restrict the exporter from claiming the refund of IGST on exports of goods if such exporter had received supplies on which the benefit of Notification no.**

48/2017- Central tax, 40/2017- Central Tax (Rate), 41/2017- Integrated Tax (Rate), 78/2017- Customs and 79/2017- Customs had been availed.

2.11 The Noticee therefore claimed that it is apparent from the above Notifications that for the period 23rd October 2017 to 8th October 2018, the exporter is not restricted to claim refund of IGST paid on export goods; that, from 9th October 2018 onwards, the restriction applies that where exporter has received supplies on which the benefit as per the Notifications mentioned in the preceding paragraphs has been availed.

2.12 The Noticee further quoted Circular No. 70/44/2018- GST dated 26th October 2018 wherein it is clarified that **'for removal of doubts, it is clarified that the net effect of these changes would- be that any exporter who himself/herself imported any inputs/capital goods in terms of notification no 78/2017 customs and 79/2017 customs both dated 13 October 2017 shall be eligible to claim the refund of the IGST paid on exports till the date of issuance of the notification No. 54/2018- Central Tax dated 9 October 2018'**; that the same was further clarified vide Circular 125/44/2019- GST dated 18 November 2019; that the Circular stated that 'The net effect of these changes is that any exporter who himself/herself imported any inputs/capital goods in terms of notification Nos. 78/~017-Customs and 79/2017-Customs both dated 13.10.2017, before the issuance of the notification No. 54/2018 - Central Tax dated 09.10.2018, shall be eligible to claim refund of the Integrated tax paid on exports; that further, exporters who have imported inputs in terms of notification Nos. 78/2017-Customs dated 13.10.2017, after the issuance of notification No. 54/2018- Central Tax dated 09.10.2018, would not be eligible to claim refund of Integrated tax paid on exports.

2.13 The Noticee further referred to the FAQs no 17 of Chapter 2- (Exports and Imports) dated 15 December 2018 issued by CBIC pursuant to the amendments introduced in GST law on recommendations suggested in the 31st council meeting wherein also it has been clarified that exporter cannot claim benefit of export of goods with payment of tax when the supplier has availed the import benefits for the period 23 October 2017 to 8 October 2018.

2.14 The Noticee has further stated that based on the above Circulars and Notifications, it can be said that the restriction on export with payment of IGST if benefit under AA has been availed is applicable from 9th October 2018 onward and before such period there is no such restriction applicable, and the Notice should be set aside.

2.15 The Noticee with reference to the **Fifth Amendment to Rule 96(10)** stated that an explanation to sub clause (b) of Rule 96 (10) vide Notification no 16/2020- Central Tax dated 23 March 2020 has been added with retrospective effect from 23rd October 2017; that it has been mentioned that benefit of notification 78/2017 and 79/2017(supra) shall not be considered to have been availed only where registered person has paid IGST and Compensation Cess on inputs and has availed exemption of BCD under these notifications.

2.16 The Noticee submitted that that, on reading the above- mentioned explanation it is clear that the restriction of Rule 96(10) is not applicable in case where IGST is paid at the time of procurement.

2.17 The Noticee has submitted that DGGI had issued SCN and demand notice on the basis that the Company has received the refund of IGST amounting to INR 7,65,96,522/- on export of goods with payment of tax during period 23rd October 2017 to 8th October 2018 and also has imported the goods by taking IGST exemption benefit as per notification 79/2017 Customs dated 23rd October 2017; that the Noticee would again like to reiterate that the Company has availed IGST exemption on imports against advance license during period 23rd October 2017 to 8th October 2018 only and not afterwards; that in view of the Notification No.54/2018 Central Tax dated 9th October 2018, which brings in restriction for an **exporter availing benefits of AA was applicable prospectively** from 9 October 2018 only; that there was no such restriction during 23rd October 2017 to 8th October 2018 on exporter of goods to avail benefit of IGST exemption on imports against advance license and hence, the Noticee is not liable to repay the refund received amounting to INR 7,65,96,522/- and the Noticee is liable to be set aside on this ground.

2.18 The Noticee further submitted that they have also procured goods as a merchant exporter and received refund amounting to INR 52,64,695 on export of goods with payment of tax; that they would like to submit that pursuant to various amendments carried out in Rule 96(10) and ambiguity in law, the Noticee has availed benefit of notification 40/2017- Central Tax (Rate) and 41/2017- Integrated Tax (Rate) Le., Merchant exports; that they accept that the same was restricted since introduction of Rule 96(10) vide notification No. 75/2017 dated 29 December 2017; that the Noticee humbly accepts the demand liability with respect to benefit availed as merchant exporter; that the Company has not repaid back the refund amount to GST department because there was no clarity in GST law for recredit in Electronic Credit Ledger (ECL) of refund amount repaid back to the GST department; that if the same will be recredited to the ECL, the Company will pay the demand amounting to INR 52,64,695 for exports done with payment of tax against which the benefit of concessional rate _as merchant exporter availed.

3. The Notice in respect of the Demand under Section 74(1) has submitted that the said demand is not sustainable. The Noticee has submitted that the SCN is issued under Section 74(1) of the Act, considering that the Noticee has willfully suppressed the fact and willfully received the refund claims with intention to liquidate the input tax credit. In this regard, the Noticee has submitted that various notifications and circulars were issued, and it is judicious to assume that Government at the time of introduction of Rule 96(10) was itself not clear; that the Rule 96(10) had time and again been amended vide various Notifications due to which, a lot of confusion prevailed amongst the exporters; that the Government provided a Rule which was rescinded and again the initial position provided was restored; that since, the Government has not been able to provide any conclusive position, exporters cannot be penalized for the same; that the allegation of suppression of fact cannot be made without any rational, concrete basis; that such a serious allegation cannot be made merely because of ambiguity in law and hence it will be irrational to assume that the intention of the Noticee was to willfully receive refund to liquidate the input tax credit; that in the present case, the Noticee

submits that there was no suppression of facts or contravention of provisions of the Act and the Rules made there under; that the element of mens rea is conspicuously absent in the present case and therefore, notice cannot be issued under Section 74(1) of the CGST Act, 2017.

4. The Noticee in respect of demand of interest has submitted that **interest is not applicable on the grounds that**, partial demand with respect refund received on export of goods with payment of tax and benefit of IGST exemption taken by way of imports against advance license, is not sustainable in law and hence demand of interest not arise at all.

4.1 The Noticee further submitted that interest will not be applicable on demand amounting to INR 7,65,96,522/- as demand of principle amount itself is not sustainable in law.

5. **The Noticee in respect of penalty has submitted that Penalty should not be levied in absence of mens rea and that**, the penalty is generally invoked in cases where there is culpable mens rea; that in the present case, the Noticee is not liable to pay penalty as there is no wrong availment of IGST refund; that when the law is itself not clear, the Notice cannot be penalized for the same; that through retrospective amendment if some provision is made into effect, then Noticee cannot be held responsible for not complying with the provisions; that it is well settled proposition that imposition of penalty is the result of quasi-criminal adjudication; that, the element of *mens rea* or malafide intent must be necessarily present in order to justify imposition of penalty and that the element of *mens rea* is conspicuously absent in the case in point.

5.1 The Noticee has relied upon the landmark decision of the Supreme Court in **Hindustan Steel Ltd. v. State of Orissa (supra)** is apposite wherein the Hon'ble Court has held that penalty will not ordinarily be imposed unless a person acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of his obligations; that the Penalty will not be imposed merely because it is lawful to do so; that whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of the relevant circumstances; that the penalty will not be imposed when there is a technical or venial breach of the provisions of the Act or where the breach follows from the bonafide belief that the person was not liable to act in the manner prescribed by the statute; that the element of positive action to evade tax or *mens rea* is essential for imposition of penalty. In view of the same, no penalty may be imposed on the Noticee in the complete absence of *mens rea*.

5.2 The Noticee in view of the detailed facts and submissions requested that the restriction under Rule 96(10) has to be considered only after the period starting from 9th October 2018 onwards and any demand should be set aside; that they would make the payment of IGST amounting to INR 52,64,695 and be allowed to take credit of the same in ECL; that they be granted an opportunity of being heard in person.

12. PERSONAL HEARING :-

The Noticee was offered personal hearing on 10/04/2023 wherein Shri Rashmikant Shah, General Manager, Indirect Tax appeared in virtual mode on webex platform on behalf of the Noticee before the undersigned. During the personal hearing held in virtual mode, Shri Shah reiterated their written submission dated 24, January, 2023 and further submitted that as there was lack of clarity by the department, the noticee should not be punished for the same.

13. Discussion and findings:-

I have carefully gone through the facts of this case. I have also considered their written submissions made by the Noticee vide letter dated 24/01/2023.

The moot point to be decided is whether the Noticee was entitled to the refund of Integrated tax paid on goods exported as they had utilised inputs imported under Advance Authorisation.

In terms of Central Goods and Services Tax Act, 2017 and the rules made there under, an exporter can claim refund of Integrated tax paid on goods exported. Whereas refund of input tax credit is governed by rule 89 of the Central Goods and Services Tax Rules, 2017, the Rule 96 ibid governs the procedure for refund of integrated tax paid on goods exported out of India.

In order to safeguard revenue interests and to restrict any possible double benefit claim, the sub rule (10) of rule 96 was amended to restrict those exporters who have imported and /or utilized IGST exempted inputs for manufacture of final products from claiming refund of integrated tax on goods exported. In fact, this sub-rule was amended more than once and vide Notification No. 53/2018-C.T dated 09.10.2018, it was substituted retrospectively with effect from 23.10.2017, and Notification No. 16/2020-C.T dated 23.03.2020 was issued to insert retrospectively from 23.10.2017 an explanation in the rule 96 (10) to disallow benefit of refund where IGST exemption was availed under two Customs notifications. The explanation provided that where only the Basic Customs duty exemption was availed for the imported inputs under Notification No. 78/2017-Customs, dated 13.10.2017 or Notification No. 79/2017-Customs, dated 13.10.2017, the benefit of IGST refund on goods exported would be permissible. The sum and substance of the above changes in the rules was to restrict the refund of IGST paid on goods exported in case IGST exempted inputs have been obtained by a supplier under Advance Authorisation or similar Notifications for manufacture of the final product which is exported.

On verifying refund of IGST paid on exports claimed by M/s Zydus Life sciences Ltd, it was noticed that they had procured imported raw materials under Advance Licence without payment of integrated tax. Advance licences issued in the years 2016 and 2017 were used for procurement of duty free inputs and refund obtained of IGST paid for the exports effected during February, 2018 to September, 2018. Refund was credited to their account during the period from May, 2018 to September, 2018. They had also claimed refund of IGST paid on exports made as a merchant exporter. It therefore,

appeared that the refund of integrated tax claimed was in contravention of rule 96 (10) of the CGST Rules, 2017 and this Show Cause Notice came to be issued for recovery of refund erroneously granted.

The Noticee has partially denied the demand raised and claimed that rule 96(10) came into effect from 23.10.2017 and the restriction to export goods with payment of IGST is applicable only from 09.10.2018; that at the time of introduction of Notification No. 75/2017 dated 29.12.2017, the restriction on claiming refund of IGST was only for deemed exports and merchant exports.

It was contended that they availed IGST exemption on imports against Advance licence during the period from 23.10.2017 to 08.10.2018 only and not afterwards; that the Notification No. 54/2018-Central Tax dated 09.10.2018, restricting an exporter availing benefits of Advance Authorisation was applicable only prospectively from 09.10.2018; that there was no restriction during the period from 23.10.2017 to 08.10.2018 on exporter of the goods from availing the benefits of IGST exemption on imports against advance licence. They have also referred to paragraph 3.2 of Circular No. 70/44/2018-GST dated 26.10.2018, which is reproduced below:

“For removal of doubts, it is clarified that the net effect of these changes would be that any exporter who himself /herself imported any inputs/capital goods in terms of notification no. 78/2017-customs and 79/2017-customs both dated 13.10.2017, shall be eligible to claim the refund of the IGST paid on exports till the date of issuance of the notification no. 54/2018-Central Tax dated 09.10.2018.”

Whereas the retrospective Notification No. 53/2018-C.T dated 09.10.2018 and the Circular No. 70/44/2018-GST dated 26.10.2018, clarifying the provisions appeared to suggest that there is no bar on an exporter who himself imported duty free inputs under Advance Authorization from claiming refund of IGST on goods exported. The Hon’ble High Court of Gujarat, in the case of M/s Cosmo Films Ltd Versus Union of India, reported in 2020 (43) G.S.T L 577 (Guj), interpreted the various provisions governing refund of IGST paid on goods exported and held that the Notification No. 39/2018, dated 4th September, 2018 shall remain in force as amended by the Notification No. 54/2018, by substituting sub-rule (10) of Rule 96 of CGST Rules, in consonance with sub-section (3) of Section 54 of the CGST Act and Section 16 of the IGST Act and the Notification No. 54/2018 is therefore, held to be effective with effect from 23rd October, 2017. The findings of the Hon’ble High Court are reproduced below, verbatim.

“8.5 Rule 96 of the CGST Rules provides for procedure of refund of Integrated Tax paid on goods or services exported out of India, as per Section 54 of the CGST Act. Rule 96(10) as it originally existed, when the Rules came into force provided that the persons claiming refund of Integrated Tax paid on export of goods or services should not have received supplies on which the supplier has availed the benefit from Government of India, Ministry of Finance, under Notification No. 48/2017, dated 18th October, 2017 or Notification No. 40 of 2017, dated 23rd October, 2017 or Notification No. 41 of 2017-Integrated Tax (Rate), dated 23rd October, 2017 or

Notification No. 78 of 2017-Customs, dated 30th October, 2017 or the Notification No. 79 of 2017-Customs, dated 13th October, 2017.

8.6 Thereafter, sub-rule (10) of Rule 96 of the CGST Rules was amended by the Notification No. 39/2018 dated 4th September 2018 w.e.f. 23rd October, 2017 and substitute Rule 10 as under :

“6. In the said rules, with effect from the 23rd October, 2017, 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 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.”

8.7 Thus, sub-rule (10) of Rule 96 was subdivided in two parts for the person claiming refund of integrated tax paid on exports of goods or services should not have received supplies on which the benefit of the Notification No. 48/2017 and availed benefit under Notification No. 78/2017 or 79/2017, dated 13th October, 2017.

8.8 It appears that, thereafter, again both the clauses which were substituted by Notification No. 39/2018 were merged by Notification No. 53/2018, dated 9th October, 2018 which reads as under :

“Notification : 53/2018-C.T., dated 9-Oct-2018

Central Goods and Services Tax Rules, 2018 - Eleventh 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 (Eleventh Amendment) Rules, 2018.

(2) They shall be deemed to have come into force with effect from the 23rd October, 2017.

2. In the Central Goods and Services Tax Rules, 2017, in rule 96, for sub-rule (10), the following sub-rule shall be substituted and shall be deemed to have been substituted with effect from the 23rd October, 2017, namely:- “(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have received supplies on which the supplier has availed 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 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 or 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.”

[Notification No. 53/2018-C.T., dated 9-10-2018]

8.9 Thereafter, by Notification No. 54/2018, dated 9th October, 2018 again sub-rule (10) of Rule 96 was amended by substituting the same, wherein, it is provided that the persons claiming refund of integrated tax paid on exports of goods or services should not have received supplies (a) on which the benefits of Notification No. 48/2017, dated 18th October, 2017, Notification No. 40/2017, dated 23rd October, 2017 or Notification No. 41/2017, dated 23rd October has been availed or (b) availed the benefit under Notification No. 78/2017 or Notification No. 79/2017.

8.10 It is pertinent to note that the Notification No. 54/2018 is made applicable retrospectively from the date when Rule 96(10) of the CGST Rules came into force and not with effect from 23rd October, 2017, as was amended in the previous Notifications.

8.11 Section 16 of IGST Act provides for ‘Zero Rated Supply’ and sub-clause (b) of sub-section (3) of Section 16 provides that, a registered person making zero rated supply shall be eligible to

claim refund, if he has supplied the goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied.

8.12 Thus on conjoint readings of the provision of Section 16 of the IGST Act, Section 54 of CGST Act and Rule 96(10) of CGST Rules, which is substituted by Notification No. 54/2018, dated 9th October, 2018, it is apparent that the person who has availed the benefits of Notification No. 48/2017, dated 18th October, 2017 and other Notifications as stated in sub-rule (10) shall not have the benefit of claiming refund of integrated tax paid on exports of goods or services. The petitioner has availed benefits under Advance Authorization License scheme as per the Notification No. 18/2015 which was amended by Notification No. 79/2017, dated 13th October, 2017 and paid integrated tax on the goods procured by the petitioners for the export purpose.

8.13 Notification No. 48/2017-C.T., dated 18th October, 2017 has declared the following goods and the explanation thereto states that, "Advance Authorization" means an authorization issued by the Director General of Foreign Trade under Chapter-4 of the Foreign Trade Policy 2015-20 for import or domestic procurement of inputs on pre-import basis for physical exports. Therefore, as the petitioner has availed the benefits of AA License as per Notification No. 40/2017-C.T. (Rate), dated 23rd October, 2017 and has enjoyed the exemption of GST on the supply of the goods from the registered supplier for the purpose of export on fulfilling the conditions prescribed therein. It appears that, thereafter, by Notification No. 39/2018-C.T., dated 4th September, 2018 has substituted the sub-rule (10) of Rule 96 w.e.f. 23rd October, 2017, however, by Notification No. 54/2018, the application of the substituted sub-rule (10) of Rule 96 is not made effective from 23rd October, 2017, but it was made applicable from the inception. Therefore, the petitioner who has availed the benefit of the Notification No. 39/2018 from 23rd October, 2017 to 4th September, 2018 would not be able to get the refund of the IGST paid or the input tax credit balance in the accounts of the petitioner, in view of the Notification No. 54/2018.

8.14 Considering the effect of the Notification No. 54/2018, the contentions raised on behalf of the respondents that there is no discrimination qua the petitioner is tenable in law, as by the amendment made by Notification No. 54/2018 it clearly denied the benefit which is granted to the petitioner by the Notification No. 39/2018 was withdrawn as the same was not made applicable from 23rd October, 2017.

8.15 Recently, vide Notification No. 16/2020-C.T., dated 23-3-2020 an amendment has been made by inserting following explanation to Rule 96(10) of CGST Rules, 2017 as amended (with retrospective effect from 23-10-2017).

“Explanation. - For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.”

By virtue of the above amendment, the option of claiming refund under option as per clause (b) is not restricted to the Exporters who only avails BCD exemption and pays IGST on the raw materials thereby exporters who wants to claim refund under second option can switch over now. The amendment is made retrospectively thereby avoiding the anomaly during the intervention period and exporters who already claimed refund under second option need to payback IGST along with interest and avail ITC.

9. In view of above amendment, the grievance of the petitioner raised in this petition is therefore taken care of. However, it is also made clear that Notification No. 54/2018 is required to be made applicable w.e.f. 23rd October, 2017 and not prior thereto from the inception of the Rule 96(10) of the CGST Act. Therefore, in effect Notification No. 39/2018, dated 4th September, 2018 shall remain in force as amended by the Notification No. 54/2018 by substituting sub-rule (10) of Rule 96 of CGST Rules, in consonance with sub-section (3) of Section 54 of the CGST Act and Section 16 of the IGST Act. The Notification No. 54/2018 is therefore held to be effective w.e.f. 23rd October, 2017. Rule is made absolute to the aforesaid extent, with no order as to costs.”

Since the Hon'ble High Court has ordered that in effect, Notification No. 39/2018, dated 4th September, 2018 shall remain in force as amended by the Notification No. 54/2018 by substituting sub-rule (10) of Rule 96 of CGST Rules, with retrospective effect from 23 rd October, 2017, it naturally follows that persons claiming refund of integrated tax paid on export of goods should not have received supplies on which the benefit of Advance Authorization is taken. In the present case, the Noticee has availed the benefit of Advance Authorization scheme and hence, the refund of **Rs 7,65,96,522/-** was not admissible and for the same reasons, refund of **Rs 52,64,695/-** taken on exports as a merchant exporter is also not admissible and requires to be demanded.

On the issue of invocation of extended period under Section 74 for raising the demand, I find that the Notification No. 39/2018-C.T. was issued on 04-09-2018 retrospectively amending from 23.10.2017, the sub rule (10) of rule 96 of the CGST Rules, 2017, to read as follows:

“(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 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.”

Since the fact of receiving inputs under Advance Authorization and consequent ineligibility from claiming IGST refund are known to the Noticee and yet, in the anonymity of online processing of refund claims which is automatic in nature, the Noticee has claimed refund which amounted to suppression of facts and at the same time, wilful mis-statement also. Further, it was possible to import under Advance Authorization by claiming exemption of only the Customs duties and IGST could have been paid in which case, the exporter would be eligible for refund of IGST. Therefore, a mere indication of “Advance Authorization” in the Shipping Bill would not be a sufficient disclosure. It should have been specifically indicated that IGST exemption was claimed while importing inputs under Advance Authorization. Such a submission was not mentioned in the export documents and it amounted to suppression of facts. In view of the above, the proposal to recover the erroneously sanctioned refund under Section 74 of the CGST Act, 2017 is correctly made and requires to be sustained.

Further, the noticee is a Limited Company and dealing in exports/imports business and it is quite obvious that they were aware of the provisions of Rule 96 (10) of Central GST Rules, 2017 which prohibits double benefit i.e. exemption of IGST on the input materials imported under Advance Authorisation and refund of IGST paid on the goods exported by using such inputs. Although, having knowledge of the same, they have wilfully and purposely filed erroneous refund claim and availed refund of IGST with the sole intention to encash their accumulated Input Tax Credit which they were otherwise prohibited in GST law. Despite having knowledge that the refund of IGST paid on export of goods is subject to the conditions as laid down in Rule 96(10) of the CGST Rules, 2017, they have neither informed the department about their erroneously claimed IGST refund of **Rs. 8,18,61,217/-**, nor did they make payment of such IGST on their own. Had the department not initiated the investigation, the said facts would not have come to light.

In fact, the sub rule (9) of rule 96 of Central GST Rules, 2017 was inserted with effect from 23.10.2017, vide Notification No. 75/2017-C.T dated 29.12.2017, to restrict persons claiming refund of integrated tax paid on export of goods from receiving supplies on which the integrated tax was not paid.

There were subsequent amendments also made but the intention to restrict the double benefit, of receiving duty free inputs and claiming refund on exports was a central condition in rule 96 *ibid*. As already noted, in GST regime, the refunds are automatic / machine driven and Shipping Bills filed are considered as refund claim. There being minimum intervention in sanction of refund claim on export of goods, the subject refunds involve suppression of facts with an intention to claim undue benefit. In view of these facts, I find that extended period under Section 74 is liable to be invoked for demanding the integrated tax refund wrongly claimed by them.

Since Section 74 is invoked for the demand which is found to be valid, I conclude that they are liable for penalty, equivalent to the tax demanded, in terms of Section 74(1) of the Central GST Act, 2017.

Since refund has been erroneously sanctioned, I find that the Noticee is also liable to pay the interest leviable, in terms of Section 50(1) of the CGST Act, 2017.

It needs to be mentioned here that for expeditious re-credit of credit amount in credit ledger, where the registered person deposits the cash equivalent in government account, the Notification No. 14/2022-C.T., dated 5-7-2022, inserted a sub rule in rule 86, as follows:

“5. In the said rules, in rule 86, after sub-rule (4A), the following sub-rule shall be inserted, namely :-

“(4B) Where a registered person deposits the amount of erroneous refund sanctioned to him, -

(a) under sub-section (3) of section 54 of the Act, or

(b) under sub-rule (3) of rule 96, in contravention of sub-rule (10) of rule 96,

along with interest and penalty, wherever applicable, through FORM GST DRC-03, by debiting the electronic cash ledger, on his own or on being pointed out, an amount equivalent to the amount of erroneous refund deposited by the registered person shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03A.”;

Therefore, deposit of IGST refund can be taken in the credit ledger in the manner specified above. In consideration of my above findings, I hereby pass the following Order.

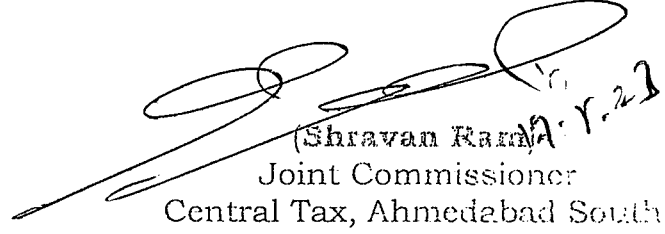
ORDER

- (i) I hereby order to recover the erroneously refunded IGST amounting to Rs 8,18,61,217/- (Rupees Eight Crore eighteen lakhs sixty one thousand two hundred and seventeen only) from the Noticee under Section 74 (9) of the Central Goods and Services Tax Act, 2017.
- (ii) I hereby order to demand interest at the appropriate rate, payable on the demand of IGST refund, under Section 50(1) of the Central Goods & Services Tax Act, 2017.
- (iii) I hereby impose a penalty of Rs 8,18,61,217/- (Rupees Eight Crore eighteen lakhs sixty one thousand two hundred and seventeen only) under Section 74(1) of the Central Goods and Services Tax Act, 2017. In

terms of sub-section (11) of Section 74 ibid, where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

- (iv) Since penalty under Section 74 is already imposed, I refrain from imposing any penalty under Section 122 (1) in terms of Section 75 (13) of the CGST Act, 2017.

The Show Cause Notice F. No. DGGI/SZU/36-152/22-23 dated 20.12.2022 is accordingly disposed of.


(Shrawan Ram)
Joint Commissioner
Central Tax, Ahmedabad South

F. No. CGST/04-296/O&A/Zydus/2022-23

Dated :- 17.05.2023

DIN-20230564WS0000555B14

BY R.P.A.D/SPEED POST

To
M/s Zydus Life sciences Ltd,
(Formerly known as M/s Cadila Healthcare Ltd)
Zydus Corporate Park,
Scheme No. 63, Survey No. 536,
Khorna (Gandhinagar),
Near Vaishnodevi Circle,
S.G Highway,
Ahmedabad 382 481
Gujarat

Copy to:

1. The Principal Commissioner, Central Tax, Ahmedabad South.
2. The Additional Director General, DGGI, Surat Zonal Unit, Surat
3. The Assistant Commissioner, Central Tax, Division-VII, Ahmedabad South.
4. The Deputy/Asstt. Commissioner, Central Tax, TAR Section, HQ, Ahmedabad South.
5. The Superintendent, Central Tax AR-I, Div.-VII, Ahmedabad South for uploading DRC-07 on GSTN portal
- ✓ 6. The Superintendent, Central Tax, Systems HQ, Ahmedabad South for uploading on the website
7. Guard file.