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Denial of refund of IGST to Advance-Authorisation holders is valid but operates prospectively w.e.f October 23, 2017

The Hon'ble HC, Gujarat in *Cosmo Films India v. Union of India & Ors. [R/SLP No. 15833/2018 dated October 20, 2020]* upheld the validity of rule 96(10) of the Central Goods and Services Tax Rules, 2017 (“CGST Rules”) and rules that notification is required to be made applicable prospectively only w.e.f. October 23, 2017 and not prior thereto from the inception of Rule 96(10) of the CGST Rules w.e.f. July 1, 2017.

Facts:

Cosmo Films India (“the Petitioner”) is a public limited company engaged in the business of manufacturing and sale of flexible packaging films and holds Advance Authorization Licenses (“the AA License”) granted in terms of the Foreign Trade Policy, issued and amended from time to time.

The Petitioner was entitled to import raw materials without payment of IGST under the AA License and pay IGST on exports and claim Rebate (Refund) of the IGST so paid on exports. The Petitioner has received benefits of rebate of IGST at the relevant point of time. Thereafter, sub-rule (10) of Rule 96 of the CGST Rules was amended by *Notification No. 39/2018-Central Tax dated September 4, 2018* with retrospective effect from October 23, 2017, providing that rebate on exports cannot be availed by the Petitioner, if the inputs procured by the Petitioner have enjoyed AA benefits or Deemed Export Benefits under the said notification. Therefore, the Petitioner was unable to utilize the benefit of duty-free imports under AA Licenses and take the benefit of rebate on exports.

Thereafter, by *Notification No. 53/2018-Central Tax dated October 9, 2018*, sub-clause (a) and (b) of sub-rule 10 of Rule 96 of the CGST Rules were merged. Thereafter, vide *Notification No. 54/2018--Central Tax dated October 9, 2018* (“Impugned Notification”), the sub-rule 10 of Rule 96 of the CGST Rules was again de-merged and “with effect from October 23, 2017”.

Issue:

Challenged the validity of sub-rule (10) of Rule 96 of CGST Rules substituted vide *Notification No. 54/2018-Central Tax dated October 9, 2018* denying the option to claim rebate to the Petitioner for importing goods under AA licenses.

Held:

The Hon'ble HC, Gujarat in *R/SLP No. 15833/2018 dated October 20, 2020* held as under:

- Rule 96 (10) as it originally existed, when the Rules came into force provided that the persons claiming refund of Integrated Tax (IGST) 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.

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- On conjoint readings of the provision of Section 16 of the Integrated Goods and Services Tax Act, 2017 (“**IGST Act**”), Section 54 of Central Goods and Services Tax Act, 2017 (“**CGST Act**”), and Rule 96(10) of CGST Rules, which is substituted by Impugned Notification, it is apparent that the person who has availed the benefits of *Notification No. 48/2017- Central Tax dated October 18, 2017* and other Notifications as stated in sub-rule 10 of Section 96 ibid 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- Customs dated April 1, 2015* which was amended by *Notification No. 79/2017- Customs dated October 13, 2017* and paid integrated tax on the goods procured by the Petitioners for the export purpose.
- Considering the effect of the Impugned Notification, the contentions raised on behalf of the department that there is no discrimination qua the petitioner is tenable in law, as by the amendment made by Impugned Notification it clearly denied the benefit which is granted to the Petitioner by the *Notification No. 39/2018- Central Tax dated September 4, 2018* was withdrawn as the same was not made applicable from October 23, 2017.
- Recently, vide Notification No. 16/2020-Central Tax dated March, 23 2020 an amendment has been made by inserting explanation to Rule 96(10) of CGST Rules, 2017 as amended (with retrospective effect from October 23, 2017). By virtue of which the option of claiming refund 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 above amendment was 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, in view of which, the grievance of the Petitioner was therefore taken care of..
- However, it is also made clear that Impugned Notification is required to be made applicable w.e.f. October 23, 2017 and not prior thereto from the inception of the Rule 96(10) of the CGST Act. Therefore, in effect *Notification No. 39/2018- Central Tax dated September 4, 2018* shall remain in force as amended by the Impugned Notification 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.

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- The Impugned Notification is therefore held to be effective w.e.f. October 23, 2017.

Relevant provision:

Rule 96(10) of the CGST Rules

“96. Refund of integrated tax paid on goods 3[or services] exported out of India.-

(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have -

1[(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.]

2[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.]”

Notes:

1. Substituted vide **Notification No. 54/2018 – Central Tax dated 09-10-2018** before it was read as

“3[(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,

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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.]

2. Inserted vide **Notification No. 16/2020 – Central Tax dated 23-03-2020 w.e.f. 23-10-2017**
3. Substituted vide **Notification No. 53/2018 – Central Tax dated 09-10-2018 w.e.f. 23-10-2017** before it was read as

"4[(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.]"

4. Substituted vide **Notification No. 39/2018 – Central Tax dated 04-09-2018 w.e.f. 23-10-2017**, before it was read as:

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"(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) 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 Tax 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."

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